

THWARTED AND DELAYED:
THREE ERAS OF LEGISLATING LABOUR RIGHTS
IN THE ONTARIO PUBLIC SERVICE, 1867-2017

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Abstract

Seeking to understand why public servants took so long to achieve labour rights—particularly the right to strike—compared to those in the broader economy, this dissertation explores the historical evolution of labour relations within the Ontario Public Service (OPS) from 1867 to 2017. Through an examination of the interplay between institutions and broader socio-economic and political forces, viewed through a critical institutionalist framework, this study argues that the development of OPS labour relations is defined by three distinct eras. The first era, from Confederation until the 1960s, was dominated by the principle of parliamentary sovereignty, which limited the labour rights available to public servants. The second era, from the 1960s to the 1990s, saw the ideology of the governing party as the primary dynamic, with party ideology playing a significant role in the emergence of public servants' right to strike. Starting in the 1990s, the third era saw the rise of neoliberalism shift the focus of governments of all partisan stripes toward cost containment. As a result, this era was marked by hard bargaining and practical constraints on the feasibility of the strike option. This study demonstrates how these primary factors, along with other influences such as worker militancy and class relations, have shaped the long development of the OPS labour relations regime. The dissertation concludes that, despite significant legislative changes, the government has nevertheless retained considerable control over the material outcomes of the public service labour relations system.

Acknowledgements

David Zimmer, the grief-stricken protagonist in Paul Auster's *The Book of Illusions*, remarked upon completing his study of the fictional silent film comedian Hector Mann that "the manuscript came to more than three hundred typed pages, and every one of those pages was a struggle for me."¹

I relate.

Before getting to the specifics of this struggle, let me first thank my supervisor, Dennis Pilon. Dennis and I met as students in York's political science graduate program. Unlike me, Dennis finished his doctorate in a timely fashion. He then went on to join the faculty. Some years later (now, ago) I asked Dennis if it might be possible for me to re-enroll at York to write my dissertation and finally earn my doctorate. As is his way, Dennis was instantly and enthusiastically supportive. He deftly stickhandled the bureaucracy to get me going and has remained just as enthusiastic as he was when this started.

The other members of my committee—Stephanie Ross and Mark Thomas—were also grad school contemporaries of mine at York (though I did not know Mark at the time). I thank them for their close reading of my work and for pushing me to produce more and better. That I learned so much writing this dissertation is owed to them.

Rather quickly into my initial doctoral studies at York I became acutely aware that I was spinning my wheels. This should not have come as a surprise.

¹ Paul Auster, *The Book of Illusions*, (New York: Picador, 2003), 55.

York had not been my first choice, and my attendance there was a decision born largely of a lack of funding to go elsewhere. More than anything else, it was York's labour relations setting that would significantly impact the course of my professional life.

My time at York featured a lengthy faculty strike during my master's degree and an even lengthier strike by teaching assistants in the second year of my doctoral studies. These strikes, plus my personal involvement with the teaching assistants' union, CUPE 3903, awakened my interest in unions and labour relations. Hence, when I finished my qualifying exams, I switched to studying law thinking a law degree could serve as an entry to working in labour relations. Ultimately, I was correct—just not in the way I had initially expected. You see, I quickly learned that I did not want to be a lawyer, least of all in the litigation-heavy area of labour law. Consequently, I did not article, but upon graduating instead landed a job as Research Officer at AMAPCEO.

An abandoned doctorate and not really seeing the whole 'learning law thing' through to its normal end point ... one might ask if I ever finish anything? One who asked that question inadvertently created a moment which served as a catalyst for this project finally being pursued. The interlocuter was my lifelong friend, Neil Williams, who some years ago laid into me, pointing out—making up with bluntness what he lacked in tact—that I tended not to finish things. Not long after that, another friend helped spur me along. This time it was Elder Marques who—with a softer touch—got me going by asking me something along the lines of “why not write the thing?” while we watched one soccer match or another. I

am sure that neither of them remembers either of these conversations. I suppose all that matters is that I do.

Compelled to write a dissertation, I sought a topic that dovetailed with my day job. The answer was obvious. At the outset Dennis expected me to produce a “regimental history” of AMAPCEO. Though that is not what I had in mind, the truth is that I had no idea where the project would lead. I only knew that I wanted to know more about why the labour relations system in the Ontario Public Service had taken the form that it had.

That is the story of how this dissertation got produced and its circuitous route—no royal road to science, indeed—is half of why I began with Zimmer. The other half has been reality of balancing full-time employment and a family with this project. This dissertation could not have been completed without the support of many people.

Several colleagues, present and past, at AMAPCEO helped me with their insights, encouragement, and occasionally research support. I thank: Dave Bulmer, Justin Gniposky, Matthew Hill, Burke Moffat, Michael Mouritsen, Jennifer Pacheco, Benjamin Rossiter, Anthony Schein, Joshua Schwartz, Jennifer Sherwood, and Jason Wagar. I thank my sister, Shauna Carson, for her enthusiasm and meticulous copy-editing. I thank my parents, Arthur and Lesley, for a lifetime’s encouragement and belief. I thank my three children, Elliott, Malcolm, and Desmond for being my favourite escape from work. Most of all, I thank my wife, Heather Schramm, for her endless love, her unwavering support, and her resilience, vision, and patience throughout the process.

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List of Abbreviations

ALOC	Association of Law Officers of the Crown
AMAPCEO	Association of Management, Administrative, and Professional Crown Employees of Ontario
AUPE	Alberta Union of Provincial Employees
BCGEU	British Columbia Government Employees Union
CCF	Cooperative Commonwealth Federation
CCL	Canadian Congress of Labour
CECBA	Crown Employees Collective Bargaining Act
CFGEO	Canadian Federation of Government Employee Organizations
CIO	Congress of Industrial Organizations
CLC	Canadian Labour Congress
CSAA	Civil Service Association of Alberta
CSAO	Civil Service Association of Ontario
CSC	Ontario Civil Service Commission
CSN	Confédération des syndicats nationaux
CUPE	Canadian Union of Public Employees
FCSC	Federal Civil Service Commission
JAC	Joint Advisory Council
LRA	Labour Relations Act
MGEA	Manitoba Government Employees Association
MGEU	Manitoba Government Employees Union
NBCSA	New Brunswick Civil Service Association
NDP	New Democratic Party
NUPE	National Union of Public Employees
OCAA	Ontario Crown Attorneys Association
OLBEU	Ontario Liquor Board Employees Union
OPSEU	Ontario Public Service Employees Union
PC	Progressive Conservative Party
PEGO	Professional Engineers of the Government of Ontario
PIPSC	Professional Institute of the Public Service of Canada
PSA	Public Service Act
PSOA	Public Service of Ontario Act
SCSA	Saskatchewan Civil Service Association
TLC	Trades and Labor Congress of Canada

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Chapter 1: Introduction

In December 1961, a guard at Toronto's Don Jail dyed his hair. 30-year-old Brendan Keatinge had seen his hair go prematurely white owing to a shock suffered during his former career as a police officer.¹ While the dye merely returned Keatinge's hair to its natural shade, upon his return to work he was ordered "to get rid of the dye job or 'you'll be out of a job.'"² The dye being permanent, Keatinge was presented with a quandary. The ultimatum became public knowledge, discussed in both newspapers and the Legislature, with the publicity resulting in Keatinge's 10-day suspension without pay and the firing of two other guards, James Keatings and Anthony Simonson.

The issue for the employer—the government—was to determine how Keatinge's story had leaked to the press. At the time, Ontario prison authorities enjoyed wide latitude to question both inmates and staff and, on this basis, an investigation into the leak ensued. Keatings, the president of the local Civil Servants Association of Ontario (CSAO) chapter, was fired for refusing to answer investigators' questions. Simonson was fired for making the leak (though it was allegedly the future CUPE president Grace Hartman who had taken the issue to

¹ Scott Young, "Ex-Police: In Canada They Seek a Change," *Globe and Mail*, 20 November 1957. Investigating reports of a gas leak, Keatinge and his partner discovered a suicide by gas asphyxiation. However, upon their entry to the London flat where the incident had occurred, the gas ignited, killing Keatinge's partner.

² "White-Haired Jail Guard Told to Remove Dark Dye," *Toronto Daily Star*, 15 December 1961.

the press on the worker's behalf).³ In a demonstration of the investigation's wide-ranging character, it brought to light that, in addition to his jail guard duties, Simonson had been working as a part-time hair stylist and that he had suggested that Keatinge dye his hair. Further, it was alleged that Simonson wore "flashy" clothing to and from work, for which fellow "guards whistled and made wolf calls" at him.⁴ Concerns were raised at the hearing over whether such a guard was sufficiently masculine to earn the respect of prisoners and colleagues.⁵

Peculiar though the hearings may have been, the fact that there were any at all is a surprise. As employees of the province, the guards did not fall under the jurisdiction of the *Labour Relations Act (LRA)*. Though the guards at the Don Jail had once been represented by the National Union of Public Employees (NUPE), due to a reorganization they were provincial employees and thus represented by the CSAO. This was not the same as being in a regular trade union. Ontario's public servants were, at that time, denied the same labour rights as workers in the broader economy. While civil servants did have some grievance rights, the province did not classify the jail guards as public servants, thereby barring them from appealing their suspensions to the Public Service Grievance Board.⁶ Neither

³ "Two Don Guards Fired In Hair-Dye Sequel," *Toronto Daily Star* 8 January 1962; Gloria Montero, *We Stood Together: First-Hand Accounts of Dramatic Events in Canada's Labour Past* (Toronto: James Lorimer & Co., 1979), 198.

⁴ "Clothes Drew 'Wolf Call' Fired Jail Guard Says," *Toronto Daily Star* 28 July 1962.

⁵ "Don Guard Asleep on Duty, Inquiry Told," *Toronto Daily Star*, 30 August 1962. (Regarding Simonson's hair stylist hobby, fellow guard Paul Mulhern testified: "When a man is in this type of work, because men are men, and men are human. It's only human to call a man down for this.")

⁶ Management and excluded OPS employees are, to this day, able to use the PSGB for dispute resolution.

fish nor fowl, the guards lacked even the limited rights of other provincial public servants while joining those other public servants in lacking the labour rights that most other workers in Ontario enjoyed.⁷

+ + +

In the 1990s, significant changes to legislation brought the Ontario Public Service (OPS) labour relations regime closer to Ontario's broader labour law. In September 1990, the Bob Rae-led New Democratic Party (NDP) became Ontario's governing party in a "stunning political upset."⁸ After forming government for the first time in the party's history, one of the Rae government's primary focuses was labour law reform. Bill 40 made several significant changes to Ontario's *LRA* such as banning replacement workers.⁹ While the changes to the *LRA* were of considerable public interest, less well-known were the amendments the government made to the legislation that governs labour relations in the OPS—the *Crown Employees Collective Bargaining Act (CECBA)*.¹⁰

First passed in 1972, *CECBA* (along with the *Public Service of Ontario Act (PSOA)*) works "to produce a unique employment and labour relations regime" in the OPS.¹¹ When the NDP came to power, *CECBA* lagged behind similar statutes in

⁷ Ron Haggart, "Jail Guards Tied Up – In Red Tape," *Toronto Daily Star*, 26 January 1962.

⁸ Patrick Monahan, *Storming the Pink Palace: The NDP in Power: A Cautionary Tale* (Toronto: Lester Publishing, 1995), 3.

⁹ See Harish C. Jain and S. Muthuchidambaram, "Bill 40 Amendments to Ontario Labour Relations Act: An Overview and Evaluation," McMaster University, Michael G. DeGroote School of Business, Working Paper #385, September 1993, 13-19.

¹⁰ *Crown Employees Collective Bargaining Act*, 1993, S.O. 1993, c. 38.

¹¹ Timothy Hadwen *et al.*, *Ontario Public Service Employment and Labour Law* (Toronto: Irwin Law, 2005), 1.

the rest of the country in terms of the labour rights afforded public servants. The two most significant ways in which *CECBA* stood out were its ban on strikes and the high proportion of employees excluded from union representation. The new version of *CECBA* addressed these matters and moved OPS labour relations towards that seen in the broader economy—for example public servants gained the right to strike and thousands of employees were allowed to organize. These two changes significantly impacted labour relations in the OPS. For instance, within two years of the amendments, a new union formed to represent previously excluded staff; within three years, the OPS had seen its first legal strike.

The NDP government was replaced in June 1995 when, in another unexpected result, the Progressive Conservatives (PC) returned to power after a decade in the political wilderness.¹² Despite an ideological orientation starkly opposed to the government it replaced, and despite repealing the NDP's changes to the *LRA*, the new government only made minor changes to *CECBA*, retaining, for instance, the right to strike—a right that previous Ontario PC governments had strongly resisted. Indeed, the Harris Conservative government wound up taking two OPS strikes over the course of its time in power.

+ + +

¹² See, e.g. David R. Cameron and Graham White, *Cycling into Saigon: The Conservative Transition in Ontario* (Vancouver and Toronto: UBC Press, 2000), vii. The PC victory “stunned the pundits” given that the PCs began the campaign “light-years behind the Liberal Party” and were campaigning on “hard-right nostrums.”

There has been staggering change in public service labour relations across time, featuring abrupt reversals from long-held beliefs. The object of the study is to identify the factors that have, over a 150-year period, “thwarted or delayed the efforts of civil servants to pursue one or another ... avenues of access to management.”¹³ Both the controversy surrounding the hair dye and the 1990s amendments are significant parts of a long history of development and change in Ontario Public Service labour relations. Each of these incidents occurred at the intersection of distinct sequences of events, a timing which imbued them with the power to catalyze future developments.¹⁴

Given that a shared standard of labour relations prevails across much of the broader economy, why did the OPS take so long to reach a similar point? With the right to strike as a significant developmental marker, this dissertation tackles this central question by tracing the historical evolution of labour relations within the OPS, beginning with Canadian Confederation.¹⁵ By examining the long path to the present day, where the right to strike became a reality, this study will illuminate the fundamental dynamics and turning points that have defined the contemporary labour relations scheme in the OPS.

¹³ J.E. Hodgetts, *The Canadian Public Service: A Physiology of Government 1867-1970* (Toronto: University of Toronto Press, 1973), 310.

¹⁴ James Mahoney, “Path dependence in historical sociology,” *Theory and Society* 29 (2000): 527.

¹⁵ As will be discussed below, this discussion takes as a starting point that “the freedom to strike can only be understood in relation to the freedom to associate and the freedom to bargain collectively” See: Judy Fudge and Eric Tucker, “The Freedom to Strike in Canada: A Brief Legal History,” *Canadian Labour and Employment Law Journal*, 15 (2010): 335.

It will be argued here that the successive iterations of OPS labour relations are the result of an interplay of factors. Though several factors will be identified through the research, it is argued that three—parliamentary sovereignty, electoral outcomes, and neoliberalism—are primary factors, with each of these defining the form of public service labour relations in three distinct eras.

In the first era, the belief in parliamentary sovereignty, shared by governments and public servants, defined the extent of labour rights in the public service. From the popular understanding that legislatures could not be bound by subordinate bodies, it logically followed that legislatures could not be bound by collective agreements. This fact defined the form of labour relations from Confederation until the 1960s in most jurisdictions. Saskatchewan was a notable outlier, the election of a Co-operative Commonwealth Federation (CCF) government in 1944 leading to public servants being included in that province's broader labour relations statute.

Saskatchewan's experience foreshadowed the second era of public service labour relations in Canada, which spanned from the 1960s to the 1990s. A comparison across Canadian jurisdictions reveals that, while various social, economic, and political factors played a role, the extent of labour rights for public sector employees during this era was largely determined by electoral outcomes and the governing party's ideology. For instance, provinces where Conservative parties held power, such as Ontario, generally provided fewer labour rights to their public service workers compared to provinces where non-Conservative parties were dominant. The right to strike serves as a key indicator of the extent

of these labour rights during this period. As A.W.R. Carrothers argued, the fundamental elements accompanying collective bargaining include the freedom to unionize, the freedom to bargain collectively, and the freedom to strike.¹⁶ By this second era, public service workers across Canada generally possessed the first two freedoms; the crucial difference lay in the existence of the right to strike.

In the third era, from the 1990s onwards, the rise of neoliberalism saw jurisdictions across Canadas become primarily concerned with cost containment. Economic concerns trumped the political as governments of all stripes pursued an agenda of cuts to public services to balance budgets and address government indebtedness. In this context, governments made use of the form of labour relations which gave the best potential for favourable outcomes for the government. This, it will be argued, was a strike/lockout regime, as opposed to arbitration. Throughout the three eras, various other factors will be explored such as worker militancy, prevailing social norms, and the overall health of the economy. Importantly, a form of class relations plays a role in all three periods, particularly classism within the public service. This will be seen, for example, with public servants choosing associations over unions, and those associations turning away from affiliation with labour organizations deemed too ‘radical.’

A note on scope

This dissertation is about the OPS. The core public service of the government of Ontario, the OPS forms part of the executive branch of the

¹⁶ A.W.R. Carrothers, *Collective Bargaining Law in Canada* (Toronto: Butterworths, 1965), 4-5.

Government of Ontario.¹⁷ The OPS has its own unique labour relations regime, currently governed by *CECBA* and, to a lesser extent, the *PSOA*.¹⁸ Many studies of the continuing development of public sector collective bargaining consider the public sector writ large, “defined to include federal and provincial civil services, municipalities, health care, education, and government-owned enterprises.”¹⁹ These studies do consider the public service, but only within that broader context of other publicly funded services that are characterized by very different structures and relations of power. With the focus here on the development of labour relations within the OPS, it must be made clear that various areas of the broader public sector are governed by different legislation.

For example, while municipalities are part of the public sector, cities fit under the *LRA*, the same law that governs the private sector. The same is true for other areas of the broader public sector, such as universities. While universities in Ontario are part of the larger, private sector labour law regime, the same is not true of colleges. Along with several other parts of Ontario’s broader public sector, colleges have unique labour relations legislation.²⁰ Other sector-specific labour

¹⁷ For many decades, the OPS styled itself as the Ontario Civil Service. Here, the two terms are used interchangeably within the appropriate era.

¹⁸ In addition to the OPS, *CECBA* covers the Alcohol and Gaming Commission of Ontario, Metrolinx, Health Quality Ontario (HQO), Liquor Control Board of Ontario (LCBO), Metro Toronto Convention Centre (MTCC), Ottawa Convention Centre (OCC), Niagara Parks Commission, Office of the French Language Services Commissioner (OFLSC), Office of the Provincial Advocate for Children and Youth (OPACY), Workplace Safety and Insurance Board (WSIB), and the Ontario Pension Board (OPB).

¹⁹ Allen Ponak and Mark Thompson, “Public-Sector Collective Bargaining,” in *Union-Management Relations in Canada*, 5th ed., ed. Morley Gunderson, Allen Ponak, and Daphne G. Taras, (Toronto: Pearson Addison Wesley, 2005), 417.

²⁰ *Colleges Collective Bargaining Act, 2008*, S.O. 2008, c. 15.

relations acts include the *Hospital Labour Disputes Arbitration Act*²¹ (which substitutes arbitration for a strike/lockout regime in the health care sector) and the *School Boards Collective Bargaining Act*²² (for teachers in any of the bargaining units named in that Act). Despite often being direct employees of municipalities, police and firefighters labour relations are governed, respectively, by the *Police Services Act*²³ and the *Fire Protection and Prevention Act*.²⁴ The Ontario Provincial Police—whose employees are provincial public servants—has its own statute, the *Ontario Provincial Police Collective Bargaining Act*.²⁵ These Acts substitute arbitration for the right to strike to settle bargaining impasses.

Organization

Chapter 2 sets out this dissertation's theoretical framework. This discussion proceeds by considering two distinct approaches to understanding institutional change in industrial relations, focusing on system theory and Marxist approaches. It will be argued that systems theory falls short in terms of its understanding of the broader context in which the system in question resides. Following that discussion, it will be argued that, though an historical institutionalist understanding of paths of development provides a strong explanation, a more robust critical institutionalism provides greater opportunity for understanding what drives institutional change. Finally, attention will turn to

²¹ *Hospital Labour Disputes Arbitration Act*, R.S.O. 1990, c. H.14.

²² *School Boards Collective Bargaining Act*, 2014, S.O. 2014, c. 5.

²³ *Police Services Act*, 2018, S.O. 2018, c. 3, Sched. 1, Part X.

²⁴ *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4, Part IX.

²⁵ *Ontario Provincial Police Collective Bargaining Act*, 2006, S.O. 2006, c. 35, Sched. B.

describing in detail contextual factors that have driven the development of public service labour relations legislation.

The balance of the dissertation is organized chronologically. Chapter 3 covers the OPS from its founding in 1867 until 1934. Over this first era, we will see that the elimination of patronage from hiring practices was a primary concern of both government and business interests. In this, the history of the OPS is much like that of the federal government. Indeed, the OPS will be shown to have followed in the footsteps of the federal government in dealing with patronage and, importantly, we will see how reforms were driven by pressure from the business class. It will be argued that the attempts to root out patronage represent the first movement toward “normalization” of public service employment. As well, this early period marks the first appearance of public service employee associations. As the First World War ended, war-driven inflation, which had eaten away at compensation, was a key concern for civil servants. Driven by this, the fledgling CSAO began its first petitions to the government and gradually moved to a process of consultation. However, we will see that the process of consultation was significantly constrained. Civil servants bristled against these constraints and began to strive for “normalcy” vis-à-vis the private and municipal sectors.

Chapter 4 covers the period between 1934 and 1952, focusing on the rise of consultation between the government employer and the CSAO. This chapter details the labour disruptions in the broader economy through a discussion of the Congress of Industrial Organizations’ (CIO) entrance into Canada and the related

efforts to form a Liberal-Conservative union government in Ontario. The chapter details how, while massive reforms were occurring to labour relations legislation in the broader economy, these changes did not touch the OPS. That said, reform came to the OPS, and the chapter concludes with the establishment of the OPS's Joint Advisory Council which marked the beginning of the consultation era.

The long sunset of the consultation era is the focus of chapter 5. Over this period of transition between the first and second eras, the concept of parliamentary sovereignty—the notion that parliament could not be bound by subordinate bodies—still guided many Canadian governments. Parliamentary sovereignty held that only the legislature had the power to disburse the funds that paid public servants' salaries. Thus, under this conception, the legislature could not be bound to approve spending in response to a negotiated collective agreement. Legislation on this basis would therefore be an illegitimate fetter on a legislature's authority.

Yet, despite the continued prevalence of parliamentary sovereignty, we will find that the notion of treating the public service labour relations as distinct from all other sectors was becoming more difficult to maintain. Vitality, contradictions became apparent as some jurisdictions gave their public servants full labour rights. This contradiction, along with material concerns (such as delayed pay increases) and broader social change, fueled worker militancy (or, at least the realistic threat of militancy), which acted as a catalyst for change. Chapter 6 considers the struggle for change in the latter half of the 1960s. The discussion is situated in labour relations developments in Ontario in that period,

in both the public and private sectors, with a great deal of attention put on an advisory report on OPS labour relations commissioned by the government.

Chapter 7 is a comparative study of the state of play in public service labour relations across Canada in 1974—a year chosen because it marked when Ontario implemented a public service labour relations statute—*CECBA*—which squarely rejected the right to strike. Using the right to strike as a prism, this chapter discusses the idiosyncratic development of various jurisdictions’ public service labour relations statutes. This comparative study of the development of the various pieces of legislation allows for an assessment of the various factors that influence change. This process proves instructive to the argument that the party in power is the primary driver of change to public service labour relations legislation.

Chapters 8 and 9 cover the *CECBA* era in the OPS. Covering the period 1972 to 2017, the vital importance of electoral politics will be highlighted in driving the creation of—and changes to—*CECBA*. Chapter 8 focuses on the early 1970s and the second era. Chapter 9 covers the latter 1970s until 2017. This chapter focuses on the 1990s amendments to *CECBA* (most importantly the arrival of the right to strike) and the onset of the third era, marked by neoliberalism, where political considerations began to take a back seat to economics.

Chapter 10 concludes the dissertation and presents the findings. This chapter begins by reviewing the three eras of labour relations in the OPS and then moves to consider the extent to which the government has ceded actual control of the labour relations system over the period studied. It is advanced that

the government—by virtue of its ability to legislate on an *ad hoc* basis and lack of efficacy of a public service strike—continues to exert significant control over the material outcomes of the public service labour relations system.

Note on Methodology

In researching this dissertation, I operated from as an insider-outsider vantage, a status which dictated the scope of the research. My “insider” status arose from my employment as Research Officer at AMAPCEO, a position which secured me access to AMAPCEO’s archival documents.²⁶ Conversely, my position simultaneously created an “outsider” barrier vis-à-vis other unions as well as the government as an employer. This forced a reliance on publicly available documents. Key primary sources used herein include media stories and archived material, including government documents at the Archives of Ontario, and various documents either created or utilized by earlier scholars, which have been preserved in the archives of the University of Toronto’s Industrial Relations and Human Resources Library, the University of Toronto Archives, and the York University Archives. Further methodological constraints were imposed by statutory limits on accessing certain government documents. Fortuitously, AMAPCEO’s archive included numerous documents created by the government of Ontario (as well as other organizations) which obviated the need to pursue access to these documents by way of formal access to information requests.

²⁶ The views, interpretations, and conclusions expressed in this dissertation are strictly my own and do not necessarily represent the official position or policy of AMAPCEO.

Chapter 2: Historical Narrative, Systems Theories, and Institutional Change: Theorizing Developments in Public Service Industrial Relations

“As nearly as I am able to discern, the relevance of labor history to industrial relations is negligible or non-existent.”

- George W. Brooks¹

It might seem surprising to begin a dissertation studying the historical transformation of an organization's industrial relations framework with that quote from George W. Brooks. However, US labour historian David Brody illuminates its significance: Brooks wasn't stating his own opinion but rather reflecting the dominant perspective among practitioners in the early 1960s. Labour leaders and today's human resources specialists largely disregard historical context, focusing instead on immediate concerns.² Although practitioners understandably prioritize current problems, this dissertation argues for the crucial importance of history. This is not simply an academic pursuit. Guided by the understanding that “you have to know the past to understand the present,” this work examines how historical developments have shaped our current industrial relations systems through institutional change.³

¹ George W. Brooks, “The Relevance of Labor History to Industrial Relations,” *Proceedings*, (Madison: Industrial Relations Research Association, 1961), cited in David Brody, “Labor History, Industrial Relations, and the Crisis of American Labor,” *Industrial and Labor Relations Review*, 43 no. 1 (October 1989): 7.

² Brody, “Labor History,”: 7.

³ Carl Sagan, *Cosmos* (New York: Ballantine Books, 2013), 40.

This chapter establishes the theoretical foundation for the upcoming analysis. It begins by examining the two most significant perspectives on industrial relations in Canada: systems theory and the Marxist school.⁴ Through an evaluation of both approaches, this chapter argues that, among other weaknesses, systems theory struggles to explain systemic change. In contrast, by considering the broader social context, the Marxist approach offers a more comprehensive understanding of what drives change in industrial relations over time. Furthermore, we will see that the Marxist approach, as outlined by Richard Hyman, presents a view of industrial relations that specifically includes the role of individuals alongside institutions like labour unions and the state. This perspective allows for a more complete consideration of the needs and desires of actual people, rather than focusing solely on the needs of institutions.

Next, the discussion turns to theorizations of institutional change across time. Conceiving of the industrial relations regime in the public service as an institution, this section assesses the ‘new institutionalisms’, focusing on historical institutionalism. As accounting for institutional change over time is the “one major problem” of institutional theory, the discussion concentrates on how historical institutionalism utilises path dependency to account for both institutional change and stability.⁵ It will be argued that, while historical institutionalism’s concept of path dependency is valuable for considering both

⁴ Daphne G. Taras, Allen Ponak, and Morley Gunderson, “Introduction to Canadian Industrial Relations,” in *Union-Management Relations in Canada*, 5th ed., ed. Morley Gunderson, Allen Ponak, and Daphne G. Taras, (Toronto: Pearson Addison Wesley, 2005), 5.

⁵ Vivien A. Schmidt, “Institutional Theory,” in *International Encyclopedia of Political Science*, ed. Bertrand Badie, Dirk Berg-Schlosser & Leonardo Morlino, (Thousand Oaks: Sage, 2011), 1188.

change and constraints on change, it does not provide the opportunity to offer a complete and compelling historical narrative.

With historical institutionalism found wanting, it is argued that a fuller explanation for change can be found in a critical approach. A critical institutionalism—an approach that emphasizes engagement with the social context of institutions—forms the strongest theoretical basis for this study. This critical approach not only helpfully eschews the positivist orientation that informs much of the work in historical institutionalism, but it also provides the tools for establishing an explanatory historical narrative. These tools are provided by the approach’s focus on context, particularly the broader social and economic contexts in which an institution exists. Finally, some of the broader contextual factors that will inform the discussion in this dissertation will be set out.

Systems Theories of Industrial Relations

In his seminal study of industrial relations, John Dunlop attempted to set out a “theoretical core” with which myriad “isolated facts” informing the then-nascent field could be ordered and linked.⁶ Dunlop observed that there were “marked differences in industrial relations among enterprises, industries, and countries” and argued that each of these represented a distinct “system of industrial relations.”⁷ These systems invariably involved three groups of actors: (1) government agencies, (2) managers and their associations, and (3) workers

⁶ John T. Dunlop, *Industrial Relations Systems*, (New York: Henry Holt, 1958), 6.

⁷ *Ibid.*, 1.

and their associations.⁸ It was these actors who established rules for the workplace within a broader context (one including technology, budgetary constraints, and the distribution of power in society).⁹ For the system to function, Dunlop added that the actors must share a common ideology (or understanding) of how and why the system operated as it did.¹⁰

According to Walther Müller-Jentsch, Dunlop's presentation of industrial relations systems made two significant contributions. First, Dunlop placed procedural rules at the heart of industrial relations. Prior to Dunlop's work, the act of collective bargaining—and any attendant conflict—was understood to be “the essence of industrial relations.”¹¹ Post-Dunlop, the focus on rules meant that industrial relations systems were understood as institutions that could be studied in their own right, “separate from the economic, social and political systems” within which they were embedded.¹² The second contribution was Dunlop's identification of the actors, the context of the system, and the importance of ideology. These remain “the elementary components of which each industrial relations system is composed.”¹³

⁸ Ibid., 7.

⁹ Ibid., 13.

¹⁰ Ibid., 9.

¹¹ Walther Müller-Jentsch, “Theoretical Approaches to Industrial Relations,” in *Theoretical Perspectives on Work and the Employment Relationship*, ed. Bruce E. Kaufman (Champaign, IL: Industrial Relations Research Association, 2004), 2.

¹² Roy J. Adams, “Desperately Seeking Industrial Relations Theory,” *The International Journal of Comparative Labour Law and Industrial Relations* 4, no. 1 (1988): 3.

¹³ Müller-Jentsch, “Theoretical Approaches,” 3.

Dunlop's theory placed both substantive rules (e.g. the terms and conditions of employment) and procedural rules (e.g. industrial relations legislation) into a "web of rules."¹⁴ Encompassing both process and product ("a rule-guided *process* generating as its *product* other rules"), Müller-Jentsch argued that Dunlop's effort ultimately amounted to being only "a formal explanation" bereft of "information on how and why rules are made."¹⁵ This gap is the fundamental difficulty with Dunlop's theory and, as a result of it, Roy Adams argued that Dunlop's theory "is primitive, involving only conceptualisation and classification."¹⁶ Simply: Dunlop's theory lacks an explanation of systemic change. Arguably, this gap arises from the fact that Dunlop's theory was predicated on a Parsonian worldview and, as such, was inherently biased towards stability (more will be said on this point below). Ultimately, this bias places Dunlop within a conservative paradigm that privileges the "survival and stability of the industrial relations system."¹⁷

In an effort to add an element of dynamism to Dunlop's model, Alton Craig and Norman Solomon proposed an amendment to system theory—a schematic of which is presented below in Figure 1.¹⁸ Craig and Solomon conceptualized an open-systems theory that "consists of a set of interrelated factors operating in a

¹⁴ Dunlop, *Industrial Relations Systems*, 13.

¹⁵ Müller-Jentsch, "Theoretical Approaches," 3. (Emphasis in original)

¹⁶ Adams, "Desperately Seeking," 5.

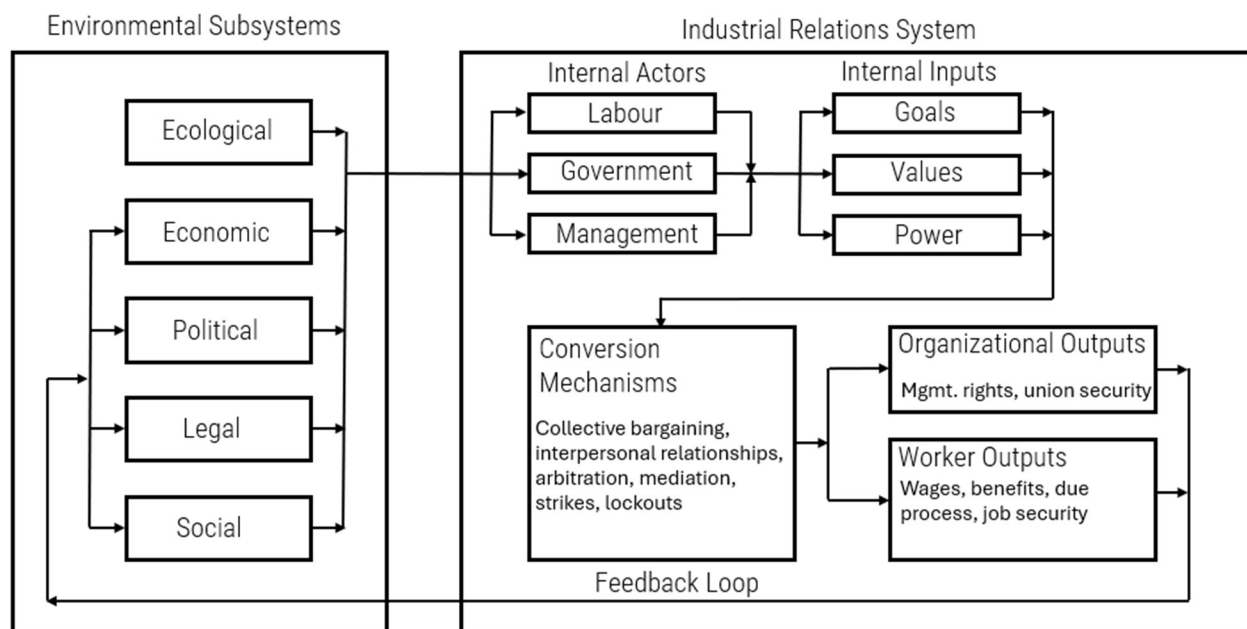
¹⁷ Dunlop, *Industrial Relations Systems*, 31.

¹⁸ Alton W.J. Craig and Norman A. Solomon, *The System of Industrial Relations in Canada*, 5th ed. (Scarborough: Prentice Hall Canada, 1996), 2.

larger environment.”¹⁹ Craig and Solomon’s system is thus impacted by external inputs in addition to internal inputs from the environment in which the system is situated. With this as a basis, Craig and Solomon defined industrial relations as

comprising a complex of private and public activities operating in a specified environment, which is concerned with the allocation of rewards to workers for their services and the conditions under which these services are rendered.²⁰

Figure 1: Schematic of Craig and Solomon's industrial relations system²¹



As set out in Figure 1, Craig and Solomon’s system has four key components: (1) internal inputs—“the goals, values, and power of the participants ... conditioned by external inputs,” (2) processes for converting the inputs into outputs, (3) outputs—“the material, social, and psychological rewards workers receive in exchange for services,” and (4) a feedback loop, through which

¹⁹ Ibid.

²⁰ Ibid., 3.

²¹ Ibid., 4.

“outputs can shape the subsequent, goals, values, and power of the actors.”²²

Through the feedback loop, Craig and Solomon’s model attempts to account for change that is both material (such as the material impact of a strike on terms and conditions of work) and that alters the processes of the system itself.

Explicitly drawing on David Easton’s “model of political life,” Craig and Solomon based their account of the industrial relations system on Easton’s contention that analysts can conceive of the political sphere as a distinct “system of activity,” separable for analytical purposes from all other social activity.²³ In Easton’s conception, the political sphere is embedded within—and distinguishable from—the broader social and economic setting in which it exists. To explain this separation, Easton drew an analogy to how “astronomers consider the solar system a complex of events isolated for certain purposes from the rest of the universe.” Likewise, the political system, though contained within all other social activity (just as the solar system is contained within the universe), can be separated from the broader social and economic context for analysis. From this viewpoint, the political system receives inputs from the broader setting, and these inputs impact the system. The system’s internal processes then convert these inputs into outputs, which, in turn, act both directly upon the system (via feedback) and drive change in the broader environment.²⁴

²² Alton W.J. Craig, *The System of Industrial Relations in Canada*, (Scarborough: Prentice Hall Canada, 1983), 2.

²³ *Ibid.*, 2.

²⁴ David Easton, “An Approach to the Analysis of Political Systems,” *World Politics* 9, no. 3 (April 1957): 384.

Systems Theory and Dynamism in Public Service Industrial Relations

Utilizing systems theory, Craig and Solomon identified the parameters of public sector industrial relations systems as encompassing three key actors: (1) unions, (2) government bodies acting as employers, and (3) administrative tribunals regulating the system. However, their formulation ultimately falls short in explaining the ongoing development of public service industrial relations. After briefly outlining the history of public sector industrial relations—tracing the evolution from “social and recreational associations” to unionization—Craig and Solomon concluded that “favourable government legislation was the major catalyst in the phenomenal growth of unionization in the federal and provincial public sectors since 1967.”²⁵

This conclusion offers a limited explanation as it leaves unexamined why the governing legislation became more “favourable.” This gap reveals limitations in systems theory’s capacity to provide a thorough understanding of how and why public service labour relations systems have evolved as they have. Drawing out this gap, Robert Hebdon highlighted four crucial distinctions between a conventional industrial relations system (operating under the *Labour Relations Act*) and a public service system governed by unique legislation. First, he noted “the dual role played by the Government of both rule-maker and employer.” In

²⁵ Craig and Solomon, *System of Industrial Relations in Canada*, 370.

essence, the government within a public service system acts as both referee and player in the “game.”²⁶

The second distinction Hebdon drew was the scope of bargaining. As will be explored at length below, when there is no right to strike, the alternative solution to a bargaining impasse is arbitration. When strikes were prohibited in the public service, the Ontario government was unwilling to leave all bargaining issues up to an arbitrator. Instead, the scope of bargaining was limited by removing certain issues entirely. The circumscribed scope of bargaining legislatively reserved certain matters as management rights. Third, Hebdon argued that (at least prior to the right to strike) there was a lack of a shared ideology (as conceived by Dunlop) between the parties. Hence, there was considerable instability as labour desired enhanced rights (particularly the right to strike), and governments in Ontario took the opposing position. Finally, Hebdon pointed to the “fundamental role” played by the strike in a Wagner-type labour relations system. The long-time absence of this right from the public sector rendered system theory conceptions, such as Craig and Solomon’s, an awkward fit for the public service.²⁷

Others working within a broad systems frame have attempted to offer more robust descriptions than Craig and Solomon of the specific inputs that drive change in public service industrial relations. Much of this literature has focused

²⁶ Robert Hebdon, “Industrial Conflict Under Ontario’s No-Strike Laws,” (PhD diss., University of Toronto, 1992), 11.

²⁷ *Ibid.*, 11-13.

on American state-level governments, utilizing comparative multivariate analyses.²⁸ The goal of this type of analysis is to disentangle and separate the various influences of discrete independent variables on the outcome being studied. The statistical methodology need not concern us here; for our purposes, what needs to be understood is that these approaches begin with a research question from which specific hypotheses of causation are derived. These hypotheses are then tested, with the assessment of a variable's relevance to the outcome determined mathematically.²⁹

In this vein, Thomas Kochan applied an index to the content of public sector bargaining legislation across all the American states, with distinct attributes of each industrial relations system yielding various scores. For example, regarding the variable "strike policy," a statute would score zero points for having no provision, one point for strikes prohibited with penalties for strikers, two points for strikes merely being prohibited, and three points for a limited right to strike. Across twelve such categories, the maximum index value

²⁸ Across jurisdictions in the United States there are vast differences in the scope of public service collective bargaining rights. While "many state and local governments" have a regime of "collective bargaining over wages or pensions, healthcare, and other major employee benefits," federal employees lack both the right to strike and the right to bargain any of these compensation and benefits issues. At the federal level, wages and benefits are set by statute. As well, it is important to note that federal employees "also have significant rights by statute not to be discharged or disciplined without cause and the ability to contest a discharge or other significant discipline in an adjudication (with or without union representation) before an independent federal agency." See: Samuel Estreicher, "The Paradox of Federal Sector Labor Relations: Voluntary Unionism Without Collective Bargaining Over Wages and Employee Benefits," (2015) *New York University Public Law and Legal Theory Working Papers*, Paper 528: 101-2.

²⁹ For a discussion see: Paul Pennings, Hans Keman, and Jan Kleinnijenhuis, *Doing Research in Political Science* (London: SAGE Publications Ltd., 2006), 133-82.

was twenty-six points.³⁰ Kochan then applied this index to the applicable legislation for various employee groups (police, firefighters, teachers, municipal employees, and state employees) in each state. Kochan then compared the index score to various state characteristics, such as: GDP, percentage of population living in an urban setting, degree of industrialization, the party system, the industrial relations environment, etc.³¹ Assessing the apparent correlations, Kochan attempted to create a predictive model of what the expected shape of public sector industrial relations laws should be, given a jurisdiction's broader environmental factors.

William Moore and Robert Newman undertook to refine Kochan's study by using a different mechanism of analysis.³² Through their analysis, the authors were able to conclude that

in general, a high degree of employment in government and agriculture, the presence of (right-to-work) laws, and location in the South tend to have a restricting influence on passage of mandatory and comprehensive bargaining laws for public employees. On the other hand, the degree of urbanization and the level of government union membership seem positively related to passage of collective bargaining legislation for public employees.³³

The trend of seeking to explain the shape of a given piece of legislation via multivariate analysis of environmental factors continued with Henry Farber. Farber argued that the causal problem the researchers of the development of

³⁰ Thomas A. Kochan, "Correlates of State Public Employee Bargaining Laws," *Industrial Relations* 12, no. 3 (1973): 324.

³¹ *Ibid.*, 327-28.

³² William J. Moore and Robert J. Newman, "A Note on the Passage of Public Bargaining Laws," *Industrial Relations* 14, no. 3 (1975): 364.

³³ *Ibid.*, 370.

public sector bargaining legislation were attempting to solve was, effectively, a chicken/egg matter:

if the public policy did cause the increase in unionization then the problem is to explain the emergence of the public policy. If unionization (or the pressure for unionization) resulted in public policy to deal with it then the problem is to explain the emergence of the unionization.³⁴

In other words, did legislation change due to public servants wishing to unionize, or did public servants wish to unionize because the law changed? In answer, Farber argued that a state deviates from its status quo (i.e. either develop a new public sector industrial relations laws, or amend an existing public sector industrial relations law) “if its preferences differ from the value of the current policy (or no policy) by enough to outweigh the costs of the change.”³⁵ The discussion of the weighing of the costs and benefits of a given approach evokes the rational choice approach. But more—the answer is effectively the system will change when it is perceived, by those with power, to be advantageous to change.

Farber employed an extensive battery of variables (e.g. the number of days a given legislature sat, the unionization rate in a jurisdiction, the overall number of laws passed in a state, etc.) that he hypothesized would correlate to the development of public sector labour legislation.³⁶ Farber found that his “model seems to perform adequately in explaining the aggregate distribution of bargaining laws at a point in time,” but that “virtually nothing was found that

³⁴ Henry S. Farber, “The Evolution of Public Sector Bargaining Laws,” in *When Public Sector Workers Unionize*, eds. Richard B. Freeman and Casey Ichniowski (Chicago: University of Chicago Press, 1988), 129.

³⁵ *Ibid.*, 131.

³⁶ *Ibid.*, 141.

was systematically related to the cost of policy change.”³⁷ In other words, Farber’s model failed at explaining why public sector bargaining laws change over time.

Berkeley Miller and William Canak studied every American state’s public service bargaining legislation.³⁸ Based on numerous quantitative variables, they assessed which broad theoretical framework (functionalist, pluralist, elitist, Marxist, or state-centred) best explained the development of these statutes. Thus, Miller and Canak began their discussion with several hypotheses that were specifically grounded in broader theoretical schools. Miller and Canak’s theoretically grounded hypotheses included:

Functionalist: The passage of public sector industrial relations laws favourable to full collective bargaining increases with industrialization.³⁹

Pluralist:

- a. The demand for public sector collective bargaining laws favourable to full collective bargaining increases when public employees are poorly paid and/or work in large bureaucracies.
- b. The passage of laws favourable to full collective bargaining increase with the strength of organized labour, high interparty competition and equal legislative apportionment.⁴⁰

³⁷ Ibid., 158.

³⁸ Berkeley Miller and William Canak, “The Passage of Public Sector Collective Bargaining Laws: Unions, Business and Political Competition in the American States,” *Political Power and Social Theory* 7 (1988): 249-92.

³⁹ Ibid., 251.

⁴⁰ Ibid., 253.

Elitist: The passage of public sector industrial relations laws favourable to collective bargaining increases with, and only with, the power of major industrial and financial corporations, with the degree of legislative malapportionment (by which the authors meant the domination of legislatures by rural and suburban representatives), and with low levels of interparty competition.⁴¹

Marxist: The passage of collective bargaining laws favourable to full collective bargaining increases with the strength of organized labour and decreases with the strength of capital. Party incumbency does not affect the passage of such laws.⁴²

State-Centred: The passage of industrial relations laws increases with the professionalization of government.⁴³

Leaving aside whether these hypotheses are satisfactorily reflective of the broader theories, it is from these hypotheses that Miller and Canak determined their independent variables. They then, as in the studies above, assessed correlations utilizing an index wherein points were awarded (or deducted) based on the content of legislative provisions. For example, if legislation prohibited strikes and imposed penalties for wildcat strikes, the jurisdiction lost 2 points; were a jurisdiction to have a full right to strike, 2 points were gained.⁴⁴

⁴¹ Ibid., 254.

⁴² Ibid., 256.

⁴³ Ibid.

⁴⁴ Ibid., 263.

Index established, Miller and Canak attempted to determine which of their hypotheses best accounted for the development of public sector collective bargaining laws. The authors found that their “empirical results do not provide support for just one hypothesis or theory, but they do suggest that some are more adequate than others.”⁴⁵ This finding boiled down to collective bargaining laws being demanded in settings where public servants are paid low wages, work within large bureaucracies, and in states with both strong labour movements and a high level of interparty competition.⁴⁶

Ultimately, Miller and Canak concluded that “a properly specified Marxist theory” most comprehensively predicted the development of public sector industrial relations legislation.⁴⁷ For Miller and Canak, the key shortcoming of the Marxist orientation was that it gave short shrift to the importance of party competition: “*parties matter* in both the United States and other capitalist nations.”⁴⁸ A Marxist approach that sufficiently took parties into account would, for Miller and Canak, have the greatest explanatory power.

Intriguingly, Miller and Canak finished their study by arguing that the type of statistical analyses canvassed here require “detailed legislative histories” to acquire more thorough explanatory power. Historical details such as “where legislation originated, who introduced it, who supported it, how it was amended in the legislative process, and who voted for it in the final passage” are crucial to

⁴⁵ Ibid., 282.

⁴⁶ Ibid., 277, 278, and 283.

⁴⁷ Ibid., 285.

⁴⁸ Ibid., 284.

form a more comprehensive understanding.⁴⁹ Miller and Canak took up a discussion of these historical details with a detailed examination of Florida, a state that possessed a robust set of public sector collective bargaining laws despite “having all the wrong characteristics for the passage of such legislation: a weak labor movement, a state controlled by conservative southern Democrats, no interparty competition, and a well-organized business community.”⁵⁰ Florida was a deviant case, and Miller and Canak took a deep dive to grapple with why.

What they found was that “starting in the 1960s, a sequence of historical events began to undermine the political power of Florida’s anti-union politicians.” The key event was a court-ordered reapportionment of legislative seats, which led to an increase in more progressive urban representation. This in turn led to a revised state constitution and a professionalization of the public service. None of these, however, was sufficient to create Florida’s public sector collective bargaining legislation.⁵¹ The vital additional factor was the state’s labour movement turning to the courts to fight anti-union statutes. Eventually, the Florida Supreme Court—“confronted by new cases seeking clarification of collective bargaining rights, and ... frustrated by the failure of the legislature to enact collective bargaining guidelines”—appointed a Commission to suggest such guidelines.⁵² It was the appointment of this commission that, in turn, led to a

⁴⁹ Ibid., 285.

⁵⁰ Berkeley Miller and William Canak, “From ‘Porkchoppers’ to ‘Lambchoppers’: The Passage of Florida’s Public Employee Relations Act,” *Industrial and Labor Relations Review* 44, no. 2 (January 1991): 349.

⁵¹ Ibid., 363.

⁵² Ibid., 361.

political compromise between competing labour- and management-friendly positions. That compromise became the law in Florida.⁵³

Further considering the notion that “parties matter,” we turn now to work by André Blais, Donald Blake, and Stéphane Dion, who put forth the hypothesis that “parties and governments of the left tend to be more generous toward public sector employees and governments of the right.”⁵⁴ The authors studied four countries (Canada, the United States, the United Kingdom, and France) to test their hypothesis, measuring variables such as the growth of public employment, growth of wages, and the extent of public sector bargaining rights. In terms of bargaining rights, Blais, Blake, and Dion found in their study of Canada’s federal government that there was “very little difference between the Liberals and Conservatives.”⁵⁵ Importantly, though, the first legislation which established a right to bargain was passed by a Liberal government, the only other federal legislation (at the time of their writing) which also increased bargaining rights was passed by the Conservatives. On the other hand, both of the parties—as well as the NDP—had acted on multiple occasions to curtail bargaining rights.⁵⁶

As both parties that had formed federal governments were equally implicated in the passage of legislation which limited bargaining rights, the

⁵³ Ibid., 362.

⁵⁴ André Blais, Donald E. Blake, and Stéphane Dion, *Governments, Parties, and Public Sector Employees: Canada, United States, Britain, and France*, (Montreal and Kingston: McGill-Queen’s University Press, 1997), 3.

⁵⁵ Ibid., 39.

⁵⁶ See, e.g.: Leo Panitch and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms*, 3rd ed. (Toronto: University of Toronto Press, 2009).

authors expanded their study to include how all parties voted on legislation which limited bargaining rights. They found that the NDP was consistently opposed, which showed that party was clearly the most favourable to public sector bargaining. While there was little dividing the Liberals and Conservatives, Blais, Blake, and Dion found that the small differences demonstrated that the Liberals were more positive about public service bargaining rights. The authors thus concluded that their hypothesis was confirmed, although not as neatly as they would have liked.⁵⁷

Systems Theory and Systemic Change

While systems theory provides insights that inform this study (such as the focus on rules and the notion of distinct workplaces having distinct industrial relations systems), systems theory's attempt to declare that these distinct systems can be separated from the broader political economic framework is fundamentally flawed. Attempts to mathematically define what specific "inputs" from the broader world impact upon an industrial relations system and play a determinative role in defining its form have limited explanatory power.

These shortcomings were demonstrated by Miller and Canak, who argued that creating a nuanced historical narrative was a superior approach to understanding how public service industrial relations systems change. This is the framework that will be followed in this dissertation. Before turning to this, we will first engage with the Marxist conceptualization of industrial relations. This

⁵⁷ Blais, Blake, and Dion, *Governments, Parties, and Public Sector Employees*, 41.

approach, represented here by Richard Hyman, emphasizes identifying contradictions. Moreover, Hyman's approach centres the role played by the people who populate institutions, such as trade unions, and will inform the analysis that comes in subsequent chapters.

Critical Approaches to Industrial Relations

The Marxist approach to industrial relations is focused on “macro-level explanations and the identification of forces that shape social and economic relations.”⁵⁸ Whereas systems theory attempts to separate industrial relations from broader society, in the Marxist approach, the form of industrial relations is inextricably linked to the broader social and economic relations of a given society. On this basis, Hyman found the systems theory of industrial relations to be “not particularly illuminating,” arguing that concept “distorts or conceals important aspects of industrial relations.”⁵⁹ As argued above, there is an inherent conservatism lying at the heart of systems theory, the approach tending to focus on how conflict is contained, as opposed to “the processes through which disagreements and disputes are generated.”⁶⁰

Hyman argued that this focus on constraining conflict situates the systems approach within “the traditional concern of conservative sociologists with the ‘problem of order.’”⁶¹ Inspired by Thomas Hobbes's depiction of the state of

⁵⁸ Taras, Ponak, and Gunderson, “Introduction to Canadian Industrial Relations,” 7.

⁵⁹ Richard Hyman, *Industrial Relations: A Marxist Introduction*, (London: MacMillan, 1975), 3.

⁶⁰ *Ibid.*, 11.

⁶¹ *Ibid.*

nature as “solitary, poore, nasty, brutish, and short,” the project of the problem of order, as pursued by Talcott Parsons, aimed to explain how society achieves stability and avoids a “warre of every man against every man.”⁶² Consequently, systems theory prioritizes the maintenance of equilibrium within the industrial relations system. In contrast, Hyman proposed a theorization of industrial relations that instead assessed the ways in which the prevailing order can be challenged and transformed.

Arguing against Dunlop’s contention of a shared, binding ideology, Hyman questioned the supposed affinity of values between employers and employed: if such a shared ideology existed, then why would an industrial relations system need to contain conflict? Instead, Hyman presented an explicitly Marxist approach to industrial relations. Here, the concept of totality—“that no area of social life can ... be satisfactorily analysed in isolation”—marked a key difference with system theory, which at its base posited that a system may be analyzed in isolation.⁶³

In their refinement of Dunlop’s theorization, Craig and Solomon attempted to account for this with the insertion of the “environmental subsystem” into the feedback loop which impacted outcomes in the system. However, the setting of the system was only considered insofar as it impacted outcomes in bargaining. For example, high inflation would be an element in the economic subsystem that

⁶² Thomas Hobbes, *Leviathan*, (London: Penguin, 1968), 186, 188; Talcott Parsons, *The Structure of Social Action*, vol. 1, (New York: Free Press, 1968), 89-94.

⁶³ Hyman, *Industrial Relations*, 4.

was part of the feedback loop, that in turn informed the goals of the actors, and that then, through a process of conversion, would manifest itself when it impacted workers' wage gains. But this still does not get at what would cause the *system itself* to change. Hebdon hints at this when he discusses illegal strikes in the Ontario Public Service (which will be discussed below in Chapter 8). Hebdon argued that the "the illegal strikes in 1979 and 1989 represent the ultimate breakdown of the system ... in effect in the Ontario Public Service. *The system could not regulate such conflict because the strikes occurred outside of it.*"⁶⁴ The system in place at the time did not contemplate strikes, thus when a strike occurred it was outside the system.

For this reason, systems theory is wanting in comparison to the Marxist approach, which is explicitly situated within the broader social and economic setting. Accordingly, Hyman sought to "incorporate the existence of *contradictory* processes and functions."⁶⁵ It is these contradictions that are of vital importance with Hyman's approach in explaining how and why institutions change over time. Within industrial relations, as throughout the social world, contradictions are at play. An example of this, one which we will see repeatedly recur in this study, is found in the structure of unions. Hyman argued that "union structure is not a fixed phenomenon but a process, the historical outcome of the interdependent but not purposefully integrated strategies of various fragmented employee groups." Within this process, Hyman identified two contradictory

⁶⁴ Hebdon, "Industrial Conflict", 126. (Emphasis added.)

⁶⁵ Ibid., 12. (Emphasis in original.)

forces: on the one hand the tendency “towards breadth, unity and solidarity,” and on the other the tendency “towards parochialism, sectionalism and exclusiveness.” Present both within and between unions, Hyman argued that this tension “gives union structure at any point of time a dynamic character.”⁶⁶ On the Marxist view, contradicting forces give rise to conflict—and out of this conflict comes the opportunity for change.

Another limitation of the systems approach relates to how the actors within the system are defined. Consider unions, which Hyman called “a very peculiar kind of organization.” The systems approach treats a union as a social agent, and Hyman questioned what precisely this means. For Hyman, treating unions in this way represented how a “purely institutional perspective can be dangerous and misleading.” Hyman argued that a union was not the sum of its members, nor was it its leadership, nor was it its staff. This ‘peculiar organization’ does not produce goods and services but rather endeavours only to influence employers and government. Hyman noted that “only a fraction” of a union’s activity is undertaken by its staff and leadership. Moreover, “trade unionism ‘exists’ wherever workers are unionized yet most members are engaged in identifiably trade union functions only infrequently.”⁶⁷

Hyman cautioned that an analysis of industrial relations commencing solely from an institutional perspective would “scarcely avoid coming to grief”

⁶⁶ Hyman, *Industrial Relations*, 41. See also Stephanie Ross and Larry Savage. “Interunion Conflict and the Evolution of Faculty Unionism in Canada,” *Studies in Political Economy* 101, no. 3 (2020): 210.

⁶⁷ *Ibid.*, 16.

regarding critical issues.⁶⁸ To illustrate this, consider Craig and Solomon's system theory of Canadian public service industrial relations, which identifies unions, employer representatives, and tribunals as the central actors. While their framework acknowledges metrics such as union membership, the analysis treats unions primarily as institutional bodies and the public service employer as an agency with delegated authority. Consequently, the impact of individual workers and the varied interests within government—whether represented by actors on the employer side or by political figures—are largely disregarded.⁶⁹ Hyman thus argued that such a viewpoint was inherently limited, emphasizing the necessity of considering “*workers* and their problems and aspirations.”⁷⁰ Moreover, this same principle must be applied to the employer side. Within a public sector labour relations system, the “employer” encompasses not only the bureaucratic entities responsible for labour relations but also the governmental executive and the legislative branch, each possessing its own unique challenges and objectives.

David Camfield picked up on this line of thought as it relates to the study of public sector unions in Canada. He noted that much of the work on Canadian public sector unions (such as the work of Swimmer and Rose) has focused on “wage outcomes of collective bargaining and the political administration of

⁶⁸ Ibid., 17.

⁶⁹ Craig and Solomon, *Industrial Relations in Canada*, 368-71.

⁷⁰ Hyman, *Industrial Relations*, 17. (Emphasis in original.)

public sector unions.”⁷¹ In its place, Camfield stressed the need to understand unions as worker organizations by theorizing

contemporary public sector unions in Canada in a historically-grounded way, as working-class movement organizations of a distinct kind that belong to a particular class formation. ... For example, workers’ orientations to unions are not solely determined by their immediate workplace circumstances or the actions of employers and union officials. They are influenced by, among other things, social experiences and traditions of the past and present.⁷²

Desmond Morton, as we discussed, made an interesting point about the histories of public service labor unions, especially considering how much public service labor relations history has been studied. He likened them to “regimental histories,” arguing that these accounts were too internally focused on the unions’ own triumphs, often neglecting the larger social and political environment.⁷³

The goal of this dissertation is to explain why and how a specific industrial relations system in a specific workplace—the Ontario Public Service—has developed as it has. The intent is to accomplish this in a way that situates these developments beyond workplace dynamics, instead considering, in a historically grounded fashion, the development of workers’ movements, political changes, and the imperatives of the government-as-an-employer. This project requires a theorization of how institutions (with the institution in question here being the OPS labour relations statutes and structure) change across time. The theorization herein will draw on certain elements of historical institutionalism— particularly

⁷¹ David Camfield, “Renewing the Study of Public Sector Unions in Canada,” *Socialist Studies* 1, no. 2 (Fall 2005): 66.

⁷² Camfield, “Renewing the Study,”: 64.

⁷³ Morton, “Government Worker Unions,”: 301.

on path dependence, which aids in understanding both change and constraints on change. The next section sets out, first, how the three ‘new institutionalisms’ grapple with institutional change. Then, there is a discussion of the concept of path dependence and how it fits with gradual change. Finally, we will turn to a discussion of critical institutionalism. Various tensions between processes, institutions, and actors pulling in opposite directions create room for change. As such, rather than downplay change, the critical approach centres dynamism. And so, Hyman:

what exists at any point of time is the product of past actions and relationships and contains in turn the potential for future development. To do justice to this dynamic character, any valid social analysis must contain a historical dimension.⁷⁴

It is that historical dimension to which we now turn.

New Institutionalism and Change

“What can the England of 1940 have in common with the England of 1840? But then, what have you in common with the child of five whose photograph your mother keeps on the mantelpiece? Nothing, except that you happen to be the same person.”

- George Orwell⁷⁵

The New Institutionalism

Institutionalism is “a general approach to the study of political institutions, a set of theoretical ideas and hypotheses concerning the relations between

⁷⁴ Ibid, 4.

⁷⁵ George Orwell, *The Lion and the Unicorn*, (London: Penguin, 1982), 37.

institutional characteristics and political agency, performance, and change.”⁷⁶

Within this overall framework, there are three leading perspectives: rational choice institutionalism (RI), sociological institutionalism (SI), and historical institutionalism (HI). Though distinct in their respective approaches, Vivien Schmidt has argued that these three “new institutionalisms” share two commonalities. First, each has struggled to explain how and why institutions change, with each facing criticism that their framework could only explain change by way of exogenous shocks. In response, each has made efforts to respond to this charge, a process described by Schmidt as an attempt to “‘endogenize’ change, that is, explain it ‘from the inside.’”⁷⁷

According to Schmidt, the second commonality of these three new institutionalisms is that each, while considering how institutions change, simultaneously assumes that institutions are themselves constraints on change. This commonality provides us with grounds on which to define each of the three approaches. Considering first the RI approach, we find a “strong functionalist disposition.”⁷⁸ That is, from the RI perspective, institutions arise because they solve problems for the involved actors. The continuing positive returns of the institution for those actors give rise to institutional stability and, consequently, act as a constraint on change. Accordingly, the RI “variant of neo-institutionalism

⁷⁶ James G. March and Johan P. Olsen, “Elaborating the ‘New Institutionalism,’” in *The Oxford Handbook of Political Institutions*, ed. Sarah A. Binder, R. A. W. Rhodes, and Bert A. Rockman, (Toronto: Oxford University Press, 2008), 4.

⁷⁷ Schmidt, “Institutional Theory,” 1188.

⁷⁸ Richard Deeg and Gregory Jackson, “Towards a More Dynamic Theory of Capitalist Variety,” *Socio-Economic Review* 5 (2007): 160.

has a tendency to propose, in the end, that existing institutional frames are efficient and reflect rationality.”⁷⁹ In this way, RI with a “logic of calculation” creates a barrier to institutional change. When change does come in RI, the tendency is to assume it will be via exogenous change in a so-called “punctuated equilibrium” model.⁸⁰

The SI approach puts a premium on the “logic of appropriateness.” Rather than calculate the consequences of action, SI has “a vision of actors following internalized prescriptions of what is socially defined as normal, true, right, or good, without, or in spite of, calculation of consequences and expected utility.”⁸¹ As such, institutions emerge in the form they do because they are understood to be “natural, rightful, expected, and legitimate.”⁸² This structure both guides institutional reproduction within SI but also seems to foreclose institutional change. That is, how can—or why would—actors embedded inside a “natural, rightful, expected, and legitimate” institution change it? This constraint on change has been called the “paradox of embedded agency.”⁸³ One way in which

⁷⁹ Marie-Laure Djelic, “Institutional Perspectives—Working towards Coherence or Irreconcilable Diversity?” in *The Oxford Handbook of Comparative Institutional Analysis*, ed. Glenn Morgan, John L. Campbell, Colin Crouch, Ove Kaj Pedersen, and Richard Whitley, (Toronto: Oxford University Press, 2010), 25.

⁸⁰ Glenn Morgan and Marco Hauptmeier, “Varieties of Institutional Theory in Comparative Employment Relations,” in *The Oxford Handbook of Employment Relations: Comparative Employment Systems*, ed. Adrian Wilkinson, Geoffrey Wood, and Richard Deeg, (Toronto: Oxford University Press, 2014), 193.

⁸¹ James G. March and Johan P. Olsen, “The Logic of Appropriateness,” in *The Oxford Handbook of Political Science*, ed. Robert E. Goodin, (Toronto: Oxford University Press, 2011), 479.

⁸² March and Olsen, “Elaborating the ‘New Institutionalism,’” 7.

⁸³ Julia Battilana and Thomas D’Aunno, “Institutional Work and the Paradox of Embedded Agency,” in *Institutional Work: Actors and Agency in Institutional Studies of Organizations*, ed. Thomas B. Lawrence, Roy Suddaby, and Bernard Leca, (Cambridge: Cambridge University Press, 2009), 31-32.

SI moves to resolve this paradox is via the concept of “institutional entrepreneurship,” in which it is acknowledged that distinct logics operate across distinct fields. The entrepreneurial actor, in this case, may transform an institution through the application of another logic to the institution at hand.⁸⁴

Historical Institutionalism: Path Dependency, Change, and Stability

HI operates via the “logic of path dependence,” wherein the sequence of events matters very much—choices made in the past inform the spectrum of choices available in the future. To explain, consider Margaret Levi’s use of a tree as a metaphor:

The entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice. Perhaps the better metaphor is a tree, rather than a path. From the same trunk, there are many different branches and smaller branches. Although it is possible to turn around or to clamber from one to the other—and essential if the chosen branch dies—the branch on which a climber begins is the one she tends to follow.⁸⁵

Thus, HI explains institutional stability by way of a path dependent logic, a logic that makes accounting for institutional change problematic. In the past, HI has accounted for this by attributing change to “big, exogenous shocks,” think here of war, famine, or a global pandemic.⁸⁶ Indeed, Kathleen Thelen has noted that, in political science, “a good deal of work falls back on a punctuated equilibrium

⁸⁴ Morgan and Hauptmeier, “Varieties of Institutional Theory,” 193.

⁸⁵ Margaret Levi, “A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis,” in *Comparative Politics: Rationality, Culture, and Structure*, eds. Mark I. Lichbach and Alan S. Zuckerman, (Cambridge: Cambridge University Press, 1997), 28.

⁸⁶ Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis*, (Princeton: Princeton University Press, 2004), 135.

model of change” (as noted with RI, above).⁸⁷ In this view, institutions remain stable until a critical juncture occurs, thus punctuated equilibriums emphasize

long stretches of institutional stability, periodically interrupted by episodes of relatively rapid innovation ... usually associated with some kind of exogenous shock ... that disrupts the previous arrangements and opens the door for significant institutional innovation.⁸⁸

While exogenous shocks do occur, it is also clear that institutions change independently of such shocks. Thus, HI has begun to account for change that occurs on an endogenous, gradual basis, via adaptations to the concept of path dependence.

Thelen argued that “historical institutionalists see institutions as enduring legacies of political struggles,”⁸⁹ as “the legacy of concrete historical processes and battles.”⁹⁰ As such, HI puts a premium on history in its study of “the *construction, maintenance, and adaptation* of institutions.” In terms of these adaptations, HI assesses the “long-term evolution and *outcome* (intended or not) of a welter of interactions among goal-seeking actors, both within institutions, and with their challengers outside.”⁹¹ In other words, HI utilises history to explain both institutional stability as well as how and why institutions change

⁸⁷ Kathleen Thelen, “Institutional Change in Advanced Political Economies,” *British Journal of Industrial Relations*, 47:3 (September 2009): 474.

⁸⁸ *Ibid.*

⁸⁹ Kathleen Thelen, “Historical Institutionalism in Comparative Politics,” *Annual Review of Political Science* 2 (1999): 388.

⁹⁰ Thelen, “Institutional Change”: 490.

⁹¹ Elizabeth Sanders, “Historical Institutionalism,” in *The Oxford Handbook of Political Institutions*, eds. R.A.W. Rhodes, Sarah A. Binder, and Bert A. Rockman, (Toronto: Oxford University Press, 2006), 42. (Emphasis in original.)

across time, and the key concepts in explaining both change and stability are path dependence and critical junctures.

Path dependence has been characterized by Peter Hall and Rosemary Taylor as a rejection of the notion that “the same operative forces will generate the same results everywhere.” Instead, “the effect of such forces will be mediated by the contextual features of a given situation often inherited from the past.”⁹² That is, decisions made in the past constrain the spectrum of choices available in the future. The most vital ‘contextual features’ are the initial events that set a path in motion. Paul Pierson offers an evocative example of this in his discussion of the Pólya urn process. Imagine a large urn containing two balls, one black and one red. One ball is removed, and its colour noted. That ball and another of the same colour are then returned to the urn. The process is repeated until the urn is full.

The Pólya urn process is an example of positive feedback, which Pierson defines as a state in which “each step along a particular path produces consequences that increase the relative attractiveness of that path for the next round.”⁹³ This becomes self-reinforcing, as the further the path goes, the more ingrained it becomes—as one colour becomes dominant in the urn, it becomes ever-more likely that one will draw a ball of that colour. Pierson’s presentation of the Pólya urn process illustrates that the sequence of events matters: early events

⁹² Peter A. Hall and Rosemary C. R. Taylor, “Political Science and Three New Institutionalisms,” *Political Studies* 44 (1996): 941.

⁹³ Pierson, *Politics in Time*, 17-8.

have a much larger impact than do later events.⁹⁴ The same point was made by Margaret Levi's tree, yet whether the metaphor features an urn, a tree, or a path, the temporal ordering of occurrences is vital to path dependence.

Given the apparent difficulty of deviating from a path, how then does HI account for change? One explanation is "punctuated equilibriums." In this view, "there are brief moments in which opportunities for major institutional reforms appear, followed by long stretches of institutional stability." These moments of potential change are referred to as "critical junctures"—critical because these decision points determine the subsequent path and become very difficult to alter. Why do these junctures emerge at all? As noted above, the attribution has often gone to "big, exogenous shocks" such as war.⁹⁵ The problem with theorizations relying on big, exogenous shocks as catalysts for change is that they have a difficult time accounting for institutional change in ways that are not "idiosyncratic and post hoc."⁹⁶

To provide a more nuanced view, HI has increasingly focused on gradual institutional change. While the path dependence of the sort represented by Pólya's urn was self-reinforcing, here the historical path is reconceived as a "reactive sequence" wherein "each event within the sequence is in part a reaction to temporally antecedent events."⁹⁷ Each step in such a sequence is a reaction to what came before. The focus is on "the way in which each antecedent event is

⁹⁴ Ibid., 18.

⁹⁵ Ibid., 135.

⁹⁶ Pierson, *Politics in Time*, 135.

⁹⁷ James Mahoney, "Path dependence in historical sociology," *Theory and Society* 29 (2000): 508-9.

linked to the subsequent one through the facilitation of certain policy responses and the preclusion of others.”⁹⁸ A different way of describing this is to say that “policies create politics,” meaning “that a policy decision may restructure subsequent political configurations through effects on the resources, incentives and (normative and cognitive) perceptions of actors.”⁹⁹

Unlike a self-reinforcing path, in a reactive sequence, feedback may be either positive or negative. A study of path dependence utilizing this framework is not, then, a search for positive feedback. Instead, the work is identifying those critical junctures that are the opportunities for an institution to change or adapt. In a reactive sequence, the “early events trigger subsequent development not by reproducing a given pattern, but by setting in motion a chain of tightly linked reactions and counterreactions.”¹⁰⁰ The chain for a reactive sequence begins with what James Mahoney termed a “breakpoint.”¹⁰¹ Mahoney noted that the breakpoint is often found at the convergence of one or more sequences—this he termed a conjuncture. Here, two or more independent processes may collide, and out of this collision, a new path may emerge. Bearing in mind the reactive sequence, Mahoney argued that “for path-dependent investigators, these smaller sets of intervening steps through which initial breakpoints produce final outcomes—not the direct link between breakpoints and outcomes—are the

⁹⁸ Carsten Daugbjerg, “Sequencing in public policy: the evolution of the CAP over a decade,” *Journal of European Public Policy* 16:3 April 2009: 396.

⁹⁹ Ferdi De Ville, “The Promise of Critical Historical Institutionalism for EU Trade Policy Analysis,” *Journal of Contemporary European Research*, 9 (2013): 620.

¹⁰⁰ Mahoney, “Path dependence in historical sociology,”: 526-7.

¹⁰¹ *Ibid.*: 527.

central objects of analysis.”¹⁰² While the events in any reactive sequence are causally connected, their inherent connectedness cannot by itself explain “how one event ‘logically’ or ‘inherently’ follows from another.”¹⁰³

Conceiving of reactive sequences as a causal chain takes HI away from a theorization in which critical junctures serve as the essential, defining feature. When focused on critical junctures, Mahoney and Thelen argued that HI research risks “overlooking shifts based on endogenous developments that often unfold incrementally.”¹⁰⁴ These gradual changes, according to Mahoney and Thelen “can be of great significance in their own right; and gradually unfolding changes may be hugely consequential as causes of other outcomes.”¹⁰⁵ Indeed, this is why Pierson has noted a personal preference for the term “institutional development” over “institutional change,” as the notion of development “encourages us to remain attentive to the ways in which previous institutional outcomes can channel and constrain later efforts at institutional innovation.”¹⁰⁶

How, then, does the researcher seek to explain these gradual changes? Consider a definition in which institutions are understood to be, fundamentally, sets of rules. For instance, as Wolfgang Streeck and Kathleen Thelen put it: “the institutions in which we are interested here are formalized rules that may be

¹⁰² Ibid.: 527-9.

¹⁰³ Ibid.: 530.

¹⁰⁴ James Mahoney and Kathleen Thelen, “A Theory of Gradual Institutional Change,” in *Explaining Institutional Change: Ambiguity, Agency, and Power*, eds. James Mahoney and Kathleen Thelen, (Cambridge: Cambridge University Press, 2009), 2.

¹⁰⁵ Ibid., 3.

¹⁰⁶ Pierson, *Politics in Time*, 133.

enforced by calling upon a third party.”¹⁰⁷ Comprehending institutions in this way, argued Streeck and Thelen, is advantageous because, among other reasons, a focus on rules and enforcement allows “for the possibility of a gap between the institution as designed and the behavior under it.” This sets this approach to HI apart from RI’s functionalism and SI’s “shared script.” Accordingly, Streeck and Thelen’s approach allows for ‘play’ in the rules and “thus for the possibility that institutional change may be generated *as a result of the normal, everyday implementation and enactment of an institution.*”¹⁰⁸

Thelen elsewhere noted “the fact that rules are never ‘simply’ applied, they are always interpreted, enforced and enacted, and, of course, by actors who have divergent and conflicting interests.”¹⁰⁹ She further highlighted the “importance of examining politics as a dynamic process that frequently produces unintended consequences as different, ongoing processes interact.”¹¹⁰ As an example, Thelen pointed to the British House of Lords—a resilient institution, yet one that is much different today from what it was in the past.¹¹¹ In order to gauge these gradual changes, Thelen highlighted that the turning points in a path can be generated endogenously. This brings us to five modes of gradual institutional change: displacement (“when existing rules are replaced by new ones”), layering (“when

¹⁰⁷ Wolfgang Streeck and Kathleen Thelen, “Introduction: Institutional Change in Advanced Political Economies,” in *Beyond continuity: institutional change in advanced political economies*, eds. Wolfgang Streeck and Kathleen Thelen (Oxford: Oxford University Press, 2005), 10.

¹⁰⁸ *Ibid.*, 11 (Emphasis in original.)

¹⁰⁹ Thelen, “Institutional Change in Advanced Political Economies,”: 490-1.

¹¹⁰ Kathleen Thelen, “Historical Institutionalism in Comparative Politics,” *Annual Review of Political Science* 2 (1999): 383-4.

¹¹¹ Thelen, “How Institutions Evolve,” 210.

new rules are attached to existing ones, thereby changing the ways in which the original rules structure behavior”), drift (“when rules remain formally the same but their impact changes as a result of shifts in external conditions”), conversion (“when rules remain formally the same but are interpreted and enacted in new ways”),¹¹² and exhaustion (“behaviors invoked or allowed under existing rules operate to undermine these”).¹¹³

The flipside of institutional change is institutional stability. Mahoney put forth four potential explanations for why institutions do not often change: utilitarian, legitimation, functional, and power-based. Each of these four “underpins,” in different ways, the social reproduction of institutions. Mahoney focused on these because understanding “the specific mechanisms that produce self-reinforcement” suggests “different ways in which patterns marked by path dependence might be reversed.”¹¹⁴

For Mahoney, utilitarian explanations focus on the perceived costs of reproduction, the explanation revolving around a rational choice, market-type mentality. As Mahoney put it, in this conception “institutional change occurs when it is no longer in the self-interest of actors to reproduce a given institution.” The drawback of this approach is that, outside of a market setting, “it is difficult for rational actors to evaluate the costs and benefits of alternative institutional outcomes.”¹¹⁵ Legitimation explanations turn on the values of the involved

¹¹² Mahoney and Thelen, “Theory of Gradual Institutional Change,” 15-8.

¹¹³ Streeck and Thelen, “Beyond Continuity,” 29.

¹¹⁴ Mahoney, “Path Dependence in Historical Sociology,” 518.

¹¹⁵ Ibid., 518.

actors, with institutional reproduction turning on subjective moral belief. In this mechanism, once an institution is selected, it “will be reinforced through processes of increasing legitimation.” This is a “positive feedback cycle” in which the initial choice becomes the basis for future decisions about what is legitimate.¹¹⁶ In functional explanations, reproduction of an institution is explained by way of the consequences of that reproduction to the larger system the institution is set within.¹¹⁷ Finally, power-based explanations see institutional reproduction as inherently conflictual. On this view, institutions are able to reproduce themselves until a critical threshold is reached, at which point those conflicts push the institution to change.¹¹⁸ Pierson argued that change driven by a threshold breached is akin to an earthquake—where a prolonged period of building-up pressure works to produce an abrupt rupture.¹¹⁹ Such changes are, however, unpredictable; as Brian Barry once commented: “In politics, as in geology, seismic events resist prophecy.”¹²⁰

Further considering reproduction and stability, let us return to Levi’s path dependency metaphor of the tree—“the branch on which a climber begins is the one she tends to follow.”¹²¹ The notion is that the climber “begins” on a given branch. She was not there, so to speak, when the tree sprouted. One enters the

¹¹⁶ Ibid., 523.

¹¹⁷ Ibid., 519.

¹¹⁸ Ibid., 523.

¹¹⁹ Pierson, “Big, Slow-Moving, and Invisible,” 182.

¹²⁰ Brian Barry, “UBI and the Work Ethic,” in *What’s Wrong with a Free Lunch?* eds. Joshua Cohen and Joel Rogers, (Boston: Beacon Press, 2001), 62.

¹²¹ Levi, “A Model, a Method, and a Map,” 28.

scene on a branch, and this dictates one's available options (where the tree came from, and how it grew is a distinct, and deeper, matter).

Another way of conceiving of this point was enunciated by Karl Marx:

men make their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past. The tradition of all the dead generations weighs like a nightmare on the brain of the living.¹²²

Marx reminded us that the past impacts the present, and this is perhaps the clearest way to understand what lies at the heart of path dependence. In a historical comparison of the Canadian Union of Postal Workers (CUPW) and the Public Service Alliance of Canada (PSAC), Rosemary Warskett applied this concept to Canadian public sector labour relations. Warskett argued that “the founding moment of a union is of crucial importance to how union members construct future struggles.”¹²³ Warskett was referring to constraints driven by a union's constitution and structure. For example, is the union democratic, or does it tend towards a model in which leaders and experts make decisions? Or, how difficult is it to amend the union's constitution?

Warskett was highlighting, as we saw with Pierson and Mahoney, the central importance of initial events in constructing future possibilities. That being said, Levi's metaphorical tree reminds us that, while a climber's path of least resistance is to follow the branch she is on, it is always possible to “clamber”

¹²² Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, (New York: International Publishers, 1963), 15.

¹²³ Rosemary Warskett, “Federal Public Sector Unions in Times of Austerity: Linking Structure and Strategic Choice,” in *Public Sector Unions in the Age of Austerity*, ed. Stephanie Ross and Larry Savage, (Halifax and Winnipeg: Fernwood Publishing, 2013), 128.

from branch to branch. Levi's word choice here—clamber—is meaningful inasmuch as it means “to climb *with difficulty and effort*.”¹²⁴ It is not easy to change branches. Likewise, this is why stability, or progress along an established branch, is the most likely outcome for an institution. The difficulty of change, of course, raises the question of why change ever occurs, be it gradual or sudden, exogenous or endogenous. This inquiry into why change happens is at the heart of this dissertation.

In this vein, Mahoney—as we saw above with Miller and Canak—argued that historical narratives were a particularly useful tool through which to make sense of the steps in a reactive sequence.¹²⁵ For Mahoney, the creation of an historical narrative allows the researcher to identify the key choice points—the proverbial forks in the road—which stand as the key points in the reactive sequence under investigation. But, going deeper, the crafting of a historical narrative is about more than the key decision points. A narrative is a story—a tale of related events. In a narrative, these events are not just things that happened, but rather the related events are animated by individuals and organizations. In any discussion of political history, it is imperative to contemplate how the events occur within a broader social and economic setting. To construct a narrative which helps to explain the movement along the path of history, a different sort of institutionalism is required—in this project the approach to accomplishing this is critical institutionalism (CI).

¹²⁴ Oxford English Dictionary (emphasis added).

¹²⁵ Mahoney, “Path Dependence in Historical Sociology,”: 530.

Path dependency will be utilised in this study as a framework through which we can understand how events are linked across time. However, illuminating a path is insufficient. Instead, an historical narrative must be overlaid on it. By doing this, a study may be forestalled from falling into what Jack Goldstone has referred to as “Seussian explanation.” To wit: “it just happened that this happened first, then this, then that, and is not likely to happen that way again.” To move beyond this, we must establish a narrative structure, the goal being to demonstrate that the several events making up the narrative have “a necessary or probable connection” to one another.¹²⁶ In the next part, we will explore how a narrative will be established in this dissertation. This will be accomplished by way of a critical institutionalist (CI) approach.

Critical Institutionalism

In CI, the development, maintenance, and change of institutions across time are explored by centring their “social dimension.” This means undertaking an “explicit engagement with the social context of institutions, particularly questions of power and power inequality.”¹²⁷ It is the infusion of the social dimension that offers a more complete avenue to understanding the development and dynamism of industrial relations in the OPS. As Dennis Pilon put it, CI allows the researcher to “put the concern with the social up front.”¹²⁸

¹²⁶ Jack A. Goldstone, “Initial Conditions, General Laws, Path Dependence, and Explanation in Historical Sociology,” *American Journal of Sociology*, 104:3 (November 1998): 833.

¹²⁷ Dennis Pilon, “Codifying Common Sense: The Limits of Historical Institutionalism.” *Studies in Political Economy* Forthcoming (2020), 4.

¹²⁸ Dennis Pilon, *Wrestling with Democracy: Voting Systems as Politics in the Twentieth-Century West*, (Toronto: University of Toronto Press, 2013), 27.

Following Stephen Maher, Pilon argued that HI is hampered by its “fuzzy ontology,” by which it is meant that HI has been unclear about its fundamental assumptions. For Pilon, HI exhibits a latent positivism seen in its search for empirically derived fundamental laws that “explain” how institutions gradually change. Such theoretical disputes are, Pilon argued, “thin gruel” amounting to little more than “decontextualized descriptions of processes and actors.” The lack of theoretical grounding in HI leads to this point because it relies upon observation of the surface details of institutions. As such HI is unable to, as Pilon put it, provide “insight into why groups or individuals are in conflict in the first place.” This fuzzy ontology ultimately limits the ability of HI to formulate ‘why?’ questions, or to even see the merits of asking them.

Pilon situated his critique of HI within a broader criticism of positivism in political science. To find a way past the positivist approach, we should first take a step back and discuss the rise of the approach in political science, which has been described by Mark Bevir. Beginning his account in the late nineteenth century with what he termed “developmental historicism,” Bevir argued that, at that time, few researchers would have “defined narrative and science in contrast to one another.” Indeed, a narrative-driven, historical approach *was* science. Such narratives were considered valid when they were created inductively by way of the rigorous collection and sorting of facts. The research of this time was situated within a framework of developmental historicism, wherein history unfolded

along “fairly fixed paths.” The path was, in essence, “the gradual triumph of nationality and freedom.”¹²⁹

Then came the First World War, which blunted and undermined faith in immutable human progress. At this point, the focus of research shifted away from the “nation” and towards the government, and with that came a shift away from concerns with unity within the body politic towards concerns with pluralism. An example of this is found with Robert Dahl. In his *Who Governs?* Dahl considered the governance of New Haven, asking if the city was governed by an elite (oligarchy) or by a diffuse assemblage of groups and individuals (polyarchy)? With ‘polyarchy’ Dahl meant to refine the understanding of ‘democracy’ from the description of “a goal or ideal, an end perhaps never achieved and possibly not even fully achievable in actuality,” on the one hand and “the distinguishing features of the actual political systems commonly called ‘democratic’ or ‘democracies’ in the modern world.”¹³⁰

Dahl utilized a positivist approach to explain liberal democracy in terms of its actual functioning. On a positivist view, society (and its politics) adheres to certain generalizable rules. This approach to politics led to the development of the behaviouralist school of political science, which Dahl defined as “nothing more or less than an emphasis on the term ‘science’ in the phrase ‘political

¹²⁹ Mark Bevir, “Political Studies as Narrative and Science, 1880-2000,” *Political Studies* 54 (2006): 584-5.

¹³⁰ Robert A. Dahl, “Polyarchy, Pluralism, and Scale,” *Scandinavian Political Studies* 7, no. 4 (1984): 228.

science.”¹³¹ Expanding on this, the behaviouralist approach was defined as comprehending:

those actions and interactions of men and groups which are involved in the process of governing. At the minimum, therefore, political behaviour research is concerned with the activities of governmental officials of all types, party functionaries, interest groups, and voters. At the maximum this conception brings under the rubric of political behaviour any human activities which can be said to be a part of governing. One of the implications of this view, of course, is that for the purposes of relevant research the whole range of political behaviour patterns is equivalent to and defines the institutions and processes of government.¹³²

With this, empiricists became focused on “atomistic and analytical,” as opposed to historical, modes of inquiry. As Bevir put it “modern empiricists still equated science with the rigorous and impartial collection and sifting of facts. They just detached such rigour from narrative.”¹³³

This set the stage for what Pilon termed the “elision of positivism with science.”¹³⁴ With this, ‘science’ came to be defined as “universal theories that generated hypotheses, which in turn received confirmation from experiments and factual investigations.”¹³⁵ It is here that we return to David Easton. Decrying that political scientists had, hitherto, “closed their eyes to general theory,” Easton contended that these political scientists had—quite wrongly—“been captive to a view of science as the objective collection of facts and the relating of them into

¹³¹ Robert A. Dahl, “The Behavioral Approach in Political Science: Epitaph for a Monument to a Successful Protest,” *The American Political Science Review*, 55, no. 4 (December 1961): 768.

¹³² David B. Truman, “The Implications of Political Behavior Research,” *Social Science Research Council – Items*, 5, no. 4 (December 1951): 37.

¹³³ Bevir, “Political Studies as Narrative and Science,”: 592.

¹³⁴ Pilon, “Codifying Common Sense,” 5.

¹³⁵ Bevir, “Political Studies as Narrative and Science,”: 592.

singular generalizations.”¹³⁶ Easton instead promoted a political science which was meant to “discover reliable, universal knowledge about social phenomena.”¹³⁷ This marked, as Bevir had it, political science’s adoption of “a positivist concept of science as universal, deductive, predictive, and verifiable theory.”¹³⁸

It is precisely this pursuit that we have seen above with systems theory and those multivariate analyses that purport to “explain” the existence and extent of public sector collective bargaining legislation by reference to a battery of independent variables. Moreover, Pilon argued that HI, too, has fallen into line with this conception of science. As he noted, much of HI’s work seeks to uncover the essential properties of institutions, then using these decontextualized properties to develop a universal theory of institutional change. This is theoretical “thin gruel” precisely because these properties have been decontextualized, torn from their socio-economic context.

Pilon proposed a different way forward for political science: a CI in which social relations are key. CI thus proceeds with a “depth ontology” in which causation may be either visible or not; in which social relations are understood to be “both structured and structuring in their form and effects.” According to Pilon,

It is this focus on relations—and the power inequities they embody—that allows us to explore why things are happening, why critical junctures are emerging when they do, or why paths remain dependent for various actors,

¹³⁶ David Easton, *The Political System: An Inquiry into the State of Political Science*, (New York: Alfred A. Knopf, 1963), 65-6.

¹³⁷ Ibid., 24.

¹³⁸ Bevir, “Political Studies as Narrative and Science,”: 592.

or why change is sometimes gradual and internal rather than sudden and exogenous.

This CI framework has been utilized in contemporary works on labour and politics in Canada. For instance, Larry Savage and Charles Smith employed it in a study of organized labour and the courts. For Savage and Smith, CI viewed “judicial interpretations of workers’ rights as inseparable from the political struggles and class tensions that underpin Canadian society.”¹³⁹ Here, we see how CI operates at both a surface (the contents of a judicial decision) and subsurface (the class tensions of broader society) level of analysis. CI “does not necessarily privilege structure over agency, or vice versa, but rather maps institutions and institutional relationships themselves as sites of social struggle.”¹⁴⁰ Savage and Smith note that CI allows for a careful assessment of the “broader contextual evolution” while also bearing in mind the “conflict-laden social dynamics” within the relationship between organized labour and the courts.¹⁴¹ Similarly, Stephanie Ross, Larry Savage, and James Watson employed CI in a study of the way in which bargaining unit structures impact bargaining outcomes for contract faculty. As the authors noted, “collective bargaining structures and workers’ representative organizations are not created from ideal types.” These structures

¹³⁹ Larry Savage and Charles W. Smith. *Unions in Court: Organized Labour and the Charter of Rights and Freedoms*, (Vancouver: UBC Press, 2017), 11.

¹⁴⁰ Ibid., 12.

¹⁴¹ Ibid., 13.

and organizations are, instead, “inseparable from the broader political and economic forces shaping the post-secondary sector.”¹⁴²

Thus, CI with its critical approach focused on the “dialectical interplay” between institutions and social dynamics, is well-suited to this dissertation’s study of the development of a specific piece of labour relations legislation.¹⁴³ Moving beyond a critical view, which takes account of the interplay between the institutions and their social setting, this dissertation means to create a narrative. Here we return to Bevir’s account of the development of political science. Bevir summed up the dominant approaches to the study of politics (circa 2006) as, first, the rational choice/behaviouralist approach, which sought to “explain the character and policies of nation states by reference to universal theories and hypotheses deduced from them.” Second is that with which (as Pilon explained HI) those new institutionalists sought to “explain the character and policies of nation states in terms of correlations and typologies that provide macro-historical, comparative contexts for diverse cases.”¹⁴⁴

Against these, Bevir placed a “return to narrative.” In such an approach, narrative is divorced from the notion of inherent progressivism which had informed the developmental historicism of the nineteenth and early twentieth centuries. Instead, a greater emphasis on contingency and indeterminacy entails

¹⁴² Stephanie Ross, Larry Savage, and James Watson, “Interrogating the Relationship Between Bargaining Structures and Bargaining Outcomes for Contract Academic Faculty in Ontario,” *Labour / Le Travail*, 86, (Fall 2020): 15.

¹⁴³ Pilon, *Wrestling with Democracy*, 26.

¹⁴⁴ Bevir, “Political Studies as Narrative and Science,”: 595.

a renunciation of universal theory. The so-called ‘radical historians’ who favoured this return to narrative

argued that if we are to understand and explain actions and beliefs, we have to grasp how they fit within wider practices and webs of meaning. They emphasised contextualization in contrast to both deduction and atomization and analysis. Radical historicists thus promoted forms of understanding and explanation that, like the narratives of developmental historicists, are inductive studies of human life in relation to historical contexts, but which, unlike the narratives of developmental historicists, do not appeal to fixed principles or to reason and progress.¹⁴⁵

Thus, we are left with a narrative which describes history within a context of social dynamism.

Conclusion

Through this chapter, we have toured developments in both political science and industrial relations. We have examined approaches which have sought to uncover universal theories, as well as approaches which emphasize context. The approach that will be applied in subsequent chapters is a critical one. Following Pilon, this study will be attuned to the “dialectical interplay” between the social setting of institutions as well as studying the institutions themselves. The product of these labours will be a narrative which describes this interplay across time. This will be a work of induction. Within this critical approach, some of the basic framework of HI will be considered, such as the impact of path dependency on the scope choices that arise. Put a different way, the consideration of history here will be cognizant that history can only be

¹⁴⁵ Ibid.: 596-7.

created “under circumstances directly encountered, given and transmitted from the past.”¹⁴⁶

¹⁴⁶ Marx, *The Eighteenth Brumaire of Louis Bonaparte*, 1.

Chapter 3: Patronage, Petitions and Consultations, 1867-1934

The history of staff relations in the Public Service can be divided into two periods. During the first of these, which might be described as the era of “petitions,” employee organizations had no real status. ... Since that time, we have been in a period marked by “joint consultations.”

- E.J. Benson¹

Introduction

This chapter unpacks some seventy years of change within the Ontario Public Service, examining the evolving relationship between the province as employer and its workforce. Beginning at Confederation, we trace how the vast political and economic transformations of Ontario impacted the development of labour relations. The spectacular growth of government and significant shifts in labour law form the central pillars of this narrative.

The creation of Ontario in 1867 saw the establishment of a new public service. From that time onward, the province largely followed the lead of the federal government in constructing its public service, a tendency that continued for decades. This chapter will also detail the considerable control exerted by the executive on the terms and conditions of work in the OPS, as well as the propensity of an acquiescent group of employees to accept the government’s decrees on workplace matters.

¹ E.J. Benson, “A Turning Point in Staff Relations,” *Civil Service Review*. 38 (September 1965), 38.

Formation

The establishment of the province of Ontario in 1867 brought with it, by constitutional necessity, the creation of a new public service.² Though established at Confederation, the “living spirit” of the OPS (as well as the other public services at both the federal level and in other provinces) was already in place, arising as it did “from earlier colonial experience.”³ At its beginning, the OPS employed just under 50 people, consisting of “the miniscule group of civil servants who were to provide the administrative support for the five executive Officers.”⁴ This five-person Cabinet and its skeletal staff were considered sufficient, given the prevailing view that “the functions of a provincial legislature would be little more than those of a ‘glorified county council.’”⁵ The province’s first budget projected revenues of \$1.8 million (with no direct taxation) against anticipated expenditures of \$1.3 million—a little less than a dollar per Ontarian.⁶

The staff count of 50 is deceptively low, however, as it included only “the visible part of the administrative iceberg,” meaning those who made up the core civil service working in the government’s headquarters. This was the so-called “inside” service, replicating the divide between the “inside” and “outside”

² *British North America Act*, 1867, 30-31 Vict., c. 3 (U.K.), s. 81. (*BNA Act*)

³ R. MacGregor Dawson, *The Civil Service of Canada*, (Toronto: Oxford University Press, 1929), 3.

⁴ J. E. Hodgetts, *From Arm’s Length to Hands-On: The Formative Years of Ontario’s Public Service, 1867-1940*, (Toronto: University of Toronto Press, 1995), 6; *BNA Act*, s. 63. (The listed executive offices include: “the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works.”)

⁵ Joseph Schull, *Ontario Since 1867*, (Toronto: McClelland and Stewart, 1978), 35.

⁶ *Ibid.*, 39. (Taking both inflation and population growth into account, this figure is approximately one quarter of one per cent of 2025 expenditures.)

services at the federal level, with the latter being those scattered outside the capital.⁷ Accounting for the “outside” service, upon Confederation about 150 employees transferred to the OPS from prior employment with the province of Canada.⁸

The Ontario legislature moved to its current home at Queen’s Park in 1893, a building a contemporary account praised as “one of the most complete and admirably adapted legislative and departmental edifices upon this continent or in the world.”⁹ Home not only to the legislature, the building also accommodated all members’ offices, executive offices, the Speaker’s quarters, and the entire public service. The fact that all of this fit within the building highlights that, at the time, there were fewer than “seven provincial employees for each elected member”—making a total staff complement of approximately 600.¹⁰ Despite seeing twelve-fold growth of the core civil service in the twenty-five years since 1867, at the building’s opening, Premier Oliver Mowat was claimed to have said he was “worried about that building. We’ll never fill it in a hundred years.”¹¹

⁷ Hodgetts, *From Arm’s Length*, 24.

⁸ Ontario, *Working Together for Ontario: Employee Information*, (Toronto: Employee Relations Branch, Department of the Civil Service, n.d.), 1. (Ontario Archives, RG-25, Box 3)

⁹ “Parliament Buildings: The New Legislative Edifice in the Queen’s Park,” *The Globe*, March 11, 1893, 11.

¹⁰ Desmond Morton, “Introduction: People and Politics of Ontario,” in *Government and Politics of Ontario*, ed. Donald C. MacDonald, (Toronto: Macmillan, 1975), 1. 600 remained the staff count in 1901. (See: J. E. Hodgetts and O. P. Dwivedi, *Provincial Governments as Employers: A Survey of Public Personnel Administration in Canada’s Provinces*, (Montreal: McGill-Queen’s University Press, 1974), 2.)

¹¹ “Speaking of long service, would you believe 77 Years?” *Topic Ontario*, November/December 1966, 20. (Ontario Archives, F1019-MU 568)

Throughout this early era, what passed for labour relations in OPS was guided by the first iteration of the *Public Service Act*,¹² which became law “without opposition” in March 1878.¹³ Marking the beginning of a long-running tendency, *PSA 1878* largely echoed existing federal legislation.¹⁴ Indeed, the new Act did not serve “so much to provide for any new course of action with regard to the Civil Service, but more to put the present procedure in statutory form.”¹⁵ Ted Hodgetts went so far as to argue that *PSA 1878*, “with surprisingly few additions and some updating of terminology,” would fit into “the field of what in the current vernacular is termed ‘human resource management.’”¹⁶ Timothy Hadwen and his co-authors give us reason to be skeptical of this claim noting, as but one example, that “the 1878 Act contained no mention of collective representation or dispute resolution,” two mainstays of OPS labour relations in the present day.¹⁷

PSA 1878 covered only the inside civil service, which matched the federal statute. Unlike the federal legislation, however, Ontario’s law contained considerable details regarding salaries and wage progression. Progress through the wage grid was standardized, though ultimately discretionary, the Act noting

¹² *An Act Respecting the Public Service of Ontario, Statutes of Ontario*, 1878, c. 2. (*PSA 1878*)

¹³ “The Session,” *The Globe*, March 8, 1878, 2.

¹⁴ *Civil Service Act, Statutes of Canada* 1868, c. 34.

¹⁵ “Ontario Legislature: Third Parliament—Third Session,” *The Globe*, February 8, 1878, 3.

¹⁶ Hodgetts, *From Arm’s Length*, 172.

¹⁷ Timothy Hadwen *et al.*, *Ontario Public Service Employment and Labour Law*, (Toronto: Irwin Law, 2005), 25.

that wage progression “may be suspended.”¹⁸ The legislated salaries were lower than those in the federal service, as the government had taken the view that the required skills of a provincial public servant were lesser than those needed in the federal service. In setting wages, the government took into consideration salaries in Toronto’s municipal government, neighbouring American states, as well as banks and insurance companies.¹⁹ By placing the wage details in the legislation, *PSA 1878* ostensibly left the legislature with the “final word” on matters related to classification and compensation of the public service.²⁰ Accordingly, Hadwen *et al.* note that the legislation ended an era of “unfettered executive authority over the public service.”²¹ There are, however, two interesting elements here. First, the public service is an appendage of the executive, as opposed to the legislative, branch. Thus, the authority the legislature *ought* to have over the minutiae of employment in the service might reasonably be questioned. Second, owing to the capacity of the executive to determine outcomes in any parliament—including Canadian legislatures—the legislature’s actual control was weak. As Graham White put it, “the Ontario legislature is better understood as a law-passing rather than lawmaking body ... the cabinet and the bureaucracy make laws.”²²

¹⁸ *PSA 1878*, s. 4.

¹⁹ “Ontario Legislature: Third Parliament—Third Session,” *The Globe*, February 8, 1878, 3.

²⁰ Hodgetts, *From Arm’s Length*, 172.

²¹ Hadwen, *et al.*, *Ontario Public Service Employment and Labour Law*, 21.

²² Graham White, “The Legislature: Influence Not Power,” in *The Government and Politics of Ontario*, 4th ed., ed. Graham White (Scarborough: Nelson, 1990), 63. Consider, as well, Ivor Jennings’ maxim that, in a parliament, “the government’s majority exists to support the government.” Ivor Jennings, *Cabinet Government*, (Cambridge: Cambridge University Press, 1961), 472.

Turning to appointments, *PSA 1878* mandated a probationary period of six months,²³ as well as that each new hire, after passing examinations, had to “produce such evidence as the Lieutenant-Governor in Council may think sufficient as to his age, health, and moral character.”²⁴ Appointments and promotions could only be made “under the authority of the Lieutenant-Governor in Council,”²⁵ with the executive also holding the power “to remove or dismiss any deputy head of a department, officer, or clerk.”²⁶ Thus, despite the determination of compensation falling to the legislature, considerable power remained with the executive—a fact the Conservative opposition argued “would leave room for a good deal of abuse.”²⁷ In reply to this charge, the government offered to statutorily mandate that clerks “may not be affected by the whim, caprice, and good or bad will of the party for the time being in power.”²⁸ Such wording does not appear in the Act.

The worries of the opposition primarily revolved around patronage. In a nod to these concerns, overt political activity by Ontario public servants was sternly frowned upon. This was made clear in the Legislature’s 1897 “Garrow resolution” (so named owing to the mover, the Liberal member James Garrow), which stated:

²³ *PSA 1878*, s. 7.

²⁴ *Ibid.*, s. 8.

²⁵ *Ibid.*, s. 6.

²⁶ *Ibid.*, s. 23.

²⁷ “Ontario Legislature: Third Parliament—Third Session,” *The Globe*, 8 February 1878.

²⁸ *Ibid.*

Resolved, That this House is of the opinion that Officers or Clerks of the Civil or Public Service of the Province, or permanent *employés*, who solely or for the most part obtain their livelihood in the Public Service, should not actively participate in Provincial or Dominion Election Campaigns, and that Officers or Clerks of the Civil Service should not become Candidates for Municipal Councillors.²⁹

The seriousness with which this resolution was taken might be seen in a brief note in *The Globe* announcing that a “Mr D. B. Jones, Clerk of the First Division Court in Brockville ... was dismissed on complaints made against him for being an active partisan, contrary to the Garrow resolution.”³⁰ More important, though, is the timing of this motion, coming less than a year after Mowat ceased being Premier. Despite this, Hodgetts has argued that a ‘spoils system’ was never in evidence within Ontario’s civil service. What might look like patronage was in hindsight, Hodgetts argued, merely a reflection of the staying power of Ontario governments—Mowat served as Premier from 1872 through to 1896, with the Liberal party enjoying uninterrupted power from 1871 to 1905. Of the sixty-four civil servants employed when Mowat came to power, thirty-seven were still employed when he left.³¹ Further, Hodgetts noted that in Ontario “governments of all political stripes took considerable pains to divorce themselves from the ‘Yankee Spoils System’ and complimented themselves for retaining their predecessors’ senior appointments,” remarking that “a detailed examination of the personnel ... would bear out that conclusion.”³² Indeed, anecdotally, former

²⁹ Ontario, *Journals of the Legislative Assembly*, vol. 30, 60 Victoria, 17 March 1897, 73.

³⁰ “Mr Jones Was Dismissed,” *The Globe*, 27 December 1906.

³¹ Hodgetts, *From Arm’s Length*, 172.

³² *Ibid.*, 106ff.

Premier Ernest Drury remarked about the civil service when his United Farmers took power that “we didn’t fire a man. ... We followed the English custom, and I had no reason to complain of any disloyalty.”³³

Yet, in what appears to be a contradiction, Fred Schindeler commented that in the early years of the province, the public service was “usually hand-picked by a Government grateful for electoral support.”³⁴ In the same vein, Margaret Evans argued that “the burgeoning civil service was an important part of Mowat’s political machine.”³⁵ Likewise, Sid Noel argued that Mowat’s success in centralizing power within the provincial government gave rise to patronage opportunities as “(p)rovincially appointed commissioners, inspectors, agents, and trustees multiplied in number.” Liquor licencing was particularly important for Mowat’s machine, with most liquor commissioner positions going to Liberals (although Mowat “always sought to give at least a modicum of credibility to Liberal claims of non-partisanship by appointing a certain number from the other party.”³⁶) Despite this, Noel still concluded that “for all the importance of patronage” to Mowat’s political machine, “it would be wrong to conclude that his use of it was either excessive or corrupt.”³⁷ A similar attitude is seen in a late nineteenth century editorial in *The Globe*, which opined that patronage was the

³³ Ernest C. Drury, interview by Fred Schindeler and Jean James, March 19, 1965. (York University Archives, Frederick F. Schindeler fonds, F0404-1999-015/003)

³⁴ F. F. Schindeler, *Responsible Government in Ontario*, (Toronto: University of Toronto Press, 1969), 23.

³⁵ A. Margaret Evans, *Sir Oliver Mowat*, (Toronto: University of Toronto Press, 1992), 223.

³⁶ S.J.R. Noel, *Patrons, Clients, Brokers: Ontario Society and Politics, 1791-1896*, (Toronto: University of Toronto Press, 1990), 282.

³⁷ *Ibid.*, 286.

norm throughout the British Empire and lamented it was “only in Ontario that we hear of the Opposition being aggrieved at the practice”:

During the long administration of Oliver Mowat it has fallen to his lot to appoint to positions in the public service a very large number of officials. ... Latterly it has become the fashion in many quarters to denounce the Government because in making these appointments it selects its friends rather than its foes. It is not pretended that the appointees are dishonest or incapable, but because they are supports of the Administration they are stigmatized as party hacks and party heelers.³⁸

A deeper consideration of the context of the times can, perhaps, aid in determining the role that patronage played in the early OPS. Vitally, the OPS had 704 employees at the beginning of the twentieth century. This was a small workplace in which “employees were known individually by their respective ministers, and even the premier was approachable by those seeking positions or preferment.”³⁹ Thus, there was patronage in the early OPS, but the evidence is that it was not a significant presence. While patronage was used for staffing, it was in the “outside” service (for example, liquor licencing, crown lands, or public works) as opposed to the “inside” service of clerks and other functionaries.⁴⁰ Despite not playing a central role in staffing the early OPS, the eradication of patronage nevertheless drove significant developments in OPS labour relations. To explain, we must turn to the federal level.

³⁸ “Government Patronage,” *The Globe*, May 29, 1894, 6.

³⁹ Schindeler, *Responsible Government in Ontario*, 23. (Schindeler remarked that “the classic illustration of this is the story of Sir J. P. Whitney, premier of Ontario at the turn of the century. Sir James made a habit of riding a bicycle to his office and one morning he was overtaken by a man who informed him that a sheriff of Manitoulin Island had died and asked if he could take his place. The unperturbed Premier replied that it was all right with him, if the undertaker did not mind.”)

⁴⁰ Hodgetts, *From Arm’s Length*, 108.

Patronage and the federal public service

The extent of patronage in the federal service is a matter of debate. Was patronage of “central importance to Canadian political life”?⁴¹ Or, as Hodgetts argued, was it an anodyne force? Answering this is beyond the scope of this study. However, regardless of its pervasiveness, for our purposes the “real significance” of patronage “is that the measures taken to eradicate it have left their mark.”⁴²

While the extent of patronage may be a subject of debate, patronage was certainly *perceived* to play a contributing role to bureaucratic inefficiency. Put simply, inefficient government was a hinderance on economic growth and consequently it was a concern of the business class. Writing about the early twentieth century, Macgregor Dawson argued that “if the Government and administration were to occupy their proper places in the life of the young nation reform must come quickly, and an efficient service was less tolerable at this stage of the country’s development than at any time before.” It was now that the public began “to realize the extravagance and waste of patronage” with the shift in public opinion driven by “different public men ... (who) advocated the non-political service as the greatest need of the nation.”⁴³ The turning of public

⁴¹ Gordon T. Stewart, “Political Patronage Under Macdonald and Laurier 1878-1911,” in *Canadian Political Party Systems: A Reader*, ed. R. K. Carty, (Toronto: Broadview Press, 1992), 45.

⁴² J.E. Hodgetts, *The Canadian Public Service: A Physiology of Government 1867-1970*, (Toronto: University of Toronto Press, 1973), 52.

⁴³ Dawson cited a pair of 1905 speeches to the Canadian Club calling for the federal Civil Service to move away from patronage, noted in J. Castell Hopkins, *The Canadian Annual Review of Public Affairs*, vol. 5 (Toronto: The Annual Review Publishing Company, 1905), 188, 192. As another example, Hodgetts *et al.* noted the role played by George Foster (a cabinet minister) who had for many years pursued the elimination of patronage “so that a strong and efficient government

opinion brought to politicians the unwelcome burdens of “public embarrassment and other difficulties attendant to dispensing patronage.”⁴⁴

Early efforts to constrain patronage, such as merit-based hiring which had been implemented with amendments to the *Civil Service Act* in 1882, had limited impact. The examination system, for example, ultimately only served to eliminate grossly incompetent applicants, as the examinations were, as Dawson quipped, “but a garment of gauze,” a mere “concession to appearances.”⁴⁵ Renewed efforts to limit patronage in the early twentieth century took a different tack, linking the drive to efficiency with scientific management, where the “rigorous system of control” that movement promised was viewed as an essential element of eliminating patronage.⁴⁶ Indeed, as Hodgetts put it “the reform movement linked hands with the scientific management movement and gained momentum.”⁴⁷ Rigours informed by scientific management principles were first established with the creation of the federal Civil Service Commission (FCSC), in amendments to the *Civil Service Act* made in 1908.⁴⁸ Initially charged with administering entry

could effectively advance the interests of Canadian business abroad.” (Hodgetts, *et al. Biography of an Institution*, 46.)

⁴⁴ J. E. Hodgetts, *et al. The Biography of an Institution: The Civil Service Commission of Canada, 1908-1967*, (Montreal and London: McGill-Queen’s University Press, 1972), 18.

⁴⁵ Dawson, *Civil Service of Canada*, 60.

⁴⁶ *Ibid.*, 53. “Reacting to principles of scientific management then in vogue, Robert Borden had made the elimination of patronage part of the official Conservative platform in 1908 and commissioned a full investigation of the Canadian civil service in 1912, with an eye to a complete overhaul.” Alan Gordon, “Patronage, Etiquette, and the Science of Connection: Edmund Bristol and Political Management, 1911-21,” *The Canadian Historical Review*, 80 (March 1999).

⁴⁷ See Hodgetts, *From Arm’s Length*, 176.

⁴⁸ In combatting patronage, the key principle employed was Taylor’s second: “scientifically select and then train and develop the workman.” Frederick Taylor, *The Principles of Scientific Management*, (New York: Harper and Brothers, 1919), 36.

examinations, the FCSC's role expanded a decade later when Robert Borden's Union government came to power. Stressing the intention to proceed with sweeping reforms to the civil service as a top priority, Borden had, under the heading of "civil service reform," promised to "abolish patronage and to make appointments upon the sole standard of merit."⁴⁹ As it turned out, the Union government—made up as it was by a coalition of Liberals and Conservatives—had its own self-interest in eliminating corruption: "the question of who would dole out the favours in each riding could tear the coalition apart."⁵⁰ By eliminating patronage, a potential political problem could be extinguished.

Unfortunately, patronage appointments began to be doled out soon after the election. The Borden government realized it needed to move quickly on the matter. A regulation was issued announcing that patronage would be abolished, leaving the details of how this was to be accomplished with the FCSC. Working under a tight timeframe, one of the functionaries at the FCSC reached out to an American contact who then directed the FCSC to the Chicago branch of Arthur Young and Company.⁵¹ That company's consultants guided the development of legislative amendments which "confirmed and extended the powers of the FCSC over all personnel matters."⁵² The FCSC then moved to implement a new classification system, which was considered "the prime instrument for preserving

⁴⁹ J. Castell Hopkins, *The Book of the Union Government: A Record and Souvenir of 1917*, (Toronto: The Canadian Annual Review, 1918), 44.

⁵⁰ Alasdair Roberts, *So-Called Experts: How American Consultants Remade the Canadian Civil Service, 1918-21*, (Toronto: Institute of Public Administration of Canada, 1996), 42.

⁵¹ *Ibid.*, 44. (Arthur Young and Company trades in the present day as EY).

⁵² Hodgetts, *Canadian Public Service*, 33.

the merit system.”⁵³ The classification system was understood to be a bulwark against the return of patronage as it ensured that similar positions would be paid similarly and a regularized system of promotion set out. As a consequence of these changes, opportunities for patronage to flourish would be limited.

Though employees were initially enthusiastic about the new classification system, the bloom quickly left the rose and the new system was met with derision. Major problems with both promotions and salary were quickly identified. Regarding promotions, the system was built upon an ideal of career movement from bottom to top along a defined line of promotion. Entrance to the service was meant to come at lower levels, with the ambitious climbing.

However, the educational requirements for entry into lower-level positions were not sufficient to allow for promotion: “how, for example, was a clerk to be promoted to the next position of senior clerk when the former required only a primary school education and the latter a high school education?”⁵⁴ Alas the

rosy future held out by one part of the Schedule thus disappears completely when confronted with the practical demands of another part, and the classification which is so elaborately exact breaks down on one of its fundamental principles.⁵⁵

On salaries, Hodgetts *et al.* argued that the designers of the new system “made a serious, perhaps disastrous, miscalculation” regarding inflation, which had run rampant during the First World War.⁵⁶ Establishing the wage grid, the

⁵³ Hopkins, *The Canadian Annual Review of Public Affairs*, vol. 8, 312.

⁵⁴ Roberts, *So-Called Experts*, 50.

⁵⁵ R. MacGregor Dawson, “The Canadian Civil Service,” *The Canadian Journal of Economics and Political Science* 2, no. 3 (August 1936): 294.

⁵⁶ Hodgetts, *Canadian Public Service*, 70.

consultants from Arthur Young (the consultancy's name providing the report's appellation of "Young Report") predicted inflation would be a temporary aberration. They were wrong. As a consequence, "civil servants were left with grossly inadequate salaries and a clumsy, insecure, and haphazard system of ad hoc bonuses to make up the difference."⁵⁷ With the federal service in uproar, classification appeals "poured in by the thousand."⁵⁸ Not surprisingly in such an environment, employees began to organize, there being "no doubt that under-classification constituted one of the principal factors" in the formation of the Professional Institute of the Civil Service of Canada (PIPSC).⁵⁹ Considering opinions within the civil service, Anthony Thomson argued that employee associations had their own motive for eliminating patronage: "Political appointments to the service create lines of individual dependency between the personnel and powerful figures in the administration which tend to undercut horizontal solidarity among the employees."⁶⁰

Developments in Ontario

Despite the battle against patronage at the federal level, from its passage in 1878, the *PSA* saw no significant amendments until 1913. At that point, the most significant amendment was a move away from "legislative prescription of the

⁵⁷ Ibid.

⁵⁸ Dawson, *The Civil Service of Canada*, 95.

⁵⁹ J. Stuart McGiffin, "The Story of the Professional Institute 1920-1945," in Swettenham and Kealy, *Serving the State*, 171. Indeed, a resolution passed at its first annual meeting compelled PIPSC to "prepare a memorandum deprecating the employment" of the American consultants, Arthur Young and Company, 176.

⁶⁰ Anthony Thomson, "'The Large and Generous View': The Debate on Labour Affiliation in the Canadian Civil Service, 1918-1928," *Labour / Le Travail* 2 (1977): 114-5.

terms and conditions of employment.”⁶¹ This turn from prescription served to place “more power over appointments in the hands of the Lieutenant-Governor in Council.”⁶² Notably, Cabinet was empowered to make regulations “fixing the maximum and minimum salary or other remuneration to be paid to civil servants in any department.”⁶³ Thus, the Executive retook control of compensation—an example of what Hadwen *et al.* referred to as the “ongoing adjustment of limits on executive sovereignty” in public service labour relations.⁶⁴

Five years later, *PSA 1918* created the province’s Civil Service Commissioner, whose role it was to make sure the new appointees were qualified and that their salaries were in line with expectations.⁶⁵ It must be noted that Ontario’s Civil Service Commissioner arrived a decade after the office’s appearance at the federal level. While the *PSA* had drawn “little opposition fire,” the opposition had made several attempts to establish a provincial Civil Service Commission.⁶⁶ In 1910, for example, Premier Whitney had rejected the notion of an Ontario Commission because the OPS was not sufficiently complex to warrant

⁶¹ Hadwen, *et al.*, *Ontario Public Service Employment and Labour Law*, 25.

⁶² “Ontario Not After Increased Subsidy,” *The Globe*, February 11, 1913, 9.

⁶³ *An Act Respecting the Public Service of Ontario, Revised Statutes of Ontario*, 1914, c. 14, s. 7(b). (*PSA 1913*). In another significant amendment, the scope of positions falling under the auspices of the *Act* grew as a new interpretation section defined the “public service” as including “every department and every office, clerkship or service at the nomination of the Crown, as representing the Province of Ontario, wherever held or performed,” thereby including positions outside the seat of government. (s. 2(d).)

⁶⁴ Hadwen, *et al.*, *Ontario Public Service Employment and Labour Law*, 19.

⁶⁵ *An Act to provide for the Better Regulation of the Public Service*, SO 1918, c.5.

⁶⁶ Hodgetts, *From Arm’s Length*, 174.

one: “The service is not deemed sufficiently large to warrant the creation of special machinery, necessarily more or less cumbersome, to control and regulate it.”⁶⁷ In 1919, the OPS staff complement was 4,066—a figure representing a 577 per cent increase in the quarter-century since 1893.⁶⁸ Undaunted, the opposition moved forward with another proposal for a Commission in 1912, making follow-up efforts in 1913, 1914, 1916, and 1917. Each attempt was parried by the government utilizing various rationales (for example, in 1917, the government argued that, given the raging First World War, the timing was simply inopportune).⁶⁹

In 1918, the government performed a volte face on creating a Civil Service Commission (CSC). The new Commissioner, J. M. McCutcheon, submitted his first report after a mere seven weeks on the job. He noted that his time in office had thus far been “occupied mainly in investigating the qualifications of applicants and nominees for appointment and promotion.”⁷⁰ Acknowledging the reclassification efforts in the federal service, the Commissioner’s report anticipated that a classification of the service “based on the duties and responsibilities of employees” would soon be undertaken. This classification

⁶⁷ “May Abolish Fee System: Ontario Government to Give Attention to Civil Service,” *The Globe*, October 10, 1910, 1.

⁶⁸ Frederick F. Schindeler, “Legislative-Executive Relations in Ontario” (PhD diss., University of Toronto, 1965), 52.

⁶⁹ See Hodgetts, *From Arm’s Length*, 176. See also: Ontario, *Journals of the Legislative Assembly*, vol. 47, 4 George V, 23 April 1913, 367. “Tory Machine Crushes Fourteen Amendments,” *The Globe*, April 24, 1913, 9; “Slaughter of 34 Liberal Motions,” *Toronto Daily Star*, April 24, 1913, 2.

⁷⁰ *First Annual Report of the Civil Service Commissioner for Ontario*, Ontario Legislature, Sessional Paper No. 72, 1919, 7.

would allow for “the application of improved methods of organization and administration” and “make possible the standardization of salaries.”⁷¹ Noting income inequalities within the OPS, the report ascribed these “to the absence of grading, and of salary schedules based on a proper classification of the service.” McCutcheon argued:

Where employees in one Department or Branch of the Service receive higher salaries than employees in another Department or Branch, for the same class of work, discontent and dissatisfaction arise, resulting often in deterioration in the quality of the service rendered. Further, it is difficult to secure an equitable system of promotion where there is no standardization of salaries.⁷²

The Emergence of the CSAO

The CSAO had been founded in 1911 when OPS employees formed an association focused on “promoting social togetherness, urging healthy athletics and co-operating with one another in the purchasing of supplies.”⁷³ Group purchasing was a central concern as “low salaries made it imperative that they obtain certain goods—such as fuel—at low prices.”⁷⁴ So successful was the initiative that the CSAO soon established a store offering foodstuffs, clothing, and a selection of gift items.⁷⁵ Two hundred men attended the CSAO’s first meeting

⁷¹ Ibid., 8.

⁷² Ibid.

⁷³ The CSAO later becomes the Ontario Public Services Employees Union (OPSEU). More on this change follows in subsequent chapters.

⁷⁴ Civil Service Association of Ontario, *Members’ Handbook*, no date, 8. (Ontario Archives, RG25, Box 8.)

⁷⁵ A. W. Pratt, “No. 7 Queen’s Park,” *Toronto Branch News*, September 1964, 9ff. (Ontario Archives, RG25-14.)

(no women were invited),⁷⁶ with the new association aiming to have 500 members by the end of its first year.⁷⁷ Though that goal was not attained (there were 300 members in November), the year-end meeting of the CSAO found that “many hundreds of dollars had been saved for members as a result of the co-operative purchase of such commodities as coal and fruit.”⁷⁸

Thus, the fledgling organization was more a social club and mutual aid society than it was a nascent labour union.⁷⁹ Yet workplace concerns were part of the organization’s meetings from the beginning; for example, the CSAO’s first meeting saw the beginnings of a campaign for pensions.⁸⁰ It was the impact of inflation that, in 1919, provoked the CSAO to make its formal compensation appeal to the government. In its brief, the CSAO compared meagre wartime wage gains with inflation on common goods, concluding that “that the increase in salaries during 1914-1919 have fallen far below the increases in the cost of living during the same period.”⁸¹ Underscoring its nature as an appeal, the brief concluded that the

success of an institution of business is dependent upon the character, loyalty, and working ability of its officials, but these cannot do their work well while they suffer from the discouragements due to financial anxieties

⁷⁶ Wayne Roberts, *Don’t Call Me Servant: Government Work in Ontario 1911-1984*, (Toronto: OPSEU, 1994), 12. On this the CSAO was no outlier. As Ross, *et al.* detailed, “unions were less than welcoming to women in the workforce.” Ross, *et al.*, *Building a Better World*, 22.

⁷⁷ “Civil Servants Organized: Association Recently Formed is Growing Rapidly,” *The Globe*, July 15, 1911, 8.

⁷⁸ “Hundreds of Dollars Saved by Co-operation,” *The Globe*, November 8, 1911, 8.

⁷⁹ Hodgetts and Dwivedi, *Provincial Governments as Employers*, 66.

⁸⁰ CSAO, *Members’ Handbook*, 8.

⁸¹ CSAO, “Ontario Civil Service Association Respectfully Submits for Consideration by the Government of Ontario Statements to Show the Necessity for Liberal Increases in Salaries to Meet the Greatly Increased Cost of Living During the Period 1914-1919” Toronto, 1919, 5.

and a sense of injustice. With an adequate scale of salaries and a classification of the Service in which each Servant will have a full day's work with corresponding pay, in which there will be, as nearly as may be, equal pay for equal work, in which ability and merit will not lack opportunity for preferment, the Government can rely upon the hearty service of a loyal, contented, and devoted Staff.⁸²

Though inflation fueled the CSAO submission, it was membership pressure that lit its spark. It is illuminating to set this event within the broader context of 1919. As Bryan Palmer described it, "Nineteen-nineteen was a year of strikes."⁸³ At the time, the labour movement was rapidly growing. Stephanie Ross *et al.* noted that, between 1915 and 1919, the number of union members in Canada increased by 170 per cent to a total of 378,000. In a "countrywide labour revolt" some 150,000 people took part in 427 strikes—of which the Winnipeg General Strike stands as the best-known.⁸⁴ Fueling the unrest were disparate factors, including the Russian revolution, war-related labour shortage, deskilling of labour, profiteering, inflation, and wage controls. Ross *et al.* also noted the expansion of unionism beyond craft and industrial unions "to new groups of workers, including municipal workers, clerical workers and postal workers."⁸⁵

⁸² Ibid., 8.

⁸³ Bryan D. Palmer, *Working Class Experience: Rethinking the History of Canadian Labour, 1800-1991*, 2nd ed., (Toronto: McClelland and Stewart, 1992), 200.

⁸⁴ Stephanie Ross, *et al.*, *Building a Better World: An Introduction to the Labour Movement in Canada*, 3rd ed, (Halifax and Winnipeg: Fernwood, 2015), 31-2. Regarding the Winnipeg General Strike, Fudge and Tucker noted that "No law was passed ordering workers back to work or prohibiting them from striking in the future. Strike leaders, however, were arrested and charged with seditious conspiracy, raising the question of whether a general strike was lawful." Fudge and Tucker, "The Freedom to Strike in Canada": 347.

⁸⁵ Ross, *et al.*, *Building a Better World*, 31-2.

The pressure from the membership was thus in keeping with the tenor of the times—though in a more restrained approach than the strikes recounted above. Craig Heron summed up the mood in 1919 as “never before in Canada had class lines been drawn so sharply in industrial communities across the country.”⁸⁶ Throughout Canada, workers were demanding more—even in the public sector; wartime inflation led municipal workers to strike, with disruptions occurring in Toronto, Montreal, Winnipeg, and Calgary.⁸⁷

Although a similar level of militancy did not manifest in the OPS, a restiveness was evident. Consider an anonymous letter to the *Daily Star* wherein “A Sufferer” decried OPS salaries, asking “is it not nearly time that an organization is formed to get a little redress?”⁸⁸ Weeks after the letter appeared, *The Globe* reported on “smouldering dissatisfaction among the Ontario civil servants ... the underlying complaint has been that of salaries.” Describing “complaints ... that the present executive of the Civil Service Association is not active enough in the interests of the members,” the article noted the growing perception that members might well be better served “if the Chief Executive office were filled by someone not so close to the Government.”⁸⁹

The “someone” was Albert Grigg. A Conservative, Grigg had begun his political career as the Mayor of Bruce Mines. He then served as MPP for Algoma

⁸⁶ Craig Heron, *The Canadian Labour Movement: A Short History*, 3rd ed. (Toronto: James Lorimer, 2012), 51.

⁸⁷ Stephanie Ross, “The Making Of CUPE: Structure, Democracy and Class Formation” (PhD diss., York University, 2005), 129-33.

⁸⁸ “Pay of Civil Servants,” *The Toronto Daily Star*, February 27, 1919, 4.

⁸⁹ “Civil Servants Want Increases,” *The Globe*, May 22, 1919, 9.

until resigning that post to become the Deputy Minister of Mines. Upon becoming Deputy, Grigg was elected President of the CSAO.⁹⁰ This pedigree stands as a testament to the character of labour relations within the OPS at that point as, in a private sector union, including a person with the status of a deputy minister would have been unthinkable. The same was simply not true in the public service. Hodgetts and Dwivedi argued that this difference was due to the nature of the state as an employer—where the concept of employer “was diffused among several layers of the administrative hierarchy which included many employees, thereby creating difficulties in making the necessary distinctions between management and workers.”⁹¹ Simpler—and perhaps more coherent—than this explanation is the simple fact that the CSAO was originally conceived of as a social club. Why would an organization focused on the bulk purchase of goods enforce management exclusions?

Only two days after the *Globe* story ran, it was reported that Grigg had resigned the CSAO presidency following a meeting at which “strong demands were voiced ... for adequate salary increases throughout the service.”⁹² Following Grigg’s ouster, the CSAO intensified its tactics and prepared the brief on inflation (after which the government provided civil servants with bonuses ranging from \$50 to \$400, with further increases in 1920). Perhaps due to enjoying some success, aside from the ouster of Grigg, “the struggle for wage increases after the

⁹⁰ “Albert Grigg, M.P.P., to Succeed Mr. White,” *The Globe*, September 29, 1915, 9; See also Albert Grigg, MPP <http://www.ontla.on.ca/web/members/members_detail.do?locale=en&ID=1235>.

⁹¹ Hodgetts and Dwivedi, *Provincial Governments as Employers*, 61.

⁹² “Gives Up Presidency of Civil Service Assn.,” *The Globe*, May 24, 1919, 9.

war did not lead to a restructuring of the CSAO or its relationship with the government.”⁹³ Which is to say, the CSAO remained content to occasionally make representations to the government and then wait with hope for positive action in response.

The Dawn of Consultation: Whitley Councils

In the midst of similar labour unrest in Britain, J. H. Whitley (successful businessman and a Liberal member of the British Parliament) chaired a committee tasked with recommending a means for a “permanent improvement in the relations between employers and workmen” through dialogue.⁹⁴ Whitley’s aim was to effect a social revolution, or a New Liberalism, that would offer “reform without the ‘madcap or Utopian schemes’” offered by the Labour Party.⁹⁵ The answer the committee proposed in 1919 was a series of Joint Industrial Councils which came to be called Whitley Councils. In each industry, a council was established, with the intent being to have representatives of management and labour discuss a range of topics, including the general conditions of work and wage rates.⁹⁶ The Councils were unsuccessful, save for one sector: the civil service—and this was despite an initial reluctance on the part of the British

⁹³ Roberts, *Don’t Call Me Servant*, 15.

⁹⁴ “Reports of Committee on Relations Between Employers and Employed: Interim Report on Joint Standing Industrial Councils” in *The Industrial Council Plan in Great Britain* (Washington DC: The Bureau of Industrial Research, 1919), 12.

⁹⁵ Whyeda Gill-McLure, “Adaptation, evolution and survival? The political economy of Whitleyism and public service industrial relations in the U.K. 1917–present,” *Labor History* 59, no. 1 (2018): 16, citing J. H. Whitley, *The great alternative: Saner politics or revolution*. (Memphis, TN: General Books, 1918/2012).

⁹⁶ Freida Stack, “Civil Service Associations and The Whitley Report of 1917,” *Political Quarterly* 40, no. 3 (July 1969): 287.

government to establish councils in the service for reasons of parliamentary sovereignty.⁹⁷ The government's change of position was driven by the activism on the part of the civil service associations.⁹⁸ Each civil service council (there was a national council as well as departmental councils) had an equal number of employer and staff representatives, and each discussed a range of employment issues. If consultation led to agreement, the council would recommend a course of action to the government. In the absence of agreement, an issue would remain unresolved.⁹⁹

⁹⁷ Eric Wigham, *From Humble Petition to Militant Action: A History of the Civil and Public Services Association 1903-1973*, (London: The Civil and Public Services Association, 1980), 39. The Chancellor's private secretary advised civil servant associations interested in establishing Councils thusly: "I am desired by the Chancellor of the Exchequer to say he would certainly deny that the Civil Service could be regarded as an 'industry' or as being included in the 'main industries of the country.'"

⁹⁸ *Ibid.*, 283.

⁹⁹ During this period there was minimal state regulation of the workplace, including collective bargaining. While unionization and striking had been legal since 1872, the legal regime at the time favoured working conditions that were determined privately through contracts settled between workers and employers. Gradually, and under pressure from unions—and over the opposition of employers, the state began imposing minimum standards (for instance on wages or duration of the working day). (See Mark P. Thomas, "Regulating Flexibility: The Ontario *Employment Standards Act* and the Politics of Flexible Production" (PhD diss., York University, 2003), 93-115.) Starting in 1900, during a period which Fudge and Tucker termed "industrial voluntarism," "state institutions played an increasingly important role in regulating industrial conflict. But although state institutions were directly involved in the resolution of industrial conflict more often after 1900, there was a great deal of continuity with the earlier regime." One continuity was a lack of an obligation on employers to recognize unions. (Judy Fudge and Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900-1948*, (Toronto: University of Toronto Press, 2004), 3.) Union recognition is the handmaiden of collective bargaining—without the first, the second is simply not possible. With both recognition and collective bargaining voluntary in this period, "in this legal vacuum, many employers were able to resist demands for union recognition even when faced with strong worker support for collective bargaining." (Sean Tucker and Alex Mucalov, "Industrial Voluntarism in Canada," *Relations industrielles / Industrial Relations* 65, no. 2 (2010): 218.) More will be said about this period below in the discussion of the 1930s, in Chapter 4.

It must be noted that the councils were purely advisory bodies.¹⁰⁰ Oscar Skelton, Canada's Deputy Minister of External Affairs in 1928, recounted what he had been told by participants in the UK councils:

One man summed it up by stating that while they had not done as much harm as he had feared, neither had they done as much good as he had hoped. ... Another man on the official side said that if they did not exist he did not think they should be brought into life, but if they did exist they should not be abolished.¹⁰¹

Skelton was testifying to a Parliamentary committee exploring the establishment of Whitley councils in the federal service, and the committee's work had been spurred by an (ultimately failed) private member's bill proposed by J. S. Woodsworth, which meant to mandate Whitley councils in the federal service.¹⁰²

As Saul Frankel had it, staff relations in the federal service at that time "were characterized by a moderate but sustained campaign" for implementation of the Whitley model.¹⁰³ The federal service's staff associations were at the forefront of these efforts, albeit—as with all other representations—"quite moderate in their efforts."¹⁰⁴ At its 1919 convention, the Civil Service Foundation of Canada (CSFC) passed a resolution calling for the establishment of a joint

¹⁰⁰ Saul Frankel, *Staff Relations in the Civil Service: The Canadian Experience*, (Montreal: McGill University Press, 1962), 56.

¹⁰¹ Canada, House of Commons, Select Standing Committee on Industrial and International Relations, 16th Parliament, no. 1, March 5, 1928, 3. <<
[>>https://parl.canadiana.ca/view/oop.com_HOC_1602_3_1/1?r=0&s=1](https://parl.canadiana.ca/view/oop.com_HOC_1602_3_1/1?r=0&s=1)>>

¹⁰² Bill 4, *An Act to Amend the Civil Service Act (Councils)*, 2nd Sess, 16th Parl, 1928 (J. S. Woodsworth). Woodsworth was a social reformer and longtime Member of Parliament. At the time of this bill, he was a member of the Labour Party. He was a key figure in the establishment of the CCF and went on to be the new party's first leader.

¹⁰³ Frankel, *Staff Relations*, 55.

¹⁰⁴ *Ibid.*, 53.

council. Part of this support was owed to the 1918 classification reforms the “Young Report” had delivered:

civil servants, who had pinned much of their hopes on the new classification schedules, were anxious for an opportunity to have a say in what was being planned for them. The idea of a joint council seemed both appropriate and urgent at that time.¹⁰⁵

Intriguingly, the “Young Report,” along with setting out the classification scheme, had in fact stressed the importance of developing “a plan for securing the representative views of employees prior to decisions affecting their working conditions.”¹⁰⁶

Ultimately, it took until 1944 for the federal government to follow this advice and establish a joint council. That same year, Canada adopted a new labour relations legal regime modeled on the American Wagner Act.¹⁰⁷ The reforms ushered in by the Act were meant to facilitate union organizing and collective bargaining by legislating several principles.¹⁰⁸ Numerous scholars have critically examined the Wagner form of labour relations, but this is not the focus

¹⁰⁵ *Ibid.*, 57.

¹⁰⁶ Anatole W. Poushinsky, “Introduction of Collective Bargaining in the Canadian Public Service,” (MA thesis, Carleton University, 1968), 23.

¹⁰⁷ Named after its sponsor, Senator Robert F. Wagner, the Wagner Act is the eponym applied to the *National Labor Relations Act*, 2 National Labor Relations Act of 1935, ch. 372, 49 Stat. 449 (codified as amended at 29 U.S.C. §§ 151-169).

¹⁰⁸ Those principles include: (1) the right to organize and form unions; (2) the certification of a union as the sole representative of workers in a particular work unit if it has been able to demonstrate majority support; (3) the requirement that unions and employers engage in good faith collective bargaining; (4) the right to strike or to third party dispute resolution should collective bargaining fail; (5) compulsory arbitration of differences during the life of a collective agreement; (6) prohibitions on the right to strike or lockout during the term of an agreement; and (7) the administration of laws pertaining to these rights by a labour board or equivalent body. (John Godard, “Labour Law and Union Recognition in Canada: A Historical-Institutionalist Perspective,” *Queen’s Law Journal* 38, no. 2 (2013): 391.) Though numbering seven here, these principles cover Carrothers’ “three freedoms” that were discussed above: the freedom to organize, the freedom to bargain, and the freedom to strike.

here. Instead, the Wagner model is a foil for the labour relations model that existed in the public service. Fundamentally, the Wagner model was meant to be a “promise to employees that they are free to embrace collective bargaining if they choose.”¹⁰⁹ The Wagner model set out a process for organizing a workplace and, once organized, set out a process for workplace collective bargaining. In contrast, most Canadian public servants could neither organize nor collectively bargain.

Coming in the same year as Wagner model labour relations, the federal joint council was meant to “provide an acceptable alternative to collective bargaining.”¹¹⁰ An “acceptable alternative” was necessary because of the limitations imposed by the doctrine of parliamentary sovereignty. This doctrine simply held that parliament could not be bound by subordinate bodies that report to parliament. In 1951, then-Prime Minister Louis St. Laurent expressed the doctrine in this way:

The Civil Service of Canada is carried on under laws enacted by parliament and is supervised by a commission set up by parliament and which reports to parliament. The commission and the government can and do receive representations from organizations of employees, but there is no process of collective bargaining in the sense in which that is used in industry.

From the very nature of employment in the public service, there can be no bargaining agent for the nation comparable with the employer in industry who has at his disposal funds derived from payments for goods or services. The funds from which salaries are paid in the public service have to be

¹⁰⁹ Paul Weiler, “Promises to Keep: Securing Workers’ Rights to Self-Organization Under the NLRA,” *Harvard Law Review* 96, no. 8 (1983): 1770.

¹¹⁰ Frankel, *Staff Relations*, 75.

voted by parliament and parliament alone can discharge that responsibility.¹¹¹

Therefore, the Commission could not negotiate, for example, a binding compensation agreement with civil service employees because only parliament could approve such an expenditure. Any attempt to constrain parliament's scope of action would offend that institution's sovereignty.

Conclusion

The doctrine of parliamentary supremacy was ascendent in conceptions of the public service in Canada. As a result, Wagner-style labour relations were simply not on the agenda in the civil service in most Canadian jurisdictions. The exception to this was Saskatchewan, which brought its civil service under the province's general Wagner-style labour relations statute.¹¹² This development will be discussed in detail below, where it will be shown that the province's distinct approach was entirely owed to the election of a democratic socialist Co-Operative Commonwealth Federation (CCF) government in 1944. Indeed, that government forced the Wagner model on its civil service despite a lack of interest from civil servants themselves.

Stepping back to the emergence of the post-war labour relations system in Ontario, the next chapter is a close study of developments in Ontario between 1937 and 1952. We will see that Ontario followed the federal lead by instituting a Whitley-style Joint Advisory Council (JAC). However, before turning to the

¹¹¹ Canada, House of Commons, Hansard, 21st Parliament, 4th Sess, vol. 4, February 21, 1951, 542.

¹¹² Saskatchewan, *The Trade Union Act*, R.S.S. 1953, c. 259.

establishment of the JAC and its composition, the study will consider the broader context of Ontario's politics in that era. This study of the government's approach to both labour and the public service during the Depression and the Second World War will focus on Premiers Mitch Hepburn and George Drew. The personal politics of these two men, and the interactions between them, will be shown to be of considerable importance to the development of Ontario's post-war approach to labour and the OPS.

Chapter 4: Rise of Ontario's Joint Advisory Council, 1934-1952

“Under this system, there will be an opportunity for members of the civil service to have their views considered and the standing of the whole service improved by their own direct contact with the Government. ... Wherever there is incompetence or dishonesty, I know that the civil servants, as a body will support action in keeping with the right the public has to expect that their money will not be paid to those who fail to perform their duties.”

- Premier George Drew¹

Introduction

This chapter contextualizes the creation of the Joint Advisory Council (JAC) in Ontario, with this study covering two governments: the Liberal government of Mitch Hepburn and the Progressive Conservative government of George Drew. Over the period in question, Drew and Hepburn had significant interactions, ranging from Hepburn firing Drew in a purge of the OPS, to Drew effectively campaigning for Hepburn in the 1937 election. Two significant events made 1937 a year of considerable importance in Ontario's political and labour history. The first event was “a landmark in the history of the Canadian labour movement”—the two-week strike by General Motors workers in Oshawa.² This strike marked the entry of the Congress of Industrial Organizations (CIO) into Canada and, with it, the rise of new union tactics such as the sit-down strike. Directly related to this strike was the second major event—“one of the strangest chapters in the province's political history”—the unrealized attempt to establish a Liberal-

¹ “Advisory Board Named by Drew on Civil Service,” *Globe and Mail*, 19 May 1944.

² Irving Abella, “Oshawa 1937,” in *On Strike: Six Key Labour Struggles in Canadas 1919-1949*, ed. Irving Abella (Toronto: James Lorimer & Company, 1975), 93.

Conservative union government.³ Hepburn and Drew were allies in this unrealized plan to side-step the seeming constraints of political parties to smash the CIO and the Communist threat the two men believed that industrial union organization brought to Ontario.

Following this review, the chapter turns to the 1944 establishment of the JAC by the Drew government. After describing the composition of the JAC, three conclusions flowing from both this and the preceding chapter are set out: (1) a tendency for Ontario to follow the lead of the federal government; (2) the assertion of executive control, though in changing forms; and (3) a tendency of OPS employees to be acquiescent, although we begin to see the limits of this compliance through the ultimately ineffective operation of the JAC.

Pragmatic Politics: The Depression, The War, The CIO, Hepburn, and Drew

In 1934, the youngest leader Ontario had (or has) seen, Mitchell Hepburn, became Premier at the age of 37. After having spent almost three decades in opposition, the 1934 election saw the Liberal caucus grow from 11 to 64 seats, with the party's return to power owed in large part to Hepburn's "swing to the left."⁴ Informing Hepburn's campaign strategy was the rise of the CCF—that party

³ Manthorpe, *Power and the Tories*, 26.

⁴ Marcus Klee, "Fighting the Sweatshop in Depression Ontario: Capital, Labour and the Industrial Standards Act," *Labour/Le Travailleur*, 45 (2000): 19. ("Hepburn's self-proclaimed "swing to the left" in 1932 was followed by attacks upon the excessive profits of oil companies sheltered behind tariff walls, sharp questions about the shady accounting (and even more dubious deals) that kept Sun Life solvent, open hostility to the "subsidized press," a demand for the repeal of Section 98 (under which the leaders of the Canadian Communist Party had been imprisoned), and a dramatic denunciation of the use of police power to suppress demonstrations and strikes.").

issuing its Regina Manifesto in July 1933—which had “thoroughly alarmed” Hepburn.⁵ This alarm was driven by the CCF’s message spreading, as Gerald Caplan put it, “across the province like a religious crusade.” Thousands packed CCF meetings where party leaders denounced capitalism. The PC government’s concern with the rallies was indicated by their support of the Toronto police efforts “to prevent the CCF from holding open meetings in public parks” as well as in private theatres. These tactics did not discourage the meetings, the CCF turning the issue to their advantage to protest the state’s infringements on free speech.⁶

Despite evidence of public support, what Caplan termed “the old party response” to the CCF was harsh. As an example, Caplan pointed to CCF MP J. S. Woodsworth’s resolution to establish Canada as a “cooperative commonwealth.”⁷ “An annual event in Parliament” Caplan noted that when he moved it in 1932, Woodsworth spoke to a near-empty chamber. By 1933, “almost every member was in his seat, listening with great attention, heckling, interjecting, rebutting the

⁵ John T. Saywell, *‘Just call me Mitch’: The Life of Mitchell F. Hepburn*, (Toronto: University of Toronto Press, 1991), 132.

⁶ Gerald L. Caplan, *The Dilemma of Canadian Socialism: The CCF in Ontario*, (Toronto: McClelland and Stewart, 1973), 28-9.

⁷ Canada, House of Commons, Hansard, 17th Parliament, 4th Sess, vol. 2, February 3, 1933, 1687. (Woodsworth’s motion: “Whereas under our present economic arrangement large numbers of our people are unemployed and without the means of earning a livelihood for themselves and their dependents; And whereas the prevalence of the present depression throughout the world indicates fundamental defects in the existing economic system; Therefore be it resolved,—That, in the opinion of this house, the government should immediately take measures looking to the setting up of a cooperative commonwealth in which all natural resources and the socially necessary machinery of production will be used in the interests of the people and not for the benefit of the few.”)

socialist analysis of the economic system.”⁸ The reaction of Conservative Earl Lawson (the MP for York West) embodied the “old party” view:

I think I am justified in coming to the conclusion that cooperative commonwealth is communism; communism without bloody revolution, if you will; communism without what these hon. gentlemen are pleased to term bureaucratic control, if you will, but nevertheless, as an economic system and in its essence I say that cooperative commonwealth is communism and communism is cooperative commonwealth.⁹

Rather than follow the Conservatives in declaring the ideas of the upstart CCF communist, the Liberal response was instead to take credit for those very ideas. Mackenzie King argued that “there is not one” CCF idea “not taken from the Liberal Party. There is not one which is not in the Liberal platform.”¹⁰

In Ontario, Mitch Hepburn crafted a similar strategy, in which the Liberals would not attack the CCF but instead “offset its appeal.”¹¹ Caplan argued that Hepburn set about “casting himself in the role of the reformer.”¹² A notable example of this came in September 1933, when Hepburn sided with striking furniture workers in Stratford, a strike that was met by machine guns that had been dispatched by the federal government at the request of Ontario’s Conservative Attorney General.¹³ At a rally, Hepburn—who “was conspicuous as

⁸ Caplan, *The Dilemma of Canadian Socialism*, 30.

⁹ Canada, House of Commons, Hansard, 17th Parliament, 4th Sess, vol. 2, February 3, 1933, 1746.

¹⁰ Caplan, *The Dilemma of Canadian Socialism*, 31.

¹¹ Saywell, ‘*Just call me Mitch*’, 132. (Saywell argued that Hepburn was concerned that the rise of the CCF would hand the PCs electoral victory through the CCF splitting the vote with the Liberals)

¹² Caplan, *The Dilemma of Canadian Socialism*, 31.

¹³ Neil McKenty, *Mitch Hepburn*, (Toronto: McClelland and Stewart, 1967), 49; Desmond Morton, *Working People: An Illustrated History of the Canadian Labour Movement*, 5th ed., (Montreal & Kingston: McGill-Queen’s University Press, 2007), 144.

one of the few old party MPs to join Woodsworth and Agnes Macphail in protesting this outrage”¹⁴—declared that

wealthy manufacturers ... take all they can from the people and give as little as they can to the workers. My sympathy lies with those people who are the victims of circumstances beyond their control and not with the manufacturers, who are increasing prices and cutting wages at the same time.¹⁵

As Desmond Morton put it, Hepburn had ably used the Stratford strike to “demonstrate Tory stupidity and his own sympathy with the workers.”¹⁶ Hepburn continued to demonstrate this sympathy by employing what Caplan termed “the rhetoric of radicalism.” For example: “I am not out to destroy capitalism ... but I condemn in no uncertain terms the abuses of the capitalist system as it has been practiced under the Tory administration.”¹⁷

Not all in the Liberal Party enthusiastically greeted Hepburn’s leftward swing. Some (mostly rural) party sects expected his quick rejection as leader, while others, such as then-Prime Minister Mackenzie King, thought Hepburn would moderate with power.¹⁸ Yet Hepburn was joined in his support for labour

¹⁴ Caplan, *The Dilemma of Canadian Socialism*, 33. (Hepburn’s political career began in 1926 when he was elected to be the Liberal Member of Parliament for Elgin West, serving in this role until his 1934. Hepburn was simultaneously an MP and leader of the provincial Liberal party, assuming that role in 1930.)

¹⁵ “Hepburn sympathetic to Stratford strikers,” *Toronto Daily Star*, 30 September 1933.

¹⁶ Morton, *Working People*, 144.

¹⁷ Caplan, *The Dilemma of Canadian Socialism*, 33. Hepburn quotation sourced by Caplan to the *Farmer’s Sun* 22 December 1932.

¹⁸ *Ibid.*, 50 (In a letter, King wrote that “Mitch may be and is extreme in many things and this brings on his head much in the way of criticism. ... It is out of pummelling of this kind that profounder judgments are evolved and I have not the least doubt that as time goes on Mitch will moderate considerably.”).

rights by the likes of Arthur Roebuck, who joined Hepburn in campaigning from the left, promising that a Liberal government would

not only establish a minimum wage, but it will also bring about codes in industry: it will negotiate rates of pay and hours of labour from the lowest to the highest grades of skill. These agreements will be supported by law, and the ruthless employer who failed to comply will be put out of business.¹⁹

After winning power, Roebuck served as Attorney General, with David Croll as Minister of Labour, and the Hepburn government began following through on these commitments. The government passed the *Industrial Standards Act* in 1935, legislation that has been called “some of the foremost labour legislation of the time.”²⁰ The intent of the Act was to establish industrial codes that would “equalize wage rates and raise them to a level where a decent standard of living would be maintained for factory employees.”²¹ Marcus Klee called the law an example of “regulatory unionism,” by which he meant that the law was meant to allow “organized capital and organized labour to establish voluntary agreements that would make the industrial codes effective.”²²

Charles Smith argued that, ultimately, the government’s efforts here were “only piecemeal steps to advance the rights of working people in the province.”²³

¹⁹ “Roebuck says issue is steak and potatoes instead of beer, wine,” *Toronto Daily Star*, 15 June 1934.

²⁰ Ontario, *Industrial Standards Act*, S.O. 1937, c. 191; Jonathan Manthorpe, *The Power and The Tories: Ontario Politics—1943 to the Present* (Toronto: Macmillan, 1974), 20. See also McKenty, *Mitch Hepburn*, 102 (McKenty called the Act “one of the most advanced pieces of labour legislation ever placed on the statute books”); Klee, “Fighting the Sweatshop in Depression Ontario”: 15 (Klee: “the Act stands as an important milestone in the development of class relations in the 1930s and offers insight into the shaping of class relations in the post-World War II period.”).

²¹ McKenty, *Mitch Hepburn*, 102.

²² Klee, “Fighting the Sweatshop in Depression Ontario”: 39.

²³ Charles W. Smith, “‘Fairness and Balance?’: The Politics of Ontario’s Labour Relations Regime, 1949-1963” (PhD diss., York University, 2009), 95. (Underlining this piecemeal nature, Mark

A similar view was taken by Craig Heron, who compared the *ISA* unfavourably with the Wagner Act, arguing that unlike in American legislation under the *ISA* “only limited bargaining developed.”²⁴ Morton took a yet more jaundiced view, stating that the purpose of the *ISA* was only to “help industries establish *codes* of wages and conditions so that generous or humanitarian employers would not be victimized by ruthless competitors.” This approach, Morton argued, “meant little in the absence of powerful worker representation.”²⁵

It is arguable that the limitations of the *ISA* were related to Hepburn’s private “anti-union feelings,” his public “swing to the left” notwithstanding.²⁶ In an example of this private attitude, no sooner had the *ISA* passed than Hepburn (at least privately) distanced himself from it, remarking in a letter to a “small ‘c’ conservative adviser” that, with that Act, he had “tried to keep the brakes on as much as possible.”²⁷ As Neil McKenty described it, “Hepburn’s attitude toward labour agitation in the thirties was consistent with his rural conservative background and his interpretation of business-like government.”²⁸ This

Thomas argued that the Act “offered little to workers who were not organized into trade unions.” This was a minority of the provinces workers as, “by 1937, only 65,000 of the province’s 650,000 non-agricultural wage labourers were covered by standards negotiated through the Act and 80 per cent of the I.S.A. schedules were in industries that had previously been unionized.” Thomas, *Regulating Flexibility*, 132.)

²⁴ Heron, *The Canadian Labour Movement*, 66.

²⁵ Desmond Morton, *Working People: An Illustrated History of the Canadian Labour Movement*, 5th ed., (Montreal & Kingston: McGill-Queen’s University Press, 2007), 158.

²⁶ Manthorpe, *Power and the Tories*, 20.

²⁷ Mitchell Hepburn to William Fraser, 2 October 1936, cited in McKenty, *Mitch Hepburn*, 103. (Hepburn was replying to a letter from Fraser—the Liberal Member of Parliament from Northumberland—in which he had written: “Knowing you as I do, I do not believe that (the *ISA*) is consistent with your own ideas.” William Fraser to Mitchell Hepburn, 28 September 1936, cited in McKenty, *Mitch Hepburn*, 103.)

²⁸ McKenty, *Mitch Hepburn*, 103.

“business-like approach” was evinced by Hepburn’s election pledge to fire sufficient public servants “that the exodus of supernumeraries from Queen’s Park would dwarf the annual Orange parade.”²⁹ Once elected, Hepburn considered his “first job to overhaul the machinery of government.” By this, Hepburn had two intentions:

First, eliminate inefficiency—rip out deadwood, political appointees, hangers-on, those who draw big salaries for doing little. Second, cut out unnecessary functions of government—those that have outlived their usefulness or are too paternal.³⁰

In a striking example of Executive power, Hepburn followed through: “with a stroke of the pen, all civil servants appointed since October, 1933, were fired.”³¹ This affected some 1,500 temporary and permanent appointees that ran the gamut from “routine annual appointments” to the “unquestionably essential” to the “blatantly political.” Despite advice to selectively dismiss only the unnecessary, the new government “decided to wipe the slate clean” via “a steady stream of orders-in-council.” While Hepburn boasted of the money his government was saving, “he neglected to add ... that many of those dismissed were immediately reinstated or were replaced by local Liberals.”³² One notable

²⁹ Ibid., 49. (Though presumably intended as a hyperbolic metaphor, it is worth noting that 15,000 people marched in Toronto’s 1934 Orange parade. See: “‘Glorious twelfth’ royally observed through Ontario,” *The Globe*, 13 July 1934.)

³⁰ Ibid., 61.

³¹ Ibid.

³² John T. Saywell, *Just call me Mitch’: The Life of Mitchell F. Hepburn*, (Toronto: University of Toronto Press, 1991), 173.

amongst the dismissed was future Premier George Drew, who was relieved of his post as head of the Ontario Securities Commission.³³

Through this period “the CSAO didn’t take any risks.” Holding the opinion that only public servants with partisan political involvements were going to be terminated, “the CSAO did not protest any of Hepburn’s firings.” Indeed, Roberts recounted that the CSAO waited three years after his election to meet with Hepburn. When they did meet, the Premier told the Association that “it was wasting his time.” Nevertheless, a salary increase followed the meeting. The CSAO did not meet with Hepburn again until 1942, when the Association appealed for a new classification system. Hepburn refused, though, again, wage increases followed the meeting. Summing up the CSAO’s approach in this era, Wayne Roberts cited an Association newsletter, which stated that

if Ontario is to forge ahead in the years to come there must exist between the Government and the Service a sympathetic understanding one for the other, and a determination to work hand in hand come what may.³⁴

Discussing Hepburn’s “attitude towards labour agitation” more generally, McKenty argued that Hepburn was less concerned with “labour’s aims” in the sense of striving for greater labour rights than he was with labour’s “apparent threat to law and order and the province’s economy.”³⁵ Hepburn harboured a particular distaste for the CIO, an organization he considered to be Communist.³⁶

³³ “Order in Council fires Col. George Drew,” *Toronto Daily Star*, 1 October 1934.

³⁴ Roberts, *Don’t Call Me Servant*, 33-4.

³⁵ McKenty, *Mitch Hepburn*, 103.

³⁶ Saywell, *Just Call Me ‘Mitch’*, 344-5; David Wilfred Cahill, “A menace to national as well as party unity”: Mitchell Hepburn and Ontario Liberalism, *The Mirror - Undergraduate History Journal*, 34, no. 1 (2014): 199.

George Drew shared Hepburn's sense of the CIO, Drew claiming to have "positive proof that every member of the Ontario executive of the CIO but one" was a member of the Communist Party.³⁷ The CIO had been established in 1935 to organize unskilled workers. These workers toiled in mass-production, and had been, as Irving Abella put it, "disdainfully ignored" by the "skilled workingmen in craft unions" that made up the American Federation of Labor (AFL).³⁸ In Canada, the Trades and Labour Congress (an affiliate of the AFL) had a similar craft union composition. As with the AFL, the TLC had little interest in organizing mass-production workers, despite the growth of that workforce in the 1920s. Rather than seek to fully organize industrial workplaces, including unskilled labour, craft unions instead employed a strategy of "dividing workers up between the various unions" based on the craft being used "even when they were in the same factory."³⁹ Essentially, the craft unions followed this approach in an effort to protect their bargaining power and higher wages for their members.

The craft union approach to organizing left a gap, which new organizations arose to fill. Among these was the "radical and aggressive" Workers' Unity League (WUL) which had been founded in 1930.⁴⁰ The WUL organized both the

³⁷ Saywell, *Just Call Me 'Mitch'*, 345.

³⁸ Irving Martin Abella, *Nationalism, Communism, and Canadian Labour: The CIO, the Communist Party, and the Canadian Congress of Labour, 1935-1956*, (Toronto: University of Toronto Press, 1973), 2-3

³⁹ Stephanie Ross, *et al.*, *Building a Better World: An Introduction to the Labour Movement in Canada*, 3rd ed, (Halifax and Winnipeg: Fernwood, 2015), 28.

⁴⁰ Irving Martin Abella, *Nationalism, Communism, and Canadian Labour: The CIO, the Communist Party, and the Canadian Congress of Labour, 1935-1956*, (Toronto: University of Toronto Press, 1973), 2-3.

unorganized and the unemployed alike and was “willing to use the strike as a weapon against both employers and governments.”⁴¹ “Militant, highly creative and extremely successful,” the WUL had amassed 40,000 members at its greatest strength.⁴² In WUL-organized workplaces, the organization moved quickly, with strikes tending to follow soon after organizing—by 1933, the WUL claimed responsibility for three-quarters of the strikes in Canada.⁴³ Importantly, the leadership of the WUL was Communist; as Abella noted: “important decisions affecting it were not made in Canada, by Canadians, but in Russia, by Russians.”⁴⁴

With the goal of uniting the world’s workers against fascism, the Seventh Congress of the Communist International ordered the WUL to dissolve and its affiliated unions to join the TLC.⁴⁵ This Congress occurred in 1935, and that same year the CIO was formed. Abella argued that the new organization immediately “became the voice for the millions of workers in the United States crying out for organization.” The CIO brought with it “an essentially new weapon, the sit-down strike.”⁴⁶ In these strikes, the workers took possession of the workplace, ceased production, and barred anyone else from engaging in productive labour. The basic issue in most of the strikes was union recognition. As Irving Bernstein pointed out, “from labour’s point of view, the sit-down was marvellously

⁴¹ Ibid., 3.

⁴² Ross, *et al.*, *Building a Better World*, 37.

⁴³ Morton, *Working People*, 143.

⁴⁴ Abella, *Nationalism, Communism, and Canadian Labour*, 3.

⁴⁵ Ibid.

⁴⁶ Irving Bernstein, *Turbulent Years: A History of the American Worker 1933-1941*, (Boston: Houghton Mifflin Company, 1970), 499.

effective” as, by occupying the workplace, the employer could not choose to operate through the strike.⁴⁷

While the CIO was not particularly interested in expanding into Canada, the organization’s success in the United States inspired significant Canadian interest: “on their own, without informing the CIO, scores of ex-WUL organizers began organizing CIO unions in Canada.”⁴⁸ “There was,” John Crispo wrote, “something about the CIO which fired the imagination.” The CIO’s sit-down strikes had “attracted continent-wide attention and gave to the movement a revolutionary colour that had tremendous appeal.”⁴⁹ In short: “the CIO label was magic,”⁵⁰ and in that magic was the hope of replicating the CIO’s victories won through sit-down strikes in American factories. Thus, with its name being widely used “to legitimize these efforts, and to maintain its image as the champion of the unorganized worker, the CIO had no alternative but to sanction organizing in Canada.”⁵¹

⁴⁷ Ibid.

⁴⁸ Ibid., 4-5; Irving M. Abella, “Lament for a Union Movement,” in *Close to the 49th Paralell etc.: The Americanization of Canada*, ed. Ian Lumsden (Toronto: University of Toronto Press, 1970), 76-7 (Abella: “The CIO came, not entirely because it wanted to, but because it was compelled to. So desperately did Canadian workers desire organization that without official CIO approval score of unauthorized ‘CIO’ organizers—most of whom were Communist—sprang up around the country, organizing workers into ‘CIO’ locals.”)

⁴⁹ John Crispo, *International Unionism: A Study in Canadian-American Relations*, (Toronto: McGraw-Hill Company, 1967), 17.

⁵⁰ Abella, *Nationalism, Communism, and Canadian Labour*, 8; Ross, *et al.*, *Building a Better World*, 40.

⁵¹ Abella, “Lament for a Union Movement,” 77. (Abella recounted that “the CIO president, John L. Lewis, grumbled that the CIO had too much to do in the United States to be bothered about Canada.”)

The CIO's first sit-down strike in Canada occurred in Sarnia at the Holmes foundry in February 1937. The strike was a disaster, with local public opinion against both the CIO as well as the foundry's mostly immigrant workers. The strike ended in only an hour, when a mob of locals descended on the strikers. The strikers—though not the strike-breakers—faced charges.⁵² When he commented on the strike in the Legislature, Hepburn vowed that “there will be no sit-down strikes in Ontario! This government is going to maintain law and order at all costs.”⁵³

Meanwhile General Motors had announced a record profit in January 1937. Following this announcement, the company “imposed the fifth wage cut in five years on its Oshawa workers.”⁵⁴ By April, the workers were on strike, with this giving a Hepburn a chance to back-up his anti-CIO rhetoric. “From the beginning,” Abella recounted, “Hepburn had taken an unusual interest” in the strike, as he “threw the whole weight of his Administration, police and other controlling resources” behind General Motors.⁵⁵ Hepburn wanted a “fight to finish” with the CIO, and the Premier's Office becoming “the headquarters for the defence of Ontario against the CIO.”⁵⁶ Abella argued that a difficulty with this position was that “the CIO played no role” in the strike “except in the minds of

⁵² Abella, *Nationalism, Communism, and Canadian Labour*, 7.

⁵³ McKenty, *Mitch Hepburn*, 104.

⁵⁴ Ross, *et al.*, *Building a Better World*, 41.

⁵⁵ Abella, *Nationalism, Communism, and Canadian Labour*, 12; “Premier Hepburn Declares War on CIO,” *The Globe and Mail*, 9 April 1937, 1.

⁵⁶ Abella, *Nationalism, Communism, and Canadian Labour*, 17; Saywell, *Just call me Mitch*, 311.

Hepburn, the mine-owners, and perhaps most importantly, in the minds of the strikers themselves.”⁵⁷ “The leaders of the CIO abdicated most of their responsibilities in Canada to local people,” because, Abella argued, “as a rapidly expanding organization in the United States, the CIO could spare neither the time nor the energy for the Canadian operation.”⁵⁸ Despite Hepburn’s public disdain for the CIO and its supposed Communist control, his battle against the organization was driven by a more immediate concern: strong pressure from the business community—notably, George McCullagh—to keep the CIO, and unions more generally, out of Ontario’s mining industry.⁵⁹ Alongside his interest in mining, McCullagh was publisher of the *Globe and Mail* and enjoyed a significant soapbox from which to push his views.⁶⁰

In spite of the Premier’s meddling, the strike was resolved within a month.⁶¹ Determining who had won was a “prickly” matter. Abella argued that Hepburn “had won a semantic victory,” as the CIO went unmentioned in the contract, and as part of the settlement was repudiated by the union negotiators.

⁵⁷ Abella, *Nationalism, Communism, and Canadian Labour*, 24; Abella, “Oshawa 1937,” 121 (Abella: “What is perhaps most significant about the Oshawa strike is that it was conducted by Canadians without much assistance from the CIO. ... (M)ost of the organizing was in fact done by Canadians. Whatever financial assistance the strikers were given came from churches and neighbours. Not a penny of aid came from the United States. Both the CIO and the UAW concluded that neither had the men nor the money to help the strikers; they even refused to call a sympathy strike of GM workers in the United States to support the strikers in Oshawa.”)

⁵⁸ Abella, “Lament for a Union Movement,” 77.

⁵⁹ Abella, “Oshawa 1937,” 116-7; Morton, *Working People*, 159; Smith, “Fairness and Balance?,” 96.

⁶⁰ Manthorpe, *Power and the Tories*, 26-30. (McCullagh was personally close to both Hepburn and Drew. Indeed, when McCullagh passed, Drew married his widow.)

⁶¹ The extent of Hepburn’s involvement in the strike, which included appealing to the RCMP to intervene, to rousing hundreds of special provincial police officers (the “Sons of Mitches” or “Hepburn’s Hussars”), to personally mediating—and simultaneously personally scuttling—negotiations, is detailed in Abella, *Nationalism, Communism, and Canadian Labour*, 12-21.

On the other hand, not only were the terms of the settlement a victory, but the action itself was “the birth of industrial unionism in Canada.”⁶² Finally, the strike disrupted Hepburn’s government, as both the Attorney General (Roebuck) and the Minister of Labour (Croll) were fired due to their discomfort with Hepburn’s handling of the matter.⁶³

Publicly, the intensity of the Hepburn government’s response to the Oshawa strike was attributed to anti-Communism. In the face of this, is notable that then-Prime Minister King had detected an infatuation with fascism in Hepburn’s actions.⁶⁴ Whatever the worth of King’s opinion, after the strike ended, Hepburn was willing to cast normal party politics aside in his quest to smash the CIO. Putting into action a plan suggested to him by McCullagh, Hepburn approached the Conservative leader Earl Rowe about forming a union government.⁶⁵ Hepburn told Rowe that, owing to the threat to the mines posed by “the CIO and the Communists, George McCullagh and other ‘interested parties’

⁶² Abella, “Oshawa 1937,” 93.

⁶³ “Expect Croll, Roebuck to Resign Today,” *The Globe and Mail*, 14 April 1937. (Roebuck and Croll were mentioned above as the Ministers responsible for the *ISA*. The two had also been heavily involved in the Oshawa strike, with Croll working to mediate the dispute.)

⁶⁴ Prime Minister Mackenzie King thought Hepburn’s position smacked of fascism: “I was even more concerned at Hepburn’s deliberate effort to identify the Ontario government’s action in the Oshawa strike with an effort to suppress Communism in Ontario. In this he has gone out of his way to raise a great issue in the Country, the frightful possibilities of which no one can foresee. ... The situation as he has brought it into being has all the elements in it that are to be found in the present appalling situation in Spain. Hepburn has become a Fascist leader and has sought to have labour in its struggle against organized capital, put into the position of being under Communist direction and control. Action of the kind is little short of criminal.” Library and Archives Canada, Diaries of Prime Minister William Lyon Mackenzie King, MG26-J13, April 13, 1937, Item: 17817.

⁶⁵ Abella, “Oshawa 1937,” 122.

had proposed to him a solution.”⁶⁶ That solution was a coalition government of Liberals and PCs.

Manthorpe recounted that Hepburn’s overture left Rowe “utterly astonished” and unsure how to reply.⁶⁷ The story quickly made it into the press, the *Globe and Mail* opining that, were the leaders to form a union government, “it is indisputable that by doing so they would be taking a major step forward. ... They could make the welfare of Ontario people their only consideration, and this we believe is the acme of statesmanship.” Conversely, those politicians who did not see the merit in a unity government merely wished to “keep party lines sacrosanct for self-seeking purposes.”⁶⁸

Both Hepburn and Rowe mendaciously denied to the public that a union government had ever been discussed. George Drew—both an avowed anti-Communist and, like Hepburn, a McCullagh acolyte—saw the merit in the union government plan. Drew had supported the union government and “implored Rowe on several occasions ... to agree.”⁶⁹ When Rowe eventually balked at the overture, Drew quit the party and embarked on a tour of the Soviet Union with the *Globe and Mail* publishing travelogues in which he detailed the ills of the Communist state.⁷⁰

⁶⁶ Ibid., 122-3.

⁶⁷ Manthorpe, *Power and The Tories*, 27.

⁶⁸ “Public Welfare Above Party,” *The Globe and Mail*, 3 May 1937, 6.

⁶⁹ Manthorpe, *Power and The Tories*, 27.

⁷⁰ See, e.g. George A. Drew, “Workers in Russia Starving,” *Globe and Mail*, 18 August 1937.

Prior to his travels, Drew penned his resignation letter from the Progressive Conservative party (he had been working as an organizer). In his letter to Rowe, Drew was clear that he believed a union government would have been able to “effect reforms which every thinking person believes should be carried out, but which in the very nature of party politics are extremely difficult for any party to do.” Drew was explicit that the civil service was near the top of his list of institutions to reform: “it would be possible, by a union of the two parties, for the time being, to effect reforms in the civil service ... which, in my opinion, can be achieved in no other way.” The extent of the specifics Drew offered were that steps could be taken to do away with Departments which are now duplicated in the Provincial and Dominion governments, and to put into effect methods of administrative efficiency which would inevitably be followed across the whole of Canada.⁷¹

In the fall of 1937, running on an anti-CIO platform, Hepburn called an early election in which his Liberals handily won a majority government.⁷² This marked a turn away from the “swing to the left” which had brought Hepburn to power in 1934. Underlining the party’s ideological change of heart was the firing of Roebuck and Croll from Cabinet during the Oshawa strike. Roebuck (who had been front and centre in the 1934 election) and Croll had overseen the passage of

⁷¹ Drew to Rowe, 30 April 1937, reprinted in Eric Ricker, “The Uses and Abuses of Historical Sources: George Drew’s Letter of Resignation as Conservative Party Organizer, the CIO ‘Menace’, and the Interpretation of Ontario’s History,” *Bulletin of the Committee on Canadian Labour History / Bulletin du Comité sur l’Histoire Ouvrière Canadienne* 2 (1976): 13.

⁷² Ross, *et al.*, *Building a Better World*, 41.

the ISA had, as noted above, both been fired due to publicly expressing discomfort with Hepburn's handling of the strike.⁷³

PC leader Rowe lost his seat in the 1937 election. Also losing was George Drew, who had run as an independent Conservative. As Manthorpe recounted, in an allyship with the Liberals, Drew had "battered away at Rowe from one side while Hepburn thumped at the other. The former Tory organizer used the Communist threat to Canada in the shape of the CIO and the merits of union government as his main issues."⁷⁴ Drew had held firm to the notion of the union government, campaigning against the yoke of party discipline and supporting the primacy of the federal government over the provinces.⁷⁵

By December 1938, Drew was the leader of the PCs. Leading his party into the 1943 election, Drew—despite the "uncompromising hatred of Communism" that had driven him to "react so strongly to the Oshawa strike,"—wound up echoing Hepburn's "swing to the left" from a decade prior.⁷⁶ The PCs ran under an ambitious "twenty-two-point programme," and among those 22 pledges was the assurance that "legislation will be introduced assuring the workers and employers of this Province the fairest and most advanced laws governing labour

⁷³ "Expect Croll, Roebuck to Resign Today," *Globe and Mail*, 14 April 1937, 1.

⁷⁴ Manthorpe, *Power and The Tories*, 27.

⁷⁵ Kirk Niergarth, "'No Sense of Reality': George A. Drew's Anti-Communist Tour of the USSR and the Campaign for Coalition Government in Ontario, 1937," *Ontario History* 107, no. 2 (2015): 218; "Drew, Entering Ontario Election, Denounces Party Pawns: Can't Abide by Rowe's CIO Policy," *Globe and Mail*, 8 September 1937.

⁷⁶ Manthorpe, *Power and The Tories*, 28 and 32.

relations.”⁷⁷ Arguably, for Drew there was no disconnect between this pledge and his disdain for the CIO.⁷⁸ Speaking about his party’s plans for labour legislation during the 1943 campaign, Drew stated he was “looking to employers, labour and the consuming public as a partnership. He cited the spirit of team play that had been developed in Britain.” Drew stated that there were two paths for Ontario to follow: on the one hand, “state socialism with all plants taken over by the State,” or “private initiative under proper control.” Further extolling the United Kingdom, Drew stated that “90 per cent of all organized labour was working under voluntary agreements” in that country. In that spirit, Drew said that if the PCs formed government “he would immediately call together a committee representing labour, employers, and the consuming public which would ... draft for this province the best labour relations laws that can be conceived.”⁷⁹

The PC’s tack to the left worked electorally, with the party capturing 38 seats, the CCF 34, the Liberals 15, and Labour 2. While George Drew’s minority was thin, it was stable. Much of this stability was owed to the CCF’s lack of interest in forming a coalition. Ted Jolliffe, the leader of the Ontario CCF, was clear that he did not believe the CCF “should attempt to take office and carry out

⁷⁷ PC Party of Ontario, *The Constructive Platform of the PC Party in the Province of Ontario*, (July 3, 1943), 4. The text used comes from the collection of political texts made available at www.poltext.org by The Center for Public Policy Analysis (CAPP) from Laval University, with the financial support of the Fonds de recherche du Québec - Société et culture (FRQSC).

⁷⁸ “CIO Leading to Trouble,” *Globe and Mail*, 22 May 1937 (“As Colonel George Drew said in his broadcast on Thursday evening, the effort to convey the impression that those who are opposed to the CIO are opposed to labour is contemptibly dishonest and an insult to the intelligence of every thinking Canadian.”).

⁷⁹ “Unanimous Nomination Is Given George Drew In Riding of High Park,” *Globe and Mail*, 12 July 1943.

our program unless we have a clear working majority.”⁸⁰ This was a reasonable position for Jolliffe; at the time, the CCF was in the ascendancy across Canada and a CCF majority government following the next election was realistic.⁸¹

The PC’s leftward turn during the election had been a departure for Drew—a man whose politics was marked by conservatism and anti-communism, and the ideological shift had been a pragmatic political gambit. As Charles Smith argued, “given the strength of the CCF and the trade unions in 1943 ... it was impossible for any government to roll-back its basic commitment to collective bargaining.”⁸² The strength of the CCF aside, Eric Ricker argued that Drew was simply a savvy enough politician to be “aware that in war time Canada the public would not be satisfied with politicians who demanded of citizens the supreme sacrifice without promising a better tomorrow.”⁸³ Or, as Gerald Caplan put it, “the belief was spreading that post-war Canada would have to be a country fit for heroes to return to.”⁸⁴

In power, Smith argued, the Drew government’s progressive commitment amounted to little more than “the rhetoric of fair and balanced labour legislation,” as the government “only extended labour freedoms when absolutely

⁸⁰ “Won’t enter coalition with either old party says Jolliffe of C.C.F.,” *Toronto Daily Star*, 5 August 1943.

⁸¹ Caplan, *The Dilemma of Canadian Socialism*, 88; Stephanie Ross, et al., *Building a Better World: An Introduction to the Labour Movement in Canada*, 3rd ed, (Halifax and Winnipeg: Fernwood, 2015), 43-4.

⁸² Smith, “‘Fairness and Balance?’, 108.

⁸³ Eric Ricker, “Uses and Abuses,”: 11.

⁸⁴ Caplan, *Dilemma of Canadian Socialism*, 89.

necessary to maintain the confidence of its private sector allies.”⁸⁵ The limits Smith identified were evident in the PC’s “secondary campaign theme” which consisted of a vociferous denunciation of the CCF agenda. Owing to this, Caplan labeled Drew an “anti-socialist reformer.”⁸⁶

When the Drew government took office in 1944, the preceding five years had been “a turning point for labour in Canada.” Bryan Palmer pointed out that “between 1939 and 1944 economic output increased by approximately two-thirds.” While much of that increase was owing to production related to the war effort, Palmer noted that “personal consumption also rose dramatically, perhaps as much as 30 per cent.”⁸⁷ Over this same period, union membership doubled, unemployment fell, and labour militancy surged.⁸⁸

With this recent history, and the conflict around the CIO in the 1930s, restructuring labour law was an urgent matter when the Throne Speech was read on February 22, 1944. The speech was, in fact, delivered only five days after the federal government had adopted the Wagner Act model of labour relations in Order in Council P.C. 1003.⁸⁹ The Throne Speech acknowledged this development, stating “that it will be in the best interests of employees, employers and the general public if this Code is extended in its effect to all industries within Ontario.

⁸⁵ Smith, “Fairness and Balance?”, 109.

⁸⁶ Caplan, *Dilemma of Canadian Socialism*, 101.

⁸⁷ Bryan D. Palmer, *Working Class Experience: Rethinking the History of Canadian Labour, 1800-1991*, 2nd ed., (Toronto: McClelland and Stewart, 1992), 278.

⁸⁸ Ross, *et al.*, *Building a Better World*, 42.

⁸⁹ Wartime Labour Relations Regulations, Order in Council P.C. 1003

Legislation will therefore be presented to you which will give effect to this decision.”⁹⁰ This application to “all industries” did not extend to the public service. With respect to the OPS, the new minority Conservative government promised in the Throne Speech that

The Ontario Civil Service will be assured of greatly improved conditions of employment, under a sound civil service system. The first step has already been taken to establish a system of appointment by merit through the application of uniform tests in certain classes of appointments. The entire classification of the Civil Service is under review and a new procedure for dealing with questions arising in connection with the Civil Service will be instituted.⁹¹

The “greatly improved” system the new government promised was to be a joint council modeled on the federal example.

Joint Councils in Ontario

Canada’s first Whitley-style joint council for a public service was established in Alberta in 1922, though it foundered as “its role was not taken seriously by the government.”⁹² However, following reforms that came in the 1950s, Frankel judged the Alberta council’s performance to be “on the whole, very effective.”⁹³ As it could only offer advice to government, Alberta’s council still fell well short of being an effective substitute for collective bargaining. Indeed, in the 1950s, Saskatchewan was the one province that collectively bargained with its public servants, a practice established in 1944 when the

⁹⁰ Frankel, *Staff Relations*, 9. Ontario, *Journals of the Legislative Assembly*, vol 78, 8 George VI, 22 February 1944, 9.

⁹¹ *Ibid.*, 14.

⁹² Frankel, *Staff Relations*, 239.

⁹³ *Ibid.*, 241.

province's CCF government defined the Crown as a regular employer in the new *Trade Union Act*. This ensured that the public service was governed by same legislation as the private sector.⁹⁴ The inclusion of the Crown was a contentious decision in which Premier Tommy Douglas took a keen interest.⁹⁵ In the acrimonious organization of Saskatchewan's public service, "many civil servants were somewhat 'perturbed' at having to make a decision to join a union. They viewed themselves as white-collar semi-professionals, and were unlikely to be sympathetic to unionism."⁹⁶ Saskatchewan's history will be discussed in more detail below, in Chapter 7.

Drew's campaign talk of a partnership between employer and worker came to OPS labour relations when his government followed the federal government's lead to create the Joint Advisory Council (JAC).⁹⁷ In this variant of a Whitley Council, the JAC had representation from both labour (3 CSAO members) and management (3 members, chosen by Cabinet), and was chaired by the Civil Service Commissioner—thereby instituting a management-side majority. The JAC was established to play a purely advisory role, its purpose being to "study and consider ... general principles" related to "appointment, remuneration, vacations,

⁹⁴ Saskatchewan, *The Trade Union Act*, R.S.S. 1953, c. 259, s. 2 ("6. 'employer' means : (a) any employer who employs three or more employees; (b) any employer who employs less than three employees if at least one of the said employees is a member of a trade union which includes among its membership employees of more than one employer; and includes Her Majesty in right of Saskatchewan").

⁹⁵ See Robert A. Lindsay, "Co-Operation and Conflict: The CCF and the Canadian Congress of Labour in Saskatchewan, 1944-56" (MA thesis, University of Saskatchewan, 1987), 59-65.

⁹⁶ *Ibid.*, 60.

⁹⁷ *Ibid.*, 261.

hours of work, superannuation and discipline” in the OPS. Beyond those workplace issues, the JAC was also meant to consider various ways to improve the functioning of the public service, “the development of a Career service” and proposals for legislation related to OPS employment. As outputs, the JAC would make recommendations to Cabinet.⁹⁸ To deal with specific issues at the individual level, a new Civil Service Appeal Board was constituted to hear appeals from workers who had been disciplined. This Board was chaired by the Minister of Labour, with one representative from the CSAO and one from the Premier’s Office at his side.⁹⁹

The CSAO viewed the establishment of the JAC as a significant gain, their newsletter stating that, with the JAC, the CSAO “has at long last found an avenue of approach to the government which is in continuous operation.”¹⁰⁰ Indicative of the “great expectations” the CSAO had of the new Premier, that same edition of the newsletter featured a “Christmas message” from the newly elected Drew. Noting that he himself was “a former civil servant,” Drew extolled the JAC, stating that by its establishment, along with the Appeal Board, “machinery has been

⁹⁸ Ontario, “Appointing a Joint Advisory Council to consider and report on the improvement of the Civil Service of Ontario. Dept. of the Prime Minister,” Order in council 244/125 (18 May 1944). (The Order in council became Ontario Regulation 340/44, printed in *The Ontario Gazette* 78, no. 24 (June 16, 1945): 1147.)

⁹⁹ *Ibid.*, 39.

¹⁰⁰ Roberts, *Don’t Call Me Servant*, 37; “Editorial Comment...” *Civil Service News*, December 1944, 1. (Ontario Archives, F1019-MU3611, Box 1)

provided for bringing your problems to the attention of the Government and safeguarding the rights of individual employees.”¹⁰¹

To grasp the significance of these changes, though, one must consider the totality of executive control of OPS terms and conditions of employment in the 1940s. For instance, for an individual to receive a wage increase, first ministry approval was required, then the CSC had to issue a certificate. The certificates were then bundled and sent to Cabinet for approval via order in council. More than this, we can find evidence of the mundanities of workplace relations making their way to Cabinet. As an example, consider an employee who complained of both her compensation as well as the inadequacies of the junior staff reporting to her. On this matter, various related correspondence was packaged and considered by a committee of Cabinet which then struck an inquiry into this and another claimant’s charges.¹⁰² Incredibly, this extent of executive control was still present in the OPS, despite the staff complement increasing by almost 1,000 per cent in the 40 years between 1904 and 1944. Putting this growth in context, over approximately the same time frame, Ontario’s population increased by approximately 75 per cent.¹⁰³ This staffing growth was driven by vast social

¹⁰¹ “Prime Minister’s Christmas Message,” *Civil Service News*, December 1944, 1. (Ontario Archives, F1019-MU3611, Box 1) (The reference was to Drew’s time as head of the Ontario Securities Commission.)

¹⁰² Ontario, “Appointing C.L. Snyder, K.C., Deputy Attorney-General, C.J. Foster, Civil Service Commissioner and Grant Potter, 2nd Vice-President of the Civil Service Association as Commissioners to inquire into and report upon certain charges made by Ernest Lawrie and Mrs. Marie Thompson, members of the staff of the Controller of Revenue, Dept. of the Prime Minister,” Order in council 243/225 (14 March 1944). (Ontario Archives)

¹⁰³ Schindeler, *Responsible Government*, 24. (The OPS staff size figures are taken from research undertaken by Fred Schindeler, who obtained the data from “Mrs A. H. Malkin, statistician in the Administrative Service Branch of the Ontario Department of the Civil Service.”) Schindeler’s monograph only presents the data in a line chart, the raw data was obtained from the Schindeler

change. Not only had Ontario's long shift from primarily rural to primarily urban intensified, but the array of services provided by the provincial government had vastly increased. A demonstration of this is that nominal spending by the Ontario government grew by 2,580 per cent over a similar period of time.¹⁰⁴

In this context of executive control, the JAC was meant to be only “an advisory body, with no executive powers.”¹⁰⁵ Crucially, it was stressed (at least by the employer side) that—although there might be differences of opinion from time to time—that fact “should not encourage the view that the Council is a battleground where opposing forces meet.”¹⁰⁶ As a pamphlet explaining the JAC to staff put it,

it may be said that the main purpose of the Joint Advisory Council is to keep the civil service machinery running smoothly and to eliminate harmful frictions. On whichever side of the table they sit all members of the Council are equally servants of the Province and are thereby partners, and not opponents, in a common enterprise.¹⁰⁷

archive. The staff count in 1904 was 704 versus 7,712 in 1944. (York University Archives, Frederick F. Schindeler fonds, F0404-1999-015/003). Ontario's population data compares the census years 1901 (2,182,947) and 1941 (3,787,655), a 73.5 per cent increase. Canada, *Eighth Census of Canada 1941*, vol 2, 3. (Table 1. Population for provinces and territories, 1871-1941).

¹⁰⁴ Schindeler, *Responsible Government*, 15. (Government expenditures increased from \$5,396,016 in 1905 to \$144,662,42 in 1945. Regarding the shift from rural to urban, in 1871, 78 per cent of Ontarians were rural residents. By 1941, the rural proportion of the population had fallen to 38 per cent. See: Canada, *Eighth Census of Canada 1941*, vol 2, 177. (Table 12. Population by sex, for provinces and territories, rural and urban, 1871-1941).)

¹⁰⁵ Ontario, “The Joint Advisory Council: Its Relationship to the Government and the Civil Service,” n.d., 7. (Ontario Archives, RG-25, Box 3); Ontario, Joint Advisory Council Meeting Minutes, 22 May 1944. (Ontario Archives, RG-59) (The minutes of the JAC's first meeting note a member “drew attention to the fact that there was no provision made for appeal in matters of salary revision by the Order in council authorizing this Joint Advisory Council. He recalled that the General Executive of the Civil Service Association of Ontario had requested such a provision.”)

¹⁰⁶ Ontario, “The Joint Advisory Council”, 8.

¹⁰⁷ Ibid.

Thus, in lieu of collective bargaining, the public service got fewer than half the seats on an advisory board, which, it was hoped, would operate without conflict. Ultimately, of course, the Executive retained all the power, a power imbued with a paternalistic flavour. In 1950, Premier Leslie Frost received the members of JAC in his office, with the meeting minutes indicating that

the Premier expressed the view that the Joint Council together with the Departmental Councils should be able to settle most employee problems. “If you cannot settle them, come and see me,” he said. “The door is always open.”¹⁰⁸

The Ineffectiveness of the JAC

Six years into its existence it was clear that the joint council at the federal level had failed to live up to its promise. The primary issue was that, as an advisory body, recommendations from the council were implemented—if at all—only after significant delay. For example, dues check-off was placed on the agenda in mid-1950. An employer-only subcommittee reported back on the matter in October 1951. At council, agreement was reached to recommend the report, with that recommendation then rejected by the Treasury Board three months later. In March 1952, the council appealed the matter to the Prime Minister, only to be told that the decision was final and irrevocable. Undaunted, the council made a renewed recommendation in October 1952, which was accepted in March 1953—almost three years from it first appearing on the agenda.¹⁰⁹ Though the council’s leisurely pace was problematic, it should not

¹⁰⁸ Ontario, Joint Advisory Council Meeting Minutes, 12 September 1950. (Ontario Archives, RG-59)

¹⁰⁹ Frankel, *Staff Relations*, 83-85.

have been a surprise. As Anatole Poushinsky detailed, from Confederation onward, experience had demonstrated “the response of the Government to requests for (public service) reform had been notoriously slow.” Poushinsky pointed to it taking 40 years for the original *Civil Service Act* to first be revised, as well as the fact that it took 26 years from the first recommendation to do so to establish the joint council.¹¹⁰

The decision to base the Ontario joint council on the federal version was a key ingredient of the JAC’s ultimate failure. From its outset, similar delays to those at the federal level plagued the Ontario body. For example, the government took three years to accede to the council’s recommendation of a five-day work week—this after rejecting the recommendation the first time it came forward.¹¹¹ This led to frustration on the part of the CSAO, demonstrated in a 1959 newsletter article that noted

during the last two years, JAC members have operated in a businesslike manner ... to produce detailed recommendations, worthy of the serious consideration of the Government. ... The resulting recommendations have, we believe, been sound, progressive and defensible. The action of the Government on these recommendations has been non-existent. Under the circumstances this lack of action is indefensible.¹¹²

Beyond inaction, both the federal council and the JAC suffered from constrained terms of reference, with vital workplace issues like compensation

¹¹⁰ Poushinsky, “Collective Bargaining,” 2.

¹¹¹ “Won’t Operate Five-Day Week At Queen’s Park,” *The Globe and Mail*, 28 June 1947, 5. (The article noted that the five-day week had been discussed “for many years” though it “was dropped during the war years.”)

¹¹² “Ours Not to Reason Why?” *The Trillium*, March 1959, 4. (Ontario Archives, F-1019-MU-3611, Box 1)

rates excluded from possible discussion.¹¹³ Despite these problems, Frankel still reported there were “few real difficulties” between the government and the CSAO. This lack of strife Frankel attributed, in large part, to the government’s approach to determining OPS salary increases, which was to tie them to increases at the federal level. Every increase the federal service received was replicated—albeit some months later—in the OPS. Largely removing salaries as a matter of contention led to an “absence of strong pressures” within the CSAO.¹¹⁴ Recall that it was pressure from the membership in 1919—over the matter of inflation—that pushed the Association to make its first appeal for wage increases.

According to Frankel, the CSAO took a languid approach to labour relations, with this approach linked to the seeming passive consent of the membership. However, the lack of internal pressure on the union leadership that Frankel noted did not necessarily imply member satisfaction. On the contrary, disillusioned members seemed to simply not take part in CSAO activities. As Howard Scarrow noted, the CSAO was

unable to present a united front. It has been sharply divided on many questions, and was recently plagued by a financial crisis and the consequent disillusionment of many of its members. ... It is apparent, moreover, that despite its substantial membership the Association does not enjoy the support of all civil servants, and that many middle-range employees and most senior officers are reluctant to join in common cause with the lower-paid workers.¹¹⁵

¹¹³ Frankel, *Staff Relations*, 90.

¹¹⁴ *Ibid.*, 266.

¹¹⁵ Howard A. Scarrow, “Employer-Employee Relationships in the Civil Services of the Canadian Provinces,” *Public Administration* 35 (1957): 73.

Conclusions

Over the near-century of developments canvassed in this and the preceding chapter, four broad themes of OPS labour relations have been in evidence: (1) a tendency to follow the lead of the federal government; (2) a continual assertion of executive control, though in changing forms; (3) a tendency of OPS employees to be acquiescent, although with limits; and (4) the emerging importance of electoral politics.

Following the Federal Government

The first iteration of the *Public Service Act* was based on the federal statute. More than this though, we have found a continual reluctance on the part of Ontario to ‘jump first.’ For example, despite opposition demands, a civil service commissioner was not appointed until after the federal government did so. A classification exercise only happened after the federal government acted. The JAC was established following the lead of the federal government. This propensity to only follow the federal government was not replicated in other provinces. For instance, Alberta established a Whitley council decades before the federal government did so, while Saskatchewan instituted collective bargaining in its civil service in 1944, well before the advent of the PSSRA in 1967.

Executive Control

At the heart of the Ontario government’s approach to labour relations we find executive control. While the original *Public Service Act* put the legislature in charge of matters like wage rates for OPS employees, this was only ostensibly the case, given the executive’s control of the legislature. Moreover, the legislature’s

controls were removed in subsequent iterations of the Act. In this same vein, recall that into the 1940s quotidian human resources matters went all the way to cabinet for approval. Finally, the establishment of the JAC also reflected this tendency to situate control in the executive: while set up as a ‘joint’ committee, it provided a majority to the management side, and could merely issue recommendations on which the executive could choose to act.

Acquiescent Employees (within Limits)

In other sectors of the economy, workers formed unions. In the public services, workers came together to form associations. In Ontario, the association was explicitly formed to facilitate the bulk purchase of goods—an action which was a salve against low wages. The CSAO was moved to address low wages directly due to wartime inflation and the demands of its membership. While the motto of the CSAO—“modern, loyal, efficient”—was more a nod to the members’ work than the association’s, it exemplified the quiescent attitudes of the majority. Indeed, Frankel credited the JAC’s operation from 1944 into the mid-1950s to the CSAO’s languid approach and largely uninterested membership.

However compliant OPS employees tended to be, there were clear indications that acquiescence had its limits. Consider here the CSAO’s brief on wages following the First World War, or the letter from “A Sufferer,” or the ouster of a CSAO president. What’s more, there is clear evidence of vocal (albeit minority) voices within the CSAO who saw the JAC as problematic almost from its

beginning.¹¹⁶ Thus, while there is certainly something to the contention that complacent employees allowed the JAC to be established in lieu of bargaining rights as well as to continue operating in the face of lengthy delays, it is also the case that acquiescence had its limits, that employees would rise up when pushed.

The Emerging Importance of Electoral Politics

The events of the 1930s and 1940s demonstrate the emergence of electoral politics as a factor. This was clearest in Saskatchewan, where the election of a CCF government was the catalyst for normalized labour relations for that province's public service. In Ontario, while it did not form government, the CCF emerged as a credible political force. Faced with a compelling electoral choice to their left, the "old parties" had to strategically adapt. Thus, we saw everything from consideration of a union government to both the Liberals and PCs undertaking strategic "swings to the left" during campaigns. The old parties jockeying for position did not have as profound an impact on the OPS as was seen in Saskatchewan's service. However, we ultimately saw the Drew government pledge improved conditions of employment which led to the establishment of consultative processes within the public service.

* * *

These four tendencies played out within a context of significant change. The two major changes exogenous to the OPS that spurred developments in OPS

¹¹⁶ See, e.g., "Drew to Shout Communism in Fascist Style-Delegate," *Toronto Daily Star* 16 September 1947: 3 (The news story recounted a special meeting of the CSAO called by the Toronto hospital branch. On the JAC: "'Let's seek direct appeal to the government and not through the deadwood advisory council,' demanded John Johnston from the Ontario Hospital Staff.")

labour relations in this period are (1) the change in the role of government and (2) the changes in labour relations in the broader economy.

Context: Role of Government

At Confederation, the *BNA Act* envisaged only a “trivial status” for provincial governments. This turned out to be, as Desmond Morton put it, “a distinct failure of prophecy by the Fathers of Confederation.”¹¹⁷ Delegating control over education, licencing, and roadways along with “hospitals, asylums, charities, and eleemosynary Institutions” to the provinces fated provincial governments to grow as the public’s social welfare became an ever-larger part of government’s role. Fred Schindeler summed up this shift:

the factor which has most profoundly influenced the scope of government operations in Ontario has been the gradual change in the social attitudes of the people. Increased specialization in agriculture and industry, improved means of transportation and communication, and the massive rural to urban population shift have made men less self-sufficient than they were in 1867. Economic and social interdependence gave an impetus to government intervention and gradually the people came to expect the government to take a creative part in establishing a viable economy and the good society. They demanded that their government take steps to mitigate the more pernicious by-products of the free market; they insisted that education should be made universally available, free of charge; and they urged that public funds be used to sustain them and assist them when they fell prey to inescapable hardships of life.¹¹⁸

The increased role of government brought with it increased spending and increased staff. The growth in spending is illustrated in Figure 2, which shows Ontario’s expenditures in 1868 were \$1.4 million and \$970.3 million in 1960—an increase of more than 65,000 per cent. Likewise, the OPS staff count increased

¹¹⁷ Morton, “People and Politics of Ontario,” 2.

¹¹⁸ Schindeler, *Responsible Government in Ontario*, 13ff.

tremendously. From 704 in 1904 to 30,433 in 1960—an increase of more than 4,200 per cent in 56 years. Figure 3 details the growth of the OPS size complement between 1919 and 1960.

Figure 2: Ontario Expenditures – 1868 to 1960 (\$ Nominal)

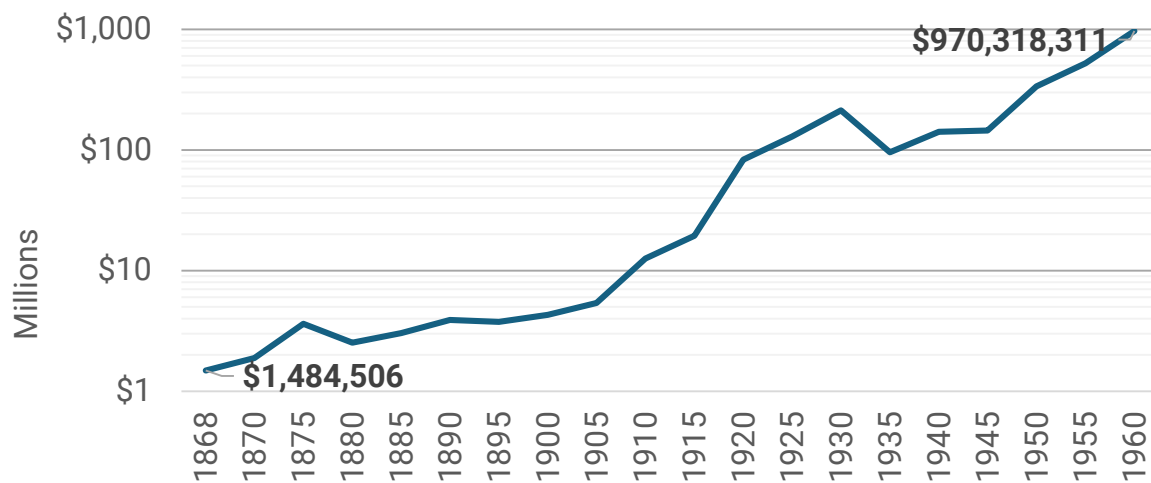


Figure 3: Size of the OPS – 1919-1960

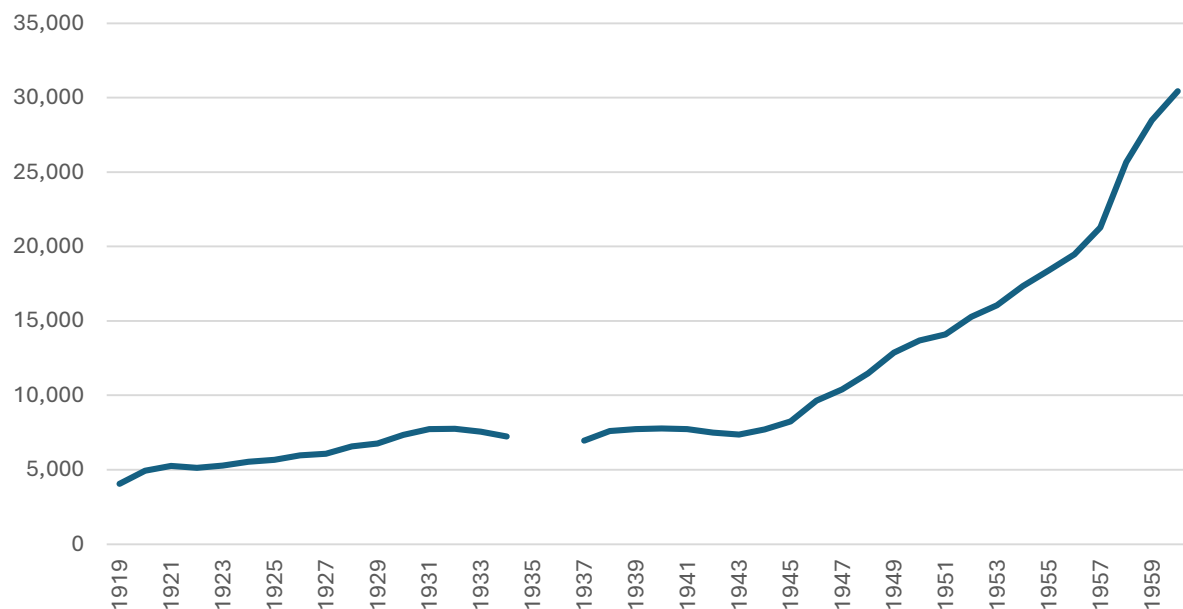


Table 1 sets out the size of the OPS staff and government expenditures in constant terms. In 1904, there were approximately 32.2 OPS employees per 100,000 Ontario residents; by 1961, this count had grown to 488, an increase of 1,415 per cent in fewer than 60 years. In constant dollars, government expenditures increased fourfold in the 40 years between 1921 and 1961. Taken together, these figures demonstrate a profound growth in government operations.

Table 1: OPS Employees and Expenditures by Ontario population¹¹⁹

Year	OPS employees per 100,000 Ontarians	Ontario government annual expenditures per Ontarian (\$ nominal)	Ontario government annual expenditures per Ontarian (\$ 1960)
1904	32.2	\$1.97	--
1921	178.9	\$28.24	\$38.55
1931	225.4	\$62.01	\$109.39
1941	204.0	\$37.40	\$72.49
1951	306.7	\$73.18	\$89.06
1961	488.0	\$155.60	\$155.60

The simple fact is that a small operation quite quickly became vast and complex. In the span of a few decades, the OPS changed from an organization in which a person on the street could reasonably ask the Premier about a particular staffing vacancy to an organization with more than 30,000 employees. An institution that size could no longer work with the degree of executive oversight that characterized the OPS for decades. But while this change in the size of

¹¹⁹ Source figures taken from the Canadian census, Schindeler's data on OPS size and government expenditures, per capita calculations by author, inflation impacts calculated with the Bank of Canada's inflation calculator.

government necessitated change to the structure of labour relations within the OPS—specifically, a diminishment of executive control—it did not determine what new *form* labour relations would take.

Context: Expanding Labour Rights

As set out above, during the period studied in this and the previous chapter, labour rights significantly changed. Organized labour went from having no positive legal support at Confederation to having positive legal support in the system of labour relations (the Wagner model) instituted following the Depression and the labour unrest during the Second World War. These vast alterations impacted the shape of labour relations in the OPS. In a context where workers were joining unions in unprecedented numbers and receiving state support for their right to unionize and bargain collectively, the government was placed in an awkward position with respect to their own employees' rights. It is no coincidence that the JAC was finally established in 1944, with the advent of Wagner model labour rights in Canada.

It would have been difficult—perhaps even untenable—for the government to simultaneously shift to the Wagner model for workers in general while providing no form of representation for its own employees. This growing contradiction, and the discontent it threatened to foment, informed the JAC's establishment. As Premier Drew put it, with the creation of the JAC, “machinery has been provided for bringing your problems to the attention of the Government

safeguarding the rights of individual employees.”¹²⁰ Of course, that is all the JAC was meant to do—to provide a venue for employees to bring matters of concern to the attention of the government. There was no prospect of collective bargaining at the JAC, which fit the expectations both employer and most employees—with both sets of expectations still deeply informed by the doctrine of parliamentary supremacy. Moving into the 1960s, however, these expectations began to change rapidly, especially for OPS employees. This period will be considered in the next chapter.

¹²⁰ “Prime Minister’s Christmas Message,” *Civil Service News*.

Chapter 5: The Long Sunset of Consultation: 1952-65

The history of the Canadian civil service records a continuing interest in the improvement of its administration. In the years following Confederation and the passage of the first two Civil Service Acts, the impetus for reform came, for the most part, from Parliament. The current demand for change comes less from the legislators than from those who have to perform administrative functions under the law and, to an increasing extent, from organizations of civil servants.

- A.D.P. Heeney¹

All we get is paternalism and promises.

- William Harper²

Introduction

In the decades following the Second World War, OPS labour relations began a gradual evolution of the relationship between the government-as-employer and its workforce. Initially characterized by an "association-consultation" framework, the CSAO focused primarily on member welfare. However, the limited consultation on offer planted the seeds of change to come. This chapter will explore the factors that contributed to a growing dissatisfaction with the association model, including the inherent limitations of bodies like the Ontario Joint Council (OJC) and a rising sentiment among public servants for greater agency in determining their working conditions and compensation.

¹ A. D. P. Heeney, "Civil Service Reform, 1958," *The Canadian Journal of Economics and Political Science*, 25, no. 1 (February 1959), 2.

² "Civil Service Directors Plan Fight," *The Globe and Mail*, 25 March 1959, 1. (Harper was the CSAO president in 1959.)

The Long Sunset of Consultation

In September 1952, the CSAO celebrated the twenty-fifth anniversary of its magazine, *Trillium*. Alongside greetings from both the Lieutenant Governor and Premier Leslie Frost, the magazine's editorial approvingly noted a cabinet minister's recent remarks that the government was "pleased to have a healthy Association because we are made aware of problems before they fester and break out."³ Further into the issue, the then-Commissioner of the Civil Service Commission, C. J. Foster, was provided space to discuss labour relations within the OPS:

At this point I would like to emphasize quite frankly a conviction which I think is shared by most civil servants: that service to the state imposes obligations which are not shared by the worker in industry. The most important of these obligations is a renunciation of the right to strike. ... Obedience to the state is vital to society itself; that civil servants are responsible, through Parliament, to the entire people. It follows that to attempt to enforce wage demands, for example, would be equivalent to attempting to establish a bureaucratic dictatorship, with power passing from Parliament into the hands of public servants.⁴

Foster was simply restating the doctrine of parliamentary sovereignty, perhaps hyperbolically echoing the substance of Prime Minister Louis St. Laurent's remark that Parliament's control of finances foreclosed collective bargaining in the public service.⁵ The primary difference between the two statements was that

³ *Trillium: 25 Years Progress*, September 1952, 4.

⁴ C.J. Foster, "Genial Commissioner Takes a Backward Look," *Trillium: 25 Years Progress*, September 1952, 17.

⁵ Canada, House of Commons, Hansard, 21st Parliament, 4th Sess, vol. 4, February 21, 1951, 542. (St. Laurent stated that, with "employment in the public service, there can be no bargaining agent for the nation comparable with the employer in industry who has at his disposal funds derived from payments for goods or services. The funds from which salaries are paid in the public service have to be voted by parliament and parliament alone can discharge that responsibility.")

St. Laurent was speaking in the House of Commons, while Foster was writing the CSAO's own magazine.

Altogether, the contents of this magazine comprise a telling example of the CSAO's demeanor in the early 1950s. While it might be surprising that a staff newsletter published these words, the fact that the civil service commissioner evidently felt the need to *write them* in the CSAO's magazine suggests the presence of restive members. Put differently: why denounce the right to strike unless demands for full collective bargaining rights in the public service were emerging? Interest in full collective bargaining rights was coming to the OPS agenda because public servants believed their compensation was inadequate. As mentioned above, in the 1950s OPS wage increases were tied to the federal public service. In turn, the federal increases were based on nationwide average wage increases. Yet, because Ontario's cost of living was increasing more rapidly than elsewhere in the country, increases based on a national average were insufficient.⁶ The insufficiency of the pay increases was compounded by the fact that the province routinely delayed their implementation. As an example, by October 1957, provincial public servants had not yet received a pay increase to match the one the federal service had received in May of that year. After it was announced the wages would not be increased until April 1958, CSAO President William Harper warned of "considerable unrest." Harper: "Employees of the province have waited since early summer for word of a general revision based on

⁶ Frankel, 267. (The CSAO "argued that the federal scales to which the province was adjusting were based on Dominion averages whereas the living costs and living standards in Ontario were consistently higher.")

the government's policy of meeting federal salaries for comparable classifications."⁷ Harper's assertions aside, there is no evidence of significant unrest. Perhaps quelling widespread dissent was the fact that—although delayed—wages were increasing. As Roberts recounted, the 1950s “were good times.” To stave off recruitment problems, average wages in the OPS increased from \$2,250 in 1950 to \$3,976 in 1960—a real increase of 40 per cent.⁸

Nevertheless, the confluence of factors led the CSAO to conclude that, to achieve meaningful change, “it would be necessary to improve and revise the procedures of consultation.”⁹ Owing to this imperative, the CSAO's internal structure began to change and a more aggressive approach vis-à-vis the government took shape. For example, in 1955 the CSAO considered seeking certification as a union under the *Labour Relations Act*. This option was ultimately not pursued as lawyers advised the CSAO that, were the *LRA* found to apply to the OPS, then any union could attempt to organize the OPS workplace.¹⁰ This outcome would have been unacceptable to both the CSAO and the government. Much more will be said below on the government's unwillingness to allow the formal organizing and certification, whether by the CSAO or by any other union.¹¹

⁷ See, e.g. “Salary Protest By Civil Service,” *The Globe and Mail*, 11 October 1957.

⁸ Roberts, *Don't Call Me Servant*, 53. (Inflation calculation by author.)

⁹ Frankel, *Staff Relations*, 266-7.

¹⁰ Roberts, *Don't Call Me Servant*, 69.

¹¹ *Ibid.* For example, the Teamsters attempted to organize the province's liquor board employees in 1951. As these employees were not defined in the *PSA* as “public servants,” they could organize with any union. In response (and apparently in collusion with the CSAO), the government altered the law to define liquor board employees as public servants and thus unable to unionize. See

At this time, the CSAO was also pursuing affiliation with the newly formed Canadian Labour Congress (CLC). This would not have had the CSAO become a full-fledged labour union; rather, affiliation was meant only to give the Association “the guidance and moral support of the CLC.”¹² This support was evidently necessary. One panelist at a CSAO meeting who recommended affiliation was Bert Merson, the then-chair of the Toronto Hydro-Electric Commission. Having sat on a committee which had considered a CSAO submission to the government, he stated that he “had never seen a labour brief so poorly presented.” At the same meeting, a member of the CSAO executive expressed reservations on affiliation, arguing that it would mark the beginning of a move toward unionization and an eventual strike/lockout model of labour relations. Evocative of Foster’s comments in *Trillium*, David Holmes argued that, in a strike/lockout system:

the Civil Service Association would have to strike against the Crown. It would be regarded as treason in time of war and little else in time of peace. Conditional affiliation without the power to strike would be sheer hypocrisy.¹³

In 1958, the CSAO executive chose not to affiliate to the CLC, a decision made despite a convention resolution from the previous year which had bound the association to hold a membership-wide referendum after an educational

Beverly Dalys, *No Longer a ‘Two-Bit’ Union: The History of the Ontario Liquor Boards Employees’ Union* (n.p, n.d.), 3-6.

¹² “Civil Servants Restless,” *Toronto Daily Star*, 18 June 1956.

¹³ “Claims Frost Made Threat To Association Leader,” *The Globe and Mail*, 7 September 1956. (Merson had been CUPE Local 79’s inaugural president. Aside from being on the CSAO executive, Holmes worked in the province’s Treasury Department.)

campaign.¹⁴ At the 1958 convention only six of 165 delegates objected to a motion ratifying the executive's decision. Perhaps in a demonstration of the association's temper, that convention had been opened by Premier Leslie Frost who, in his speech (as summarized in the *Toronto Daily Star*), "pointed out that the association could not have the same set of relationships with government as employees in private industry had with their employer."¹⁵

At least three factors guided the CSAO's decision to not affiliate. First, at its 1958 convention, the CLC had chosen to "consider a new course of political action through the sponsorship of a political party." The decision to explore aligning with what, in 1961, was to become the New Democratic Party was sufficiently polarizing that "even associations that had long been affiliated with the Congress were re-examining their position."¹⁶ The impact of the CLC's partisanship was evident on that CSAO convention. For example, the chair of the CSAO's education committee, Ambrose Jackel, attributed the rejection to "the CLC action at Winnipeg in adopting the principle of supporting a political party." Jackel also

¹⁴ Frankel, *Staff Relations*, 278. (Frankel quoted the convention resolution as reading: "Be it resolved that the Civil Service Association of Ontario conduct a vote by ballot among its membership regarding affiliation with the Canadian Labour Congress, at a date prior to the next annual general meeting after an educational programme.")

¹⁵ "Civil Servants Reject Affiliation with the CLC," *Toronto Daily Star*, 12 November 1958. (Perhaps Jacob Finkelman's opinion about public sector bargaining had influenced Frost's. Without specifying the date, Finkelman wrote about how "several years before I went to Ottawa (to serve as chair of the Public Service Labour Relations Board in 1967) the Hon. Leslie Frost, then premier of Ontario, asked me what I thought about bringing the Ontario civil service under the Ontario *Labour Relations Act*. My response was that, if he did so, he could find another chairman for the Ontario Labour Relations Board. I recall I said to him: 'The animal with which we are dealing is a zebra in both cases, but its stripes run vertically in the private sector and horizontally in the public sector.'" Jacob Finkelman, "Public Sector Collective Bargaining," *Industrial Relations / Relations industrielles* 41, no. 4 (1986): 692.)

¹⁶ Frankel, *Staff Relations*, 278.

pointed to another rationale: the cost of affiliation.¹⁷ Frankel argued a third reason for the executive's decision to nix the affiliation referendum: the board detected a general lack of interest in affiliation among the membership. The educational programme mandated by the convention resolution had been a failure. "Apathy on the (affiliation) issue was widespread," argued Frankel, who cited an article in the CSAO's *Trillium* magazine which noted that the Association's directors "have been forced to report to the Board that in their travels they have met with either negligible, and negative, interest; or none at all."¹⁸

However, CSAO president William Harper made clear the decision to not affiliate with the CLC should not be confused with a lack of interest in collective bargaining:

there is little doubt that the time has arrived when employees of the Crown should be recognized as other citizens are with the same right to representation by the organization of their choice, to formal bargaining procedures, and to arbitration or appeal if necessary.¹⁹

A week after their 1958 convention, the CSAO officially called for formal collective bargaining with binding arbitration (as opposed to strike/lockout) put forth as the solution to an impasse.²⁰ The government was unmoved. This was, perhaps, for the best as the CSAO's proposal was both timid and confusing. The Association was seeking a novel approach that meant to reconcile parliamentary

¹⁷ The CLC has a per member affiliation dues charge. At the time, the CSAO boasted a 25,000-person membership.

¹⁸ CSAO, *Trillium*, July 1958, 2, cited in Frankel, *Staff Relations*, 278.

¹⁹ "Civil Service Won't Affiliate with Labor," *The Globe and Mail*, 13 November 1958.

²⁰ Roberts, *Don't Call Me Servant*, 71.

sovereignty with collective bargaining. Thus, the CSAO proposed that it negotiate directly with the Civil Service Commission, with the Commission then recommending implementation of that negotiated settlement to the government. Frankel suggested that it was “difficult to see how this scheme could satisfy the Association’s desire for procedures that would yield clear-cut results.”²¹ Put differently, without any meaningful force behind the CSC’s recommendation to government, the proposal seemed unlikely to eradicate the delays of the existing system.

Nevertheless, CSAO demands for collective bargaining gained speed in March 1959, when some 3,000 CSAO members “jammed” the Odeon Theatre on Carlton Street in Toronto to “reaffirm their support of demands for collective bargaining rights, grievance procedure and more rapid action of submissions to the Ontario Government.”²² At the meeting, the CSAO committed “all its resources—nearly half a million dollars” to the fight to obtain bargaining rights.²³ Two resolutions formed the CSAO’s “top priority” and were enunciated in a letter to Premier Frost:

1. That the Association, representing all the employees of the Ontario Government, inform the Prime Minister that the Association is not satisfied with the present form of negotiation with the government.
2. That the Prime Minister be informed that the objective of this Association is to realize free collective bargaining between the

²¹ Frankel, *Staff Relations*, 271.

²² “Civil Service Bargain Role Demanded,” *The Globe and Mail*, 23 March 1959.

²³ “Civil Service Directors Plan Fight,” *The Globe and Mail*, 25 March 1959.

Government and the Association as the representative of all Government employees.²⁴

As the 1950s closed, the Ontario government remained reluctant to establish collective bargaining in the OPS, despite the growing and more public demands of the association. Before moving forward with this history, it is worth pausing to consider why the government remained opposed to collective bargaining, as well as why the CSAO was slow to start demanding it.

Delayed Collective Bargaining in Canadian Public Services

Demands for public service collective bargaining rights were, of course, not solely a Canadian phenomenon. In other similar countries, though, the demands for—as well as the establishment of—some sort of collective bargaining scheme came earlier. In Australia, Commonwealth public servants gained arbitration rights in 1911, while in the United Kingdom salary arbitration was established in 1925.²⁵ More will be said on these cases later in this section.

Seven factors explain the Canadian delay: (1) historically weak staff associations, (2) a popular sense that the existing labour relations outcomes were adequate, (3) public servants feeling themselves to be a unique class of workers, (4) internal class cleavages within the public service, (5) fierce employer resistance to staff unionization, (6) the lack of socialist or left-wing governments

²⁴ Harold Bowen, Executive Secretary CSAO to Leslie Frost, Prime Minister of Ontario, March 26, 1959 (Ontario Archive: F 1019, B293959).

²⁵ Gerald E. Caiden, *Public Employment Compulsory Arbitration in Australia*, (Ann Arbor: Institute of Labour and Industrial Relations, 1971), 18-9.

in Canadian jurisdictions, and underpinning all of these (7) the lingering belief in parliamentary sovereignty.

First, public servants initially organized into loosely constituted and weak staff associations rather than unions. Allen Ponak fittingly dubbed the ensuing system the “association-consultation” model of labour relations, and this was the model in operation in the OPS since the establishment of the JAC in 1944.²⁶ This model’s defining feature is that, rather than collective bargaining, employee associations were merely consulted, with all decision-making authority retained by the employer. Vital to this structure was that the employee associations were not formed in a manner akin to industrial unions, the latter having been formed explicitly to collectively bargain with employers. Conversely, when the associations formed there was no expectation of collective bargaining. As seen above in the case of the CSAO, the primary goal at formation was to obtain discounts on staple goods for members by way of bulk purchasing. Gradually, as with associations in other jurisdictions, the CSAO began making representations to the employer/government. These representations then evolved into a formalized process of consultation. With the doctrine of parliamentary supremacy ascendent, a consultative process appeared to be the boundary of the possible to employer and association alike.

This takes us to the second factor. As Frankel argued, most public servants thought the prevailing model of labour relations, as exemplified by joint councils,

²⁶ Allen Ponak, “Public Sector Collective Bargaining,” in *Union-Management Relations in Canada*, eds. John C. Anderson and Morley Gunderson, (Don Mills: Addison-Wesley, 1982), 345ff.

was adequate.²⁷ Adding nuance to Frankel's position, it was perhaps not so much that the *structures* of labour relations were adequate, but rather that the *outcomes* of those structures were. On this point, John Carson (a former director of the FCSC) wrote in 1967:

Generally speaking, public servants have been at least modestly well cared for: tenure, pensions, merit promotions (as opposed to favoritism), appeal procedures, and community comparisons in pay have been commonplace in North America for almost half a century.²⁸

It was not until wage increases were both delayed and insufficient that we find the associations agitating for change. Recall that the CSAO's first formal brief to the government, issued in 1919, was spurred by the need for compensation increases owing to inflation related to the First World War.

In common with the unions of the era, civil service staff associations had gained strength coming out of the First World War, but this strength dissipated during the Great Depression. As Frankel put it: "Civil servants were much too anxious about holding on ... to allow themselves to become engaged in a struggle" over collective bargaining rights.²⁹ A committee report summarized the mood of the government towards the federal public service during the Depression era, arguing

the early 1930s was a period of retrenchment: few new programs were initiated, recruitment was nominal, and promotions and reclassifications were kept to a minimum. ... The depression years served to make the

²⁷ Frankel, *Staff Relations*, 54.

²⁸ John J. Carson, "Collective Bargaining in Private Industry: The Lessons for Public Administration," in *Collective Bargaining in the Public Service: Theory and Practice*, ed. Kenneth O. Warner, (Chicago: Public Personnel Association, 1967), 47.

²⁹ Frankel, *Staff Relations*, 54.

Government acutely aware of its manpower costs and, by the force of events, this concern was maintained during the war years that followed.³⁰

On the other side of the ledger, Shirley Goldenberg argued that the Depression-era mood amongst public servants was such that

with the relative security of civil service employment to compensate for lagging wage levels and a tradition of patronage appointments in certain areas of public employment, civil servants were not inclined to assert the rights that other workers were demanding in the private sector.³¹

The mood changed in the post-World War Two era of economic expansion.

The third and fourth reasons for the delayed arrival of collective bargaining in the public service fit under the broad rubric of classism. Anatole Poushinsky argued it was a common view “that civil servants were a class apart” from other workers, with public servants seen as distinct from other workers by themselves and employer alike. Part of this was due to public servants’ responsibility to the public.³² This is a position closely related to parliamentary sovereignty, one which was evident in Foster’s stance that “service to the state imposes obligations which are not shared by the worker in industry.” As Rosemary Warskett put it, “employees of the state were perceived as different from other employees because of the general perception of a neutral state standing above or apart from society.”³³

³⁰ Canada, *Report of the Preparatory Committee on Collective Bargaining in the Public Service*, (Ottawa: Queen’s Printer and Controller of Stationary, 1965), 8.

³¹ Shirley B. Goldenberg, “Collective Bargaining in the Provincial Public Services,” in *Collective Bargaining in the Public Service*, (Toronto: Institute of Public Administration of Canada, 1973), 11.

³² Poushinsky, “Introduction of Collective Bargaining,” 17.

³³ Rosemary Warskett, “Law, Regulation, and Becoming ‘Uncivil’: Contestation and Reconstruction within the Federal Administrative State,” in *Law, Regulation, and Governance*, eds. Michael Mac Neil, Neil Sargent, and Peter Swan, (Toronto: Oxford University Press, 2002), 193.

Pondering a different side of the sense of obligation, Roch Bolduc considered the residual role of patronage in shaping public servants' consciousness, arguing that, because "in many provincial services the merit system was inexistent," many public servants felt "a debt of gratitude for their appointment."³⁴ Unfortunately, Bolduc adduced no evidence for his claim that significant patronage continued well into the twentieth century. More interestingly though, Bolduc linked his patronage claim to what he termed "white collar attitudes" which, he argued, pervaded Canada's various civil services.³⁵ Poushinsky also considered this element of classism:

most of the civil servants were "white collar" workers who generally considered themselves to be higher on the social scale than the "blue collar" workers in industry. To them, organization into unions meant lowering the social status and alienation from management with whom they identified.³⁶

Not only were public servants a class apart from other workers, but they were also riven by their own internal class distinctions which hindered the development of a common perspective. Warskett argued that, in the interwar period, career civil servants "were mainly drawn from the upper- and middle-class ranks of white, Anglo-Saxon men." Women largely occupied roles such as stenographer until leaving at marriage (or occasionally staying on as higher-level secretaries). Blue-collar work was considered "marginal" and was often a

³⁴ Roch Bolduc, "The Framework for Collective Bargaining in the Public Service: The Canadian Experience," in *Collective Bargaining in the Public Service: Theory and Practice*, ed. Kenneth O. Warner, (Chicago: Public Personnel Association, 1967), 13.

³⁵ Poushinsky, "Introduction of Collective Bargaining," 17.

³⁶ *Ibid.*, 17-8.

temporary, as opposed to permanent, appointment.³⁷ Due to these sorts of internal class cleavages, the CSAO was unable “to present a united front” at the JAC. Although it boasted a substantial membership (some 25,000 by the end of the 1950s), the CSAO did “not enjoy the support of all civil servants ... many middle-range employees and most senior officers are reluctant to join in common cause with the lower-paid workers.”³⁸

In this same vein, Morley Gunderson argued that despite “common problems” shared with other workers, professionals tended to look at blue collar unions with “aloofness.”³⁹ Though Gunderson was discussing what we might term *bona fide* professionals (i.e. highly skilled, licensed workers regulated by a self-governing body⁴⁰), his analysis may reasonably be extended to encompass white-collar workers more generally. To underscore this point, several contemporary Canadian public sector unions that consist mainly of white-collar public sector workers define themselves as unions of professionals in the colloquial sense of white-collar workers who (tend to) possess graduate-level

³⁷ Warskett, “Law, Regulation, and Becoming ‘Uncivil’,” 192.

³⁸ Scarrow, “Employer-Employee Relationships,” 73.

³⁹ Morley Gunderson, “Professionalization of the Canadian Public Sector,” in *Studies in Public Employment and Compensation in Canada*, ed. Meyer W. Bucovetsky, (Montreal: Institute for Research on Public Policy, 1979), 115.

⁴⁰ The federal *Canada Labour Code* defines a “professional employee” as “an employee who (a) is, in the course of their employment, engaged in the application of specialized knowledge ordinarily acquired by a course of instruction and study resulting in graduation from a university or similar institution, and (b) is, or is eligible to be, a member of a professional organization that is authorized by statute to establish the qualifications for membership in the organization.” (*Canada Labour Code*, R.S.C., 1985, c. L-2, s. 3(1))

degrees.⁴¹ We will return to this theme of internal class distinction in a subsequent chapter.

Ponak noted a fifth reason for delay, arguing that this tends to occur “in situations where there is fierce employer resistance to collective bargaining.” Although it is common for employers to enthusiastically resist a union entering the workplace, only one employer has the power to craft legislation to pre-empt such a development. Ponak suggested that it was “arguable that even if public employees had wanted to bargain with their employers, they would not have been able to do so.”⁴²

Consider here the 1951 attempt by the Teamsters to organize employees of the Liquor Control Board of Ontario. This nascent attempt was squashed by government by simply choosing to interpret the term “public servant” in the *Public Service Act* as encompassing Liquor Board employees. This amended definition prohibited those employees from organizing or collectively bargaining. There are two interesting sidenotes to this story. First, the new interpretation of “public servant” was a complete reversal of course for the government; their prior interpretation had ruled Liquor Board employees out of the public service. This *volte-face* amply illustrates the government’s resistance to having unionized

⁴¹ Examples of such unions include Ontario’s AMAPCEO (Association of Management, Administrative, and Professional Crown Employees of Ontario) which brands itself “Ontario’s Professional Employees,” British Columbia’s PEA (Professional Employees Association), and the aforementioned Professional Institute of the Public Service of Canada, which operates primarily in the federal public service. In addition, each of these does, to a greater or lesser degree, represent *bona fide* professionals.

⁴² Ponak, “Public Sector Collective Bargaining,” 345.

staff. Second, the CSAO was involved in the matter, with the Association's President writing in *Trillium* that

certain correspondence and interviews between myself and the Prime Minister led to an ultimate and final pronouncement that henceforth all employees of the Liquor Control Board of Ontario would be civil servants.⁴³

As Beverly Dalys wrote, once an outside union was rendered an impossibility, "it was assumed employees of the Liquor Boards would be represented by the CSAO."⁴⁴ Of course, at this point just as in the rest of the OPS, the CSAO-represented employees would still not have been able to bargain collectively.

Turning now to the sixth factor—the importance of the party in power. In the Canadian context, we have already seen how the newly elected CCF foisted a collective bargaining regime upon an uninterested public service (which will be discussed in detail in Chapter 7). The importance of the party in power was also seen in Australia, regarding which Gerald Caiden found that

Conservative governments were reluctant to depart from tradition in public employment. ... (T)he legislature had written public service conditions into law and even detailed all salary and wage rates for individual officers. Control had since passed to the executive branch and to central personnel agencies and employing authorities. The legislature was loath to interfere with the arrangements of the executive while Cabinet ministers were loath to undermine the authority of senior officials charged with public administration. Thus the government tended to resist public employee demands and justified its position with reference to Crown prerogative and the sovereign rights of the state.⁴⁵

⁴³ Dalys, *No Longer a 'Two-Bit' Union*: 5.

⁴⁴ Ibid.: 6. The liquor board employees ultimately formed their own association, setting the stage for decades of acrimony with the CSAO/OPSEU until the unions eventually merged.

⁴⁵ Caiden, *Public Employment Compulsory Arbitration in Australia*, 18.

What changed the perspective in Australia was the ideology of the party in power. Thus, for example, Labor won the 1910 Australian federal election, with arbitration rights granted to the public service in 1911. This relationship was repeated at the state level in Queensland (Labor winning in 1915, arbitration in 1916), New South Wales (Labor winning in 1910, arbitration in 1919), South Australia (Labor first winning in 1905, winning again in 1924 with arbitration that year), and Western Australia (Labor first winning in 1904, though no arbitration until 1936 under another Labor government). According to Caiden's analysis, "the disparity in dates (of public employees receiving arbitration rights) is largely attributable to the stand of the Australian Labor Party and its strength in the various states."⁴⁶

Ultimately, Caiden was suggesting that a labour party winning election is a necessary, though not sufficient, condition of expanding public service labour rights. Simply having a socialist (or, at least, worker-friendly) party governing a jurisdiction is not sufficient to drive change; the party must also favour granting these rights. As an example, consider New Zealand. Pat Walsh argued that both the Liberal government of 1890 to 1912 and the Labour government of 1935 to 1949 enhanced the rights of labour though (paradoxically for Walsh) both governments "were hostile to the extension of those same rights to their own employees." Five decades after compulsory arbitration was introduced in that country's private sector, the Labour party, "with visible reluctance" granted the

⁴⁶ Ibid., 19.

same rights to public servants.⁴⁷ In Chapter 7, more will be said about the importance of the party in power within the Canadian context, with a detailed study of Ontario following in Chapters 8 and 9.

Underpinning all these reasons for delay is the seventh factor: the resistance of the state to bargaining with public servants was fundamentally animated by the doctrine of parliamentary sovereignty. As Bolduc had it, parliamentary sovereignty was a value “held in common” by various political parties—Bolduc neglecting to consider the CCF government in Saskatchewan which had implemented public service collective bargaining more than 20 years before he wrote that passage. Nonetheless, Bolduc concisely defined the doctrine of parliamentary sovereignty as the “belief that the ultimate authority of Cabinet to determine the total amount of annual expenditures including, of course, personnel expenditures cannot be challenged by anyone.”⁴⁸ During the period between 1919 and 1944, when the doctrine of parliamentary sovereignty was ascendent, collective bargaining would have been “quite unthinkable” in any Canadian public service. Indeed, Frankel noted that the employee associations were focused on establishing Whitley councils as opposed to attempting to obtain the “unthinkable.”⁴⁹ While Frankel accurately recounted the focus of the associations, when we consider the interwar period, it is vital to broaden the analysis and consider developments outside the public service.

⁴⁷ Pat Walsh, “Pay-fixing Reform in the New Zealand Public Service, 1912–1948,” *New Zealand Journal of History* 25, no. 1 (1991): 18.

⁴⁸ Bolduc, “Framework for Collective Bargaining,” 13.

⁴⁹ Frankel, *Staff Relations*, 55.

Prior to World War Two, both the federal government and the provinces boasted an array of conciliation legislation. This legislation was created to “deal specifically with strike situations in which the community had either a direct proprietary interest or a special concern arising out of the essential nature of the industries affected.”⁵⁰ The federal *Industrial Disputes Investigation Act (IDIA)*, made law in 1907, covered different industries distinctly.⁵¹ If the employer in question operated

any mining property, agency of transportation or communication, or public service utility, including, except as hereinafter provided, railways, whether operated by steam, electricity or other motive power, steamships, telegraph and telephone lines, gas, electric light, water, and power works,

any labour dispute had to be referred to a board of conciliation.⁵² The fundamental point of the legislation was to bar strikes during an investigation by an appointed board of conciliation.⁵³

In 1925, the *IDIA* was struck down by the Judicial Committee of the Privy Council in a decision that gave provinces jurisdiction over labour relations.⁵⁴ In April 1943, Ontario enacted the first Canadian law based on the Wagner Act model, though the legislation was short-lived as the federal government took

⁵⁰ Harry W. Arthurs, “Collective Bargaining in the Public Service of Canada: Bold Experiment of Act of Folly?” *Michigan Law Review* 67, 5 (1969): 971.

⁵¹ *Industrial Disputes Investigation Act, 1907*, SC 1907, c. 20.

⁵² C. E. Dankert, “The Canadian Industrial Disputes Investigation Act,” *Journal of Political Economy* (1928): 141.

⁵³ Marcus M. Marks, “The Canadian Industrial Disputes Act,” *The Annals of the American Academy of Political and Social Science*, 44, (November 1912): 1.

⁵⁴ *The Toronto Electric Commissioners v Colin G. Snider and others* (Ontario) (1925) UKPC 2 (20 January 1925) <http://www.bailii.org/uk/cases/UKPC/1925/1925_2.html>.

control of labour relations during the Second World War.⁵⁵ The provinces reasserted control at the war's end, with each jurisdiction applying the Wagner Act principles. In Ontario, this was accomplished with the *Labour Relations Board Act, 1944*.⁵⁶

Assessing this history beginning with the *IDIA*, Harry Arthurs argued that “Canadians were accustomed to the use of a single statute to regulate labour relations in both the public and private sectors.”⁵⁷ To Arthurs' point, municipalities were quick to unionize, with municipal employees in Toronto being the first such employees in Ontario to be certified under the new law.⁵⁸ Yet collective bargaining did not expand to the provincial public services at this time. Despite the developments at City Hall, provincial civil servants were not meaningfully pushing for those rights.

This takes us back to the preceding explanations for the delayed arrival of public service collective bargaining. Associations were weak and internally divided, and consultation was seen by many as a viable mechanism of addressing workplace concerns. However, as the limitations of consultation became clearer, the associations believed they had no choice but to gradually hew closer to a traditional union model. But acting as a fetter on this, the government-as-employer remained opposed to unionization. Persistent, too, were the class-

⁵⁵ *The Collective Bargaining Act*, SO 1943, c. 4.

⁵⁶ *The Labour Relations Board Act, 1944*, SO 1944, c. 29.

⁵⁷ Arthurs, “Collective Bargaining in the Public Service of Canada”: 972.

⁵⁸ “Civic Bodies are Certified,” *The Globe and Mail*, 8 December 1943. (The municipal workers' organizations had been formed decades earlier.)

informed reservations many public servants felt about unionization. Exploring how and why these obstacles fell away, we will find evidence that the “quest for collective bargaining rights” in the public service “has usually taken on intensive proportions only when the results of existing machinery of employer-employee consultation have, in the eyes of the associations, proved disappointing.”⁵⁹

Developments in the early 1960s, in Ontario and elsewhere

The push for collective bargaining rights in the civil service picked up pace across Canada in the 1960s. Though Saskatchewan had granted its public service the right to bargain and strike in 1944, there is scant evidence that this inspired public servants in other Canadian jurisdictions to pursue similar rights. As the 1960s began, the mood among public servants had altered. As Desmond Morton recounted, “civil servants traditionally traded low pay for job security, pensions, and—in the public mind—easy workloads. By the 1960s, those advantages were gone.”⁶⁰ Public servants watched those outside government make wage gains and win job security and pension benefits like those in the public service. While workers in the broader economy were making these gains largely by way of labour unions and collective bargaining, public servants (outside of Saskatchewan at least) had to make do with a consultation process that was simply not replicating results in sectors with collective bargaining. At the federal level, for example, the Whitley council (known as the National Joint Council)

⁵⁹ Scharrow, “Employer-Employee Relationships,” 71.

⁶⁰ Desmond Morton, “The History of Canadian Labour,” in *Union-Management Relations in Canada*, eds. John C. Anderson and Morley Gunderson, (Don Mills: Addison-Wesley, 1982), 109.

operated much like Ontario's JAC. Most important, its scope was circumscribed (for example, wages were off the table) and the employer tended not to act on its recommendations. This inaction went beyond the council. Consider an event that Ted Hodgetts *et al.* saw as having "critical importance" in the development of labour relations in the federal service—a pay dispute in the late 1950s.⁶¹

To understand the pay dispute, it is necessary to first set out the government's compensation philosophy at the time, which was to offer public servants salaries "at the level provided by good outside employers for comparable work."⁶² Thus the government sought to attract quality staff while simultaneously being fair to taxpayers by comparing the wages they offered to those offered by similar positions in the private sector.⁶³ The best way to determine the ideal level of wages was through robust research. Accordingly, in 1957, the Pay Research Bureau was established as part of the FCSC.

In this same period, the federal Liberal government had become enamoured with the FCSC's potential to be reformulated as a truly independent agency. In this vision, the FCSC would stand as the final arbitrator of disagreements between staff associations and the Treasury Board regarding the terms and conditions of work. Arnold Heeney was chosen by the government to work on implementing this plan. "An outstanding and widely respected civil servant," Heeney had an illustrious career in public service, including stints as

⁶¹ Hodgetts, *et al.*, *Biography of an Institution*, 259.

⁶² Heeney, "Civil Service Reform, 1958," 8.

⁶³ See John Diefenbaker quoted in Hodgetts, *et al.* *Biography of an Institution*, 259ff.

Prime Minister King's Principal Secretary and Ambassador to the United States.⁶⁴ He became head of the FCSC in March 1957. In June of that year, the Conservative Diefenbaker took power with a minority government. In September, the Pay Research Bureau was established.

A little less than a year later, in August 1958, the Bureau's data was used to inform an FCSC report to the Minister of Finance. The report recommended no wage increases for federal public servants. The government concurred, but the staff associations had not been consulted. As Frankel recounted,

the Minister was particularly anxious to connect the report of the Commission with the work of the Bureau. He thus intended to justify what was in fact a unilateral policy on the grounds that it was based on the supposedly objective and unequivocal facts collected by the Bureau.⁶⁵

In 1959, the data led the Bureau and the FCSC to recommend pay increases. However, the government sat on the report for three months before rejecting the advice offered.⁶⁶ This lack of action became one of the catalysts for public servants to push for change. As Ponak put it, "once disenchantment with consultation set in, events followed swiftly."⁶⁷ Indeed, through the 1950s "the growing militancy of the associations was forcing the government to reconsider its position" on negotiating procedures.⁶⁸ Frankel detected "a new, albeit very slight, flexibility" creep into the government's position in 1956, when Prime

⁶⁴ Arthurs, "Collective Bargaining in the Public Service of Canada": 976.

⁶⁵ Frankel, *Staff Relations*. 141-2.

⁶⁶ Hodgetts, *et al. Biography of an Institution*, 264.

⁶⁷ Ponak, "Public Sector Collective Bargaining," 348ff.

⁶⁸ Hodgetts, *et al. Biography of an Institution*, 240ff.

Minister St. Laurent indicated that the government was considering alternative approaches to labour relations.⁶⁹ That same year, the Civil Service Federation convention passed a resolution calling for bargaining leading to arbitration in the event of an impasse.⁷⁰ Over this period, the Liberal government considered placing a fully independent FCSC in the role of arbitrator, though the nascent effort was abandoned when the Diefenbaker government came to power.⁷¹

Moving into the 1960s, the broad feeling of disenchantment grew. This was informed, in part, by the example of Saskatchewan. As Arthurs put it, Saskatchewan stood as a “pioneering experiment in public sector unionism” that “helped to eclipse once and for all” the doctrine of parliamentary sovereignty as a fetter on unionization.⁷² For his part, Frankel argued that, for both the staff side and the government, the Saskatchewan “experience has, on the whole, been a satisfactory one.”⁷³ By 1967, Jacob Finkelman was referring to the notion of parliamentary sovereignty as “anaesthetizing intelligent examination of the relations between employers and employees.” Finkelman continued:

Ideological concepts such as sovereignty are often no more than political myths functioning to preserve the existing social structure. Even looking at the matter from a theoretical or philosophical point of view, there is no greater surrender of sovereignty in a legislature delegating to an arbitration tribunal authority to make a declaration in (public service labour relations) than there in the enactment of a statute which provides that the courts shall have the power to adjudicate certain types of disputes between the

⁶⁹ Frankel, *Staff Relations*, 123.

⁷⁰ *Ibid.*, 125.

⁷¹ Hodgetts, *et al. Biography of an Institution*, 245ff.

⁷² Arthurs, “Collective Bargaining in the Public Service”: 972.

⁷³ Saul J. Frankel, “Civil Service Staff Relations in Saskatchewan,” *Canadian Public Administration* 3, no. 3 (September 1960): 215.

state and a private citizen and award damages to the latter which the state is required to pay.⁷⁴

Importantly, Saskatchewan's two decades of free collective bargaining in the public service showed that it had not diminished the legislature's ability to control the public purse. According to Frankel, "When asked if he considered that collective bargaining in itself had increased the cost of administration a (Saskatchewan) government spokesman answered with an unequivocal 'no.'"⁷⁵ With this, one of the key arguments used by opponents to block unionization in the public service was gravely undercut. A newspaper editorial from the time evokes this mood. Noting that the report of the Glassco Commission (which had studied the organization of the federal civil service) had "sidestepped" the issue of collective bargaining, the editorial argued that

One of the chief irritants chafing civil service morale is the government's refusal to concede collective bargaining rights. Public employees do not want, nor have they asked for, the right to strike but they do feel entitled to the use of bargaining tools accorded other workers by law, the right to sit down with management at a table and engage in the normal give and take of collective bargaining. ... There is no logical or just reason why Canada should be chary about granting these rights. Other charter members of the Commonwealth have long since recognized them. British civil servants have been bargaining with the Queen for almost 40 years, Australians for 42, New Zealand government employees have had bargaining rights since 1948.⁷⁶

The Demise of Ontario's Joint Advisory Council

Ontario's JAC system fundamentally broke down in the early 1960s, with the catalyst being the hair dye incident at the Don Jail recounted at the beginning

⁷⁴ Jacob Finkelman, "When Bargaining Fails," in *Collective Bargaining in the Public Service: Theory and Practice*, ed. Kenneth O. Warner, (Chicago: Public Personnel Association, 1967), 120.

⁷⁵ Frankel, "Civil Service Staff Relations in Saskatchewan": 215.

⁷⁶ "The Right To Bargain," *Toronto Daily Star*, 7 September 1962.

of this dissertation. In that incident, Brendan Keatinge, a guard whose hair had turned prematurely white due to a shock, chose to dye his hair black.⁷⁷ Both Keatinge's co-workers and inmates volubly mocked him for his supposed vanity. Keatinge was consequently suspended for 10 days for creating disorder. The media was informed of the suspension and the alleged whistleblower (Anthony Simonson, who happened to be the same person who had originally suggested to Keatinge a trip to the hair salon) was fired for violating his civil service oath of secrecy. Subsequently, the CSAO local president was fired for refusing to answer questions about the leak.⁷⁸

The guards were fired after a "trial" held under *The Penal and Reform Institutions Inspection Act*, which allowed the Minister of Reform Institutions to authorize an inspector to "institute an inquiry into the management or affairs of a penal and reform institution, or into any matter in connection therewith." In such an inquiry, the inspector was empowered to compel witnesses to give evidence.⁷⁹ Kenneth Bryden (a Co-operative Commonwealth Federation and then NDP MPP) described the way the process unfolded in this case, arguing that the *Penal and Reform Institutions Inspection Act* had been

abused to permit the constitution of a kangaroo court before which three men were hauled without any charges being laid against them, were tried by

⁷⁷ "White-Haired Jail Guard Told To Remove Dark Dye," *Toronto Daily Star*, 15 December 1961.

⁷⁸ As mentioned above, it has also been alleged that CUPE's Grace Hartman was the person who informed the press of the incident. However, at the time, Simonson was understood to be the culprit. As Irwin Haskett, the then-Minister of Reform Institutions said: "It was established by the investigation that Mr. A. B. Simonson was the officer responsible for giving out information regarding the incident and by so doing created unwarranted criticism, which further disrupted the discipline in the jail among staff and inmates." Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 3rd Sess, No 47 (23 March 1962) at 1465.

⁷⁹ *Penal and Reform Institutions Inspection Act*, RSO 1960, c. 291, s. 3.

the so-called investigator who was both prosecutor and the judge, were not only not permitted to have counsel but were not even permitted to put up a defence. They were found guilty under these unusual circumstances.⁸⁰

Owing to the peculiar mechanism used to terminate the three, the specifics of a potential appeal were a significant matter. The men were granted the option of requesting an appeal to the Minister. As the officers' termination letters made clear, the guards had "the right to appeal to the Minister who can establish an impartial tribunal to hear an appeal."⁸¹ This was very much a mere request, however, as the Minister was under no obligation to hear the appeal. The CSAO refused to utilize this avenue of appeal, instead demanding either reinstatement or giving the jail guards access to the grievance procedure which was available to other public servants.⁸²

Indeed, a grievance procedure was available under *PSA* at the time. Legislating that Cabinet "may" prescribe a grievance procedure for public servants, the Public Service Grievance Board had been established.⁸³ While that Board certainly had its weaknesses (for example, the three members were all

⁸⁰ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 3rd Sess, No 43 (20 March 1962) at 1364.

⁸¹ *Ibid.*

⁸² Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 3rd Sess, No 47 (23 March 1962) at 1471. (Kenneth Bryden: "The Civil Service Association advised these men that, since they had no guarantee (a) that they would even get an impartial tribunal; and (b) that if they did get it no assurance as to the manner in which his procedures would be conducted, they should ask for the recognized procedure that was applicable to all civil servants.")

⁸³ *Public Service Act*, RSO 1960, c. 331, s. 10(1). ("The Lieutenant Governor in Council may make regulations ... prescribing procedures to be followed for hearing and dealing with grievances of such classes of persons in the public service as are designated, (i) providing for the establishment of a grievance board to hear and deal with such grievances as are prescribed, and (ii) prescribing the powers of the board including the power to call, swear and compel the attendance of witnesses."); Ontario, Regulation 527, RRO 1960, s. 2.

appointed by Cabinet), a procedure was at least set out. Under this process, a public servant could be represented by a representative from an “employee association.”⁸⁴ Thus, a public servant appealing a supervisor’s decision could appeal, first, to their Deputy Minister. If dissatisfied with the Deputy’s decision, an appeal could be made to Board, with that decision being final.⁸⁵ To the opposition parties’ disbelief, this process was not available to the jail guards.⁸⁶ Irwin Haskett, Minister of Reform Institutions, explained that the grievance procedure was not available to jail guards because the jails were “under divided authority.” To explain, Ontario jails were

owned by the municipality, be it a city or a county. Metropolitan Toronto Jail belongs to Metropolitan Toronto and Metropolitan Toronto pays the bill. It has been, and for reasons probably well known to him, that through the years the appointments were made to the staff by the province. The Act was permissive; it provided that the Lieutenant-Governor in Council may appoint the staff and may set the rates of pay. ... (F)ollowing the establishment of the civil service grievance committee some of these employees of the municipal jail began going to the grievance board and awards being made by the grievance board were against the municipality.⁸⁷

The government considered this unfair. Alas, jail guards were excluded from the grievance process. Noting that the entire “situation of divided authority” was

⁸⁴ Ontario, Regulation 527, RRO 1960, s. 1. (“‘employee association’ means a duly constituted association of public servants which has for one of its purposes the representation of public servants in matters relating to employment and to which the majority of the public servants belong.”)

⁸⁵ Ontario, Regulation 527, RRO 1960, ss. 2-11.

⁸⁶ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 3rd Sess, No 47 (23 March 1962) at 1467. (Liberal member Vernon Singer: “The time has come for the hon. Minister to explain: why is this group singled out and given different types of treatment? Why are they being unfairly dealt with? These are the explanations that the people of the province of Ontario are entitled to and these are the things the hon. Minister should tell us.”)

⁸⁷ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 3rd Sess, No 47 (23 March 1962) at 1467-8.

problematic, Haskett announced a Bill would soon be coming forward to resolve the matter. The amendment Haskett was alluding to—which went on to cause a new round of labour unrest—will be discussed in detail in the next chapter.

Ultimately, the government held firm in its position on the jail guards. In response, the CSAO ceased attending the JAC and refused to meet again unless some version of collective bargaining was in place.⁸⁸ Thus, the dye incident expanded into something of a labour relations crisis for the government. Underlining the extent of the problem, the debate on the Estimates for the Department of Reform Institutions became a venue for the opposition to pillory the government over the incident.⁸⁹

The Rise of the Ontario Joint Council

The furor over the dye incident peaked in the legislature in March 1962, and an amended *Public Service Act* was passed in April. No debate of the Bill was memorialized in *Hansard*.⁹⁰ The new Act continued the practice of the legislation being light on specifics. Numerous matters—including salaries, employee benefits, hours of work, and the constitution of the JAC—were left to the

⁸⁸ Roberts, *Don't Call Me Servant*, 74. In a slight departure from Roberts' account, the JAC's minutes indicate that while there was no meeting held in April, the JAC met in both May and June. In July, only the employer-side members attended, with the minutes indicating that quorum was not achieved.

⁸⁹ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 3rd Sess, No 43 (20 March 1962) at 1364-73 and Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 3rd Sess, No 47 (23 March 1962) at 1463-74.

⁹⁰ Ontario, Bill 155, *The Public Service Act, 1961-62*, 3rd Sess, 26th Leg. For the lack of debate, see: Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 3rd Sess, No 66 (1 April 1962) at 2245 (Second reading); Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 3rd Sess, No 70 (16 April 1962) at 2398 (In committee); Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 3rd Sess, No 73 (17 April 1962) at 2498 (Third reading).

executive to spell out in regulations rather than being set by the legislature.⁹¹ The CSC's duties were defined in the legislation, including being charged with classifying positions and recommending salary levels to the Lieutenant Governor in Council.⁹²

Subsequent amendments to the Act came in April 1963. These included several important developments, such as the first-ever definition of a “crown employee,”⁹³ the relaxation of the “outright prohibitions against political activity contained in the Garrow resolution,”⁹⁴ and the establishment of the Ontario Joint Council (OJC) to take the place of the JAC. As the province's then-Treasurer James Allan explained, the amendments to the PSA were meant to underline the government's

belief that employees of the government have the right, and indeed the duty, to play a full part in our political and democratic institutions and that they enjoy the right to form an association and to negotiate on matters concerning their terms of employment.⁹⁵

Allan explained the need for changes to public servants' political rights by noting the growth of what he termed “positive government” and the need to encourage public servants to take an interest in political institutions.⁹⁶

⁹¹ *The Public Service Act, 1961-62*, SO 1961, c. 121, s. 20(1).

⁹² *Ibid.*, s. 4(a) and 4(b).

⁹³ *An Act to amend The Public Service Act, 1961-62*, SO 1962-63, c. 118, s.1. (“Crown employee” means a person employed in the service of the Crown or any agency of the Crown, but does not include an employee of The Hydro-Electric Power Commission of Ontario, the Workmen's Compensation Board, or the Ontario Northland Transportation Commission.”) (PSA 1963)

⁹⁴ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 4th Sess, No 28 (14 February 1963) at 715 (Hon. J. N. Allan, Treasurer).

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*, 717.

The newly formed OJC differed from the JAC in several ways. First, much of the OJC's constitution was defined in the legislation as opposed to being left to regulation. The OJC was created with eight members, four representing the employer and four the association, along with a non-voting chair.⁹⁷ Every decision was to be sent "to the appropriate authority to be implemented."⁹⁸ In the event of a tied vote, the matter would be referred to the civil service arbitration board for a hearing, with the decision then transmitted to the appropriate authority.⁹⁹

Debating the amendments, the opposition noted that, while the government had long paid lip service to the principles of the Whitley system, such a system had never been fully implemented in Ontario. This despite the opposition having "requested for a long time ... definite, unequivocal collective bargaining for the civil servants, and a provision for arbitration to settle disputes."¹⁰⁰ Demonstrating the constraints on bargaining that were still widely accepted at the time, the Liberal leader John Wintermeyer intoned that "we all recognize ... that there must be a certain limitation to collective bargaining as we normally think of it, particularly in respect to strikes and permission to strike."¹⁰¹

⁹⁷ PSA 1963, s.6 (19a(1)).

⁹⁸ Ibid., s. 6 (19a(8)).

⁹⁹ Ibid., s. 6 (19b(2)(3)).

¹⁰⁰ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 4th Sess, No 48 (7 March 1963) at 1510 (J. J. Wintermeyer).

¹⁰¹ Ibid.

Wintermeyer need not have been too concerned. Regarding the scope of the OJC, the amended *PSA* declared:

19a (4) The chairman of the Joint Council shall, ... (c) put on the agenda at the request of a member any matter concerning the terms of employment of public servants, including working conditions, remuneration, leaves and hours of work, that is not excluded by the regulations.¹⁰²

With this, the executive was given the ultimate authority to circumscribe the matters of reference for the OJC. To make the point yet clearer, the CSC (so long as the executive agreed) was also so empowered:

29(1) The Commission, subject to the approval of the Lieutenant Governor in Council, may make regulations, ... (r) prescribing the duties and procedures of the Joint Council and the Civil Service Arbitration Board and excluding matters from the agenda of the Joint Council.¹⁰³

Despite these clear limitations, we must note the advances seen in the early 1960s, particularly the arrival of arbitration. Although it was possible for the OJC's terms of reference to be limited by executive order, the amended Act contained clear language facilitating arbitrated outcomes. The Act stated:

Where a majority of the OJC is unable to agree on any matter, the chairman shall refer the matter to the Civil Service Arbitration Board who shall, after a hearing, decide the matter. ... (3) Every decision of the Civil Service Arbitration Board shall (be transmitted) to the appropriate authority to be implemented.

Though an advance, significant limitations remained. Most obviously, the JAC had already been able to transmit decisions to the appropriate authority (read: the executive) for implementation. The difficulty, as extensively recounted above,

¹⁰² *PSA* 1963 s. 6(19a(4)). (Emphasis added.)

¹⁰³ *PSA* 1963 s. 6(29(1)). (Emphasis added.)

was that these decisions were not implemented in a timely manner. There was nothing in the new Act that spoke to this fact by mandating action.

The OJC had a convivial first meeting on July 24, 1963.¹⁰⁴ To mark the importance of the day, both Premier John Robarts and Treasurer James Allan attended, with the Premier chairing at the meeting's outset. In his opening remarks, the minutes recount Robarts commenting

that the Joint Council, established by law to bring about collective negotiation and arbitration of disputes, was the most advanced legislation of this type on the continent. It was his hope that arbitration would never be necessary. He remarked that in bringing about a closer relationship of employer and employee there should result a continuing improvement in the administration of affairs of the Government and better service to the people. ... He pointed out that the operation of the Ontario Joint Council will be watched with great interest by other jurisdictions, and may establish a model for employer-employee relationships in government.¹⁰⁵

The CSAO largely echoed the Premier, with the Association's President H. J. Mace expressing

the appreciation of the members of the Association for the establishment of this form of negotiation. He assured the Prime Minister that the Association representatives were aware of their responsibility and that their participation will be directed to the further improvement of the employer-employee relationship, recognizing the interest of the province.¹⁰⁶

The high hopes of that first day fast evaporated. At fault were the powers that the executive had retained for itself—particularly the option to limit the scope of the OJC via regulation. A CSAO brief described this option as

¹⁰⁴ "Handshakes All Around: Civility is Keynote In Civil Service Talks," *Globe and Mail*, 25 July 1963.

¹⁰⁵ Ontario Joint Council, Minutes, Meeting of 24 July 1963, 5. (Ontario Archives, RG-59)

¹⁰⁶ Ibid., 6. (After his presidency at the CSAO ended, Mace retired and began a new career as the OPS's first-ever employee relations officer. See: Harold James Suter Mace, 1960, Bill Stannett. Whitby Archives 31-009-584 <<https://vitacollections.ca/whitbynews/2443152/data>>.)

empowering the employer “to remove, by regulation, any item from the bargaining ‘agenda,’ and of course it used its power to keep control of what it deemed to be ‘management’s rights.’”¹⁰⁷

Thus, mere months after that first OJC meeting, in April 1964, the CSAO delivered a brief to the Premier decrying the lack of meaningful negotiation at the Council. The CSAO charged not only that the government had failed to negotiate in good faith since “the negotiation procedure restrictions applied only to the Association and to the items presented by the Association.”¹⁰⁸ As there was no collective agreement covering OPS staff, the terms and conditions of employment were contained within the *PSA* and its regulations. Cabinet regularly, and without negotiation, issued regulatory changes that, the CSAO argued, impacted class specifications, pay rates, conditions of work, and the scope of the OJC.

Specifically, the CSAO pointed to the “arbitrary exclusion ... of the Ontario Provincial Police.” On this matter, “the Association was allowed no say ... even though a significant number of police officers are members of the association.” That the government did this unilaterally surprised the CSAO as, though the law contemplated such an exclusion, “the Association had held the opinion that the Government would not use that device to arbitrarily remove groups from the

¹⁰⁷ CSAO, *Full and Free Collective Bargaining for Crown Employees: A Brief to the Ontario Government Presented by the Civil Service Association of Ontario*, May 1974: 7.

¹⁰⁸ CSAO, “A Submission RE Employer-Employee Relations in the Ontario Public Service,” April 21, 1964: 5.

bargaining provision.”¹⁰⁹ The regulation removing Ontario Provincial Police uniformed staff from the OJC was made in May 1963.¹¹⁰ A year later, a regulation established the Ontario Provincial Police Negotiating Committee.¹¹¹

In response, the CSAO attempted to move a motion at the OJC demanding that “no Regulations or Amendments to regulations governing the general employment conditions of Ontario Public Servants shall be issued without prior negotiation.” The employer side of the Council “refused to accept the item on the grounds that ‘we cannot tell the Government what to do or what not to do.’” For the CSAO, this refusal of their motion was evidence that the OJC was not a serious forum: “such an attitude completely negates the principles of negotiation and arouses suspicion against the employer.”¹¹²

Through the 1960s, regulations continued to alter OPS working conditions. Though, from the regulation alone, it is impossible to determine its provenance—whether the change came about via negotiation or via government fiat, the product is the same. However, from the CSAO brief, several regulations came about by fiat. For example, the CSAO pointed to parental leave and an incident in which an employee “filed a grievance when denied a second maternity leave.” The employee won the grievance. The government responded by amending the

¹⁰⁹ Ibid.

¹¹⁰ Ontario Regulation 177/63.

¹¹¹ Ontario Regulation 124/64. (The Committee was composed of 6 members appointed by Cabinet, with three members appointed on the advice of the Ontario Provincial Police Association.)

¹¹² CSAO, “A Submission RE Employer-Employee Relations in the Ontario Public Service,” 6-7.

relevant regulation in its favour.¹¹³ The CSAO summed up the matter by stating that “it is sufficient to say here that losing a grievance in any other jurisdiction would not give management the right to change the rules of the game unless and until the change had been bargained for.”¹¹⁴

In 1965, a regulation excluded from the agenda of the OJC “any matter affecting civil servants” working in classifications in which “at least 50 per cent of the civil servants in the classification are required to” perform one of two broad types of duties. The first of these types is management of other staff. The second was broader and encompassed “advising on the requirements of departmental or government programmes in respect of (a) departmental policy; (b) budget requirements; (c) assignment of employees or groups of employees; or (d) work methods.”¹¹⁵

The first exclusion revolved around classes of jobs whereas the second exclusion was defined on basis of individual positions and excluded employees who were “required to perform duties that require the use of confidential information relating to employee relations.”¹¹⁶ Notably, these exclusions—management and work confidential to labour relations—are broadly like those in private sector labour relations. Recall that a key problem for the CSAO was solidarity across the organization. The removal of management-type positions

¹¹³ Ontario Regulation 323/63.

¹¹⁴ CSAO, “A Submission RE Employer-Employee Relations in the Ontario Public Service,”: 9.

¹¹⁵ Ontario Regulation 239/65, ss. 1(1) and 1(2).

¹¹⁶ Ibid. s. 1(3).

from the agenda of the OJC had the potential to enhance the CSAO's internal solidarity by removing the need to negotiate for "management" positions.

The Federal Public Service and the Heeney Committee Report

While Ontario was developing its joint council, at the federal level staff organizations were already pursuing collective bargaining. For example, during the 1963 federal election, federal public service staff organizations asked the party leaders if they were willing to endorse a system of collective bargaining in the public service. The party leaders all answered in the affirmative.¹¹⁷ After winning the election, the Lester Pearson-led Liberal government brought Heeney back to head the Preparatory Committee on Collective Bargaining in the Public Service (the Heeney Committee).¹¹⁸ In its report, the Committee outlined five "basic characteristics" which ought to be featured in a public service collective bargaining regime: (1) permit regular discussion of rates of pay and conditions of employment; (2) make arbitration available, at the request of either party, should negotiations break down; (3) promote the "prompt implementation and effective administration" of agreements; (4) be adaptable to changes to the character of the

¹¹⁷ Desmond Morton, *Working People: An Illustrated History of the Canadian Labour Movement*, 5th ed., (Montreal & Kingston: McGill-Queen's University Press, 2007), 258; Hodgetts, *Canadian Public Service*, 334.

¹¹⁸ An interesting side note from the Heeney Committee comes from Jacob Finkelman who consulted with the Committee whilst he was serving as Chair of the Ontario Labour Relations Board. Of this appointment Finkelman recounted that "the Ontario government felt it would be advisable for me to accept the invitation (to consult) because it might provide the Ontario government with some insight into the problems to be met if Ontario decided to introduce legislation of a similar character" to the federal public service labour relations statute. (Jacob Finkelman, "Public Sector Collective Bargaining," *Industrial Relations / Relations industrielles* 41, no. 4 (1986): 691.

public service; and, (5) adhere, as closely as possible, to the existing processes governing relations between employers and employees.¹¹⁹

Speaking specifically to the fifth characteristic, the Heeney Committee called for collective bargaining in the public service “to be rooted in the principles and practices governing employer-employee relations in the Canadian community at large.” The Committee took this position aware of the “widely recognized if ill-defined” uniqueness of the public sector. Nevertheless, the Committee recognized

that the Public Service cannot be insulated from the economic and social environment in which it operates, and that the aspirations and expectations of its employees, and of the organizations that serve their interests, are bound to be affected and, to some extent at least, moulded by the conditions and practices prevailing outside the Public Service.¹²⁰

This passage marked a sea change in attitudes about public servants and collective bargaining.

Yet, the operative phrase in the quote above is “to some extent at least”—Heeney did not recommend a replication of the private sector strike/lockout model. Instead, the Heeney Committee recommended collective bargaining that led, in the event of an impasse, to arbitration.¹²¹ Even these arbitral awards were not to be absolute in Heeney’s estimation:

The Preparatory Committee recommends that collective agreements and arbitral awards be binding on the employee organizations concerned, on the employees they represent, and, in normal circumstances, on the employer—subject always to the availability of funds provided by Parliament. Where the national interest is at stake, however, the Governor in Council should

¹¹⁹ *Preparatory Committee on Collective Bargaining in the Public Service*, 24.

¹²⁰ *Ibid.*, 25.

¹²¹ *Ibid.*, 35ff.

have the power to amend or set aside an arbitral award but should be required, whenever the power is used, to table the relevant Order in Council in Parliament and provide Parliament with an opportunity to debate the issues involved.¹²²

The Heeney Committee's vision of collective bargaining was, just as Macgregor Dawson remarked about the civil service entry exams of the nineteenth century, "but a garment of gauze." What to make of a process of negotiation in which the employer could, after an arbitration, simply choose to set the award aside? Indeed, the Civil Service Association of Canada was clear that this idea was unacceptable to them.¹²³

Conclusion

This chapter has covered the decline of the association-consultation model of labour relations in the public service. It has been argued that this decline was driven by growing worker and association dissatisfaction with the system. Essentially, the normal functioning of the association-consultation model highlighted the fundamental primacy of the government/employer. As examples of this, consider delayed action by the employer (most importantly in terms of awarding salary increases) along with various examples of employer mischief, such as in the kangaroo court firings around the hair dye incident, or the Ontario government working around the OCJ almost instantly after it was formed.

Contradictions also played a role in bringing about change, such as the presentation of the public service as an outlier in labour relations. Not only was

¹²² Ibid., 37.

¹²³ "Committee Proposes Collective Bargaining for Civil Servants," *Globe and Mail*, 9 July 1965, 3.

the private sector under a completely different set of rules, but these rules also applied to large parts of the public sector, such as municipalities. Related to this is the doctrine of parliamentary sovereignty, which served as the rationale for treating the public service differently than other areas of the economy. The contradiction here was laid bare by the simple fact that Saskatchewan suffered no ill effects from bringing its public service under the same labour legislation as all other workplaces.

Ultimately, the ingredients that led to the decline of the association-consultation model sowed the seeds for militancy in the public service in coming years. The next chapter will discuss the rise in militancy through the 1960s, a decade which saw the start of public service wildcat strikes. Specific to Ontario, we will discuss a wildcat strike at the Don Jail and the government's response, situating these events in the province's broader efforts to grapple with a rapidly altering labour relations system.

Chapter 6: Worker Militancy and Government Control: 1966-1970

We're still dealing with both an employer and a government.

- Harold Bowen¹

Introduction

This chapter covers a period of labour unrest in Ontario and analyzes how the provincial government responded to that unrest with inquiries into labour relations in both the public and private sectors. The chapter will recount the broader context of labour relations as well as the contents of the advisory reports commissioned by the government. Ultimately, we will find that the government used the report into public service labour relations as the basis for its first attempt to create specific collective bargaining legislation for the public service. It will be argued that, with this proposed legislation, the government was attempting to maintain its position of dominance as the employer, while simultaneously endeavouring to keep militancy out of the OPS by attempting to placate the CSAO. These countervailing efforts ended in failure, due to the government's conservatism. Simply, the government was unwilling to go far enough to placate the CSAO while also going too far in attempting to maintain its dominance.

¹ "CSAO general manager unhappy with new bill," *Globe and Mail*, 3 November 1970.

Injunctions, Unrest, and Commissions

Waves of labour unrest buffeted Canada in the mid-1960s, as the country experienced “one of the heaviest periods of strike activity in its history.”² The 274 strikes that occurred in 1960 had increased by 125 per cent to 617 strikes in 1966. Between 1960 and 1965, each year averaged 1,381,607 annual days of missed work. In 1966, 5,179,993 days were lost—an increase of 275 per cent over the average of the preceding 5 years. These days lost in 1966 were the equivalent of 0.34 per cent of the nation’s working time, marking the highest Canadian figure since 1946.³ Measured globally, Canada’s days-lost-to-strikes in 1966 was second only to Italy.⁴ Moreover, at the beginning of the 1960s, strikes tended to be small and short; by 1966, they tended to be large and long. This change was owed to increasing tensions in labour relations. Explaining these rising tensions, Eric Tucker argued that both labour and management faced their own set of problems:

declining rates of growth, productivity, and profit led some employers to adopt a tougher attitude toward unions, while unions that had achieved a modicum of institutional security were facing stagnating membership growth and threats to existing standards.⁵

² H. D. Woods, “Federal Government Task Force on Labour Relations,” *Relations industrielles / Industrial Relations*, Vol. 22 No. 1 (1967): 130.

³ Stephanie Ross, et al., *Building a Better World: An Introduction to the Labour Movement in Canada*, 3rd ed, (Halifax and Winnipeg: Fernwood, 2015), 56-7.

⁴ William Kaplan, *Canadian Maverick: The Life and Times of Ivan C. Rand*, (Toronto: Published for the Osgoode Society for Canadian Legal History by University of Toronto Press, 2009), 378.

⁵ Eric Tucker, “*Hersees of Woodstock Ltd. v. Goldstein*: How a Small Town Case Made it Big,” in *Work on Trial: Canadian Labour Law Struggles*, ed. Judy Fudge and Eric Tucker, (Toronto: Irwin Law, 2010), 217.

With strikes increasing in both number and intensity, the courts stepped into the conflict. Writing in 1960, Harry Arthurs remarked that this was an “unenviable task,” as the courts had to work “within a legislative framework adopted in one era, on the basis of sentiments of a later day, and the common-law precedents of an earlier one.”⁶ Arthurs further said of labour unions that “the lusty and forgivable infant that was trade unionism fifteen years ago has developed in public, legislative, and judicial imagery, into a churlish adolescent.”⁷ While this quote captured the spirit of those who sought to make trade unions (in their view) a more responsible social actor, Tucker noted that the unions took a contrary position, pointing to hostile legislation and antagonistic employers as the root causes of surge in labour disruptions.⁸

As part of this surge in labour strife, there was an increase in secondary picketing which targeted not the struck employers but instead focused on related (though independent) actors, for example, retail stores that stocked the wares of struck manufacturers. Such a picket was at the heart of the prominent case known as *Hersees of Woodstock*. In this case, the Amalgamated Clothing Workers (ACW) had an ongoing labour dispute at a Belleville clothing manufacturer which arose from an inability to complete a first collective agreement. In the face of this, the ACW shifted tactics and attempted convince a retailer—Hersee’s Men’s Wear in Woodstock—to cease ordering from that manufacturer. The store refused. In

⁶ Harry Arthurs, “Tort Liability for Strikes in Canada: Some Problems of Judicial Workmanship,” *Canadian Bar Review*, 38, no. 3 (1960): 346.

⁷ Ibid.

⁸ Tucker, “*Hersees of Woodstock Ltd. v. Goldstein*,”: 218.

response, the ACW established a two-person picket, with the picketers “carrying placards advising shoppers that Deacon Brothers Sportswear, made by non-union labour, was being sold at Hersee’s.”⁹ The store’s effort to stop this secondary picket went to court.

In the Ontario Court of Appeal’s decision on the matter, Justice J. B. Aylesworth (a former management-side labour lawyer) “without any legal basis and contrary to established precedent ... declared all secondary picketing unlawful.”¹⁰ Wrote Aylesworth:

even assuming that the picketing carried on by the respondents was lawful in the sense that it was merely peaceful picketing for the purpose only of communicating information, I think it should be restrained. ... (T)he right, if there be such a right, of the respondents to engage in secondary picketing of appellant's premises must give way to appellant's right to trade; the former, assuming it to be a legal right, is exercised for the benefit of a particular class only while the latter is a right far more fundamental and of far greater importance.¹¹

Simply put, the decision in *Hersees of Woodstock* favoured the interests of management over those of labour. While it went further than other decisions, the outcome of the case was consistent with other court decisions of the era, which saw injunctions regularly weaponized by employers to limit the effectiveness of job action. At the time, injunctions against picketing were granted based on “information and belief,” meaning that employers were free to say whatever they wished in an application. Unions were not routinely informed that an injunction

⁹ Tucker, “*Hersees of Woodstock Ltd. v. Goldstein*,” 222. (Tucker covers the history of this dispute in comprehensive detail at pages 218-22.)

¹⁰ Kaplan, *Canadian Maverick*, 379.

¹¹ *Hersees of Woodstock Ltd. v. Goldstein et al.*, 1963 CanLII 151 (ON CA).

was being pursued, and applications often proceeded *ex parte* (meaning the court makes its decision without hearing from both parties to the case).¹²

That the *Judicature Act* even contemplated *ex parte* injunctions to curtail picketing served as an evocative demonstration of the government's employer-friendly approach to labour relations. Certainly, picket-restraining injunctions were also granted with the participation of unions. However, as Kaplan wrote, whether the union was a participant in the legal process, "in practice the judiciary could be counted on to grant injunctions with few or no questions asked." Injunctions to restrain pickets lasted for four days. While a short period, it was nevertheless "often sufficient to break a strike." If the injunction did not derail the strike and "more time was required, the judges were invariably accommodating."¹³ Thus, while the fact that injunctions could be granted *ex parte* was a concern, it was actually the granting of injunctions against pickets and the consequent hampering of the ability to strike successfully that were at issue for organized labour.

Two strikes in February 1966—one at the *Oshawa Times* and the other at Tilco Plastics—brought matters to a head and forced the government to address

¹² The use of *ex parte* injunctions in Ontario labour disputes was the express intent of the government. On February 24, 1960, immediately following first reading of Bill 74 which sought to amend the *Labour Relations Act*, a bill seeking to entrench *ex parte* injunctions in labour disputes had been introduced. The bill allowed *ex parte* injunctions "where the court is satisfied that a breach of the peace, injury to the person or damage to property has occurred or an interruption of an essential public service has occurred or is likely to occur." Ontario, Bill 75, *An Act to amend the Judicature Act*, 1st sess., 26th Leg., 1960, cl. 1(3). See Charles W. Smith, "The Politics of the Ontario Labour Relations Act: Business, Labour, and Government in the Consolidation of Post-War Industrial Relations, 1949-1961," *Labour / Le Travail* 62, Fall (2008): 139.

¹³ Kaplan, *Canadian Maverick*, 379-80.

the injunction issue. In Oshawa, the *Times* endeavoured to keep printing through the strike. In response, the Toronto Newspaper Guild appealed to United Autoworkers (UAW) members at the local General Motors facility to join their picket line. Many did, and the newspaper was shut down on days one and two of the strike, with the employer seeking an injunction that second day. Knowing the injunction would be granted, the union voluntarily agreed to terms limiting the number of pickets. However, rather than negotiate a resolution to the strike at the bargaining table, the newspaper pressed on seeking to win the dispute outright. In response—and contrary to the agreed limitations—the *Oshawa Times* again found itself surrounded by a thousand picketers. Something was going on in Oshawa, and Kaplan recounted that “there was no doubt that the dispute had increasingly less to do with wage rates and technological change at the *Times* and more to do with the use of injunctions in labour-management disputes.”¹⁴

At the *Times*, the injunction proved useless in the face of mass pickets. Oshawa’s police were of no help here, their sympathies lying with the union. At Queen’s Park, the government was inclined to ignore the matter: “If there had been suggestions that local police were not upholding the law, the Premier said, ‘they were not made to me.’”¹⁵ For his part, Attorney General Arthur Wishart merely pointed out that the injunction in Oshawa had not been granted *ex parte*.¹⁶ The newspaper sought enforcement of the injunction at court by seeking

¹⁴ Ibid., 383.

¹⁵ “No one has complained, Robarts says of strike,” *Globe and Mail*, 4 February 1966.

¹⁶ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 27th Leg, 4th Sess, No. 13 (9 February 1966), 337.

an order to arrest any picketer who did not disperse. In response, yet more picketers—including the leader of the provincial New Democrats, Donald C. MacDonald—joined the line.¹⁷ At the same time, the Ontario section of the Canadian Bar Association endorsed a resolution calling for the government to take all measures necessary to enforce the rule of law in Oshawa. Notably, Harry Arthurs successfully added an amendment to the motion which called on the provincial government to “set up a committee including representatives of management and labour to review the law on injunctions.”¹⁸ It was now that the government acted, with Premier Robarts arranging for mediation by Ontario’s chief conciliation officer. Within 28 hours, the strike ended with the Guild achieving significant gains. Buoyed by the victory, organized labour sought to eliminate picket-restricting injunctions, and with this, the next step in this process, labour’s attention turned to Peterborough.¹⁹

There, the Textile Workers of America (TWA) had been on strike against Tilco Plastics since December 1965. For five months, the union had been attempting to bargain a first contract with the intransigent employer. Once the strike began, Tilco immediately recruited a replacement workforce. An injunction against picketing was granted on the strike’s third day. Granted *ex parte*, the union had not been asked to appear at the injunction hearing, though the TWA nevertheless agreed to a permanent picket limit of four persons per gate

¹⁷ Kaplan, *Canadian Maverick*, 384.

¹⁸ “Lawyers urge province enforce law in Oshawa,” *Globe and Mail*, 7 February 1966.

¹⁹ Wilfred List, “Labor launches campaign against use of injunction,” *Globe and Mail* 12 February 1966.

“under threat of losing any right to picket the plant whatsoever.”²⁰ Within those constraints, the strike continued.

As soon as the strike at the *Oshawa Times* had ended, the Oshawa and District Labour Council offered the TWA the aid of its 25,000 members. On February 22, it was reported that picketers were going to defy the injunction. Attorney General Wishart rose in the Legislature to decry the planned mass picket:

that there may be no misunderstanding on the part of any man as to our position in this matter, we have met with a responsible leader of labour and have indicated our express intention that any violations of the law arising from disobedience to the laws of this country, or the orders of our courts, will be prosecuted in the manner that our community demands.²¹

Undaunted, hundreds of picketers appeared at Tilco the next day.²² As a result, more than two dozen picketers were charged with criminal contempt of court proceedings. Numerous of the accused were sentenced to jail time, with five receiving two months each. Organized labour was enraged. Kaplan summed up the situation: “Peaceful picketers were going to jail, while managers at Tilco Plastics, who broke the law by bargaining in bad faith, went free.”²³ Labour announced its intent to engage in protests, with George Burt of the UAW stating that “if this government thinks jail terms are the way to enforce injunctions, it

²⁰ Textile Workers Union of America, “Submission of the Textile Workers Union of America CLC, AFL-CIO to the Royal Commission Inquiry into Labour Disputes, Commissioner Honourable Ivan C. Rand,” 7 (University of Toronto Centre for Industrial Relations Library Archive).

²¹ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 27th Leg, 4th Sess, No. 26 (22 February 1966), 743.

²² Eddy Roworth, “Mass Pickets: Showdown Near,” *Toronto Daily Star*, 23 February 1966.

²³ Kaplan, *Canadian Maverick*, 388.

had better get a crash building program going on jails because it is going to run out of space.”²⁴

Once again, the government was forced to act. On July 8, 1966, Premier Robarts announced in the Legislature that the government intended to appoint a royal commission to investigate not only the role of injunctions in labour disputes, but also strikes, lockouts, and picketing more generally.²⁵ A mere six years since the *LRA* was amended and injunctions against picketing affirmed, the government signalled that it was time for change. Indeed, with labour disputes now a national problem, the federal government, having been “been caught up in a baffling and complex set of labour-management problems,” had announced its own Task Force on labour relations before the end of 1966.²⁶

Weeks after Robarts’ announcement, Justice Ivan Rand was appointed Chair of Ontario’s Royal Commission on Labour Disputes. In his 1968 report, Rand recommended a wholesale rethink of labour relations in Ontario, with an industrial tribunal essentially replacing the strike/lockout model of labour relations.²⁷ The report pleased neither side. CLC President Donald MacDonald called Rand’s recommendations a “complete travesty of democracy. Free working men might just as well be indentured slaves again.”²⁸ The Canadian

²⁴ “Shocked unions step up war on injunctions,” *Toronto Daily Star*, 28 June 1966.

²⁵ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 27th Leg, 4th Sess, No. 172 (8 July 1966), 5932.

²⁶ Woods, “Federal Government Task Force”: 131.

²⁷ Ontario, *Report of the Royal Commission Inquiry into Labour Disputes*, (Toronto: Queen’s Printer, August, 1968).

²⁸ “Labor leaders hostile to Rand’s proposals,” *Toronto Daily Star* 6 September 1968.

Manufacturers Association (CMA) likewise saw, for the private sector at least, little of worth in the report. Speaking to the proposed tribunal, the CMA opined that “such a commission’s purview should be limited, for the present at least, to the public sector and premised on legislative denial of the right to strike.”²⁹

The same urgency to quell worker militancy that had spurred the creation of the Royal Commission also informed Rand’s recommendations. At its root, the source of the militancy was simple: in the face of inflation, workers were demanding more money. Rand was quite aware that the heart of the matter was workers’ demands for more money. Indeed, Rand took care in his report to decry “this materialistic period” and its “asserted claims of men and women to a greater sharing of what the more successful of their fellows look upon as the prizes of life.”³⁰ Charitably put, Rand

was somewhat carried away by the violence in China, France and the United States, to which he referred in his recent report, when he was inquiring into disturbances flowing from mass picketing as practiced at two small Ontario plants.³¹

²⁹ “CMA opposes strike tribunal in brief to Ontario government,” *Globe and Mail*, 20 December 1968.

³⁰ Ontario, *Report of the Royal Commission Inquiry into Labour Disputes*, 17. (As a counterpoint to Rand’s concern about materialistic workers, it should be understood that at Tilco “for the employees, most of whom were girls, many in the 16-to-20-year age group, working conditions and wage rates were sub-standard. The starting rate at the plant was the statutory minimum of \$1.00 an hour rising eventually to \$1.12 and \$1.17.” TWA Submission to the Rand Commission, 5.)

³¹ H. Carl Goldenberg, “The Law and Labour Relations: A Reaction to the Rand Report,” *Relations industrielles/Industrial Relations* 24, no. 2 (1969): 311. Kaplan offered a less charitable assessment: “Rand claimed that there must be more regulations because history required it. In fact, he believed that increased regulation was necessary to counter the attack on the social fabric. Labour unions and mass picketing were a part of it, but so too were the advent of automation, the arrival of inflation, the bomb, the Black Panthers, the hippies, the yippies, the Summer of Love, social unrest in American ghettos, Martin Luther King and Bobby Seale and Jerry Rubin and Abby Hoffman, Weathermen blowing themselves and others up, rioting students and communists in France—the list of challenges to the ‘establishment’ occurring every day was what really motivated Rand.” Kaplan, *Canadian Maverick*, 411.

Workers' desire for more money was not limited to the private sector. As seen in the previous chapter, the Heeney Committee had been hesitant about granting public servants the right to strike. Despite the committee's hesitation, events soon overtook the recommendations. The Committee's report was issued on July 8, 1965. Not two weeks later, on July 21, postal workers in Hamilton, Vancouver, and Montreal went on a wildcat strike. Meanwhile in Quebec, a new labour code in 1963 excluded civil servants. As Morton recounted, the then-President of the Confederation of National Trade Unions

(Jean) Marchand exploded. The province, he warned, would be set on fire. The rival Quebec Federation of Labour called a special convention and talked of a general strike. Underpaid hospital workers staged illegal walkouts. In August, 1963, the once conservative teachers' federation insisted that any right of association would be meaningless without the right to strike. The Lesage government finally listened. In 1964, a revised code emerged, covering all workers, with the exception of police, firefighters and a few narrowly-defined categories of essential workers.³²

In the public sector, the strike was merely a new tactic in the decades-long struggle for higher wages. The new militancy in the public service was “surprising and disquieting to a citizenry habituated to docility in that quarter.”³³ Accordingly, the government was aware that changes had to be made—and that previously untenable notions, such as allowing public servants to strike, had to be considered. To deal with these concerns, the Robarts government appointed Judge Walter Little to offer advice on the way forward. We will turn to the Little

³² Morton, *Working People*, 260.

³³ Kaplan, *Canadian Maverick*, 378.

Report below, but first we will consider an example of public servant militancy in Ontario: a wildcat strike at the Don Jail.

The Don Jail Strike

In 1967 the Ontario Committee on Taxation issued a report with a series of recommendations on how to update the province's revenue system. One recommendation was a transfer from municipalities to the province:

All local responsibilities for the administration of justice related to the functioning of the county courts, the county jails, the regional detention centres, the registry offices and the land titles offices be transferred to the Province, and the local responsibility for all other courts be transferred to the Province.³⁴

The province followed this recommendation, an action which turned out to have significant ramifications for public service labour relations.

At the time the Committee on Taxation reported, corrections officers in Toronto's municipal jails were members of CUPE. Prior to being CUPE members, the officers had been members of the CSAO—this will be remembered from the Keatinge hair dye incident. Due largely to delays by the provincial government in awarding a compensation increase (the sort of delays detailed above around the collapse of the JAC), the corrections officers sought to organize a union with private sector-style collective bargaining rights. This was, of course, forbidden by provincial legislation. However, whether the officers at the Don Jail were provincial public servants was disputed. The guards were in the unique position of being paid by Metropolitan Toronto, but with terms and conditions of

³⁴ Ontario, *The Ontario Committee on Taxation Report*, vol. 2, *The Local Revenue System* (Toronto: Queen's Printer, 1967), 23.

employment set by the province.³⁵ The bouncing of these employees between the provincial and municipal level went back as far as 1942.³⁶ A newspaper account from 1960 noted that “no official body appears willing to claim responsibility for the operation of the Don Jail. ... Provincial and Metro authorities both point to the other when asked for pay raises.”³⁷

To unionize, the officers sought a ruling that the city was the employer, a finding that would allow them to join the National Union of Public Employees (NUPE), one of CUPE’s predecessor unions. The officers made this move with the backing of the CSAO—even though the CSAO would lose members if the officers were successful.³⁸ The CSAO later stated that they had “voluntarily surrendered jurisdiction” so as to adhere to “the principle that bargaining rights should be extended to the bargaining agent having the greatest support.”³⁹ This is likely a circuitous way of saying that the CSAO did not pursue representation of the guards because they knew they would lose any vote. Indeed, as recently as

³⁵ “Ontario Hires, Fires,” *Globe and Mail*, 11 August 1961. (“The Ontario Labour Relations Board will shortly have to decide who employs the staff of the Don Jail—Metropolitan Toronto, which pays the salaries, or the Department of Reform Institutions, which is responsible for hiring and firing.”)

³⁶ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 26th Leg, 3rd Sess, No 43 (20 March 1962), 1367. (Vernon Singer: “Disputes concerning municipal and county jails go back a great number of years. In 1942 the city of Toronto, on the advice of their solicitor, came to the conclusion that jail guards were not municipal employees but did not care to set out whose employees they were. This was despite the fact that they had been considered for many years previously as municipal employees.”)

³⁷ “Civil Servants Say Jail Pays Badly,” *Globe and Mail*, 14 October 1960.

³⁸ “Guards at Don Jail Bid for Union Status,” *Globe and Mail*, 3 February 1961.

³⁹ “Special Issue on the Judge Little Report,” *C.S.A.O. News*, Vol. 4 No. 4, June 1969 (University of Toronto Centre for Industrial Relations Library Archive).

January 1960, the CSAO clearly wanted to represent the jail staff, having taken the position that there was a

necessity for some central responsibility for County and City Jails. ... A curious feature of the present dual responsibility for County and City Jails is the insistence of the Department of Reforms on certain standards of qualification and performance while allowing the county authorities to set pay rates which in some areas do not attract or retain the people able to meet the standards.⁴⁰

Of course, such central control would have sealed the guards within the CSAO.

In any event, the guards' initial attempt at organizing with NUPE was rejected by the Labour Relations Board.⁴¹ However, the determinative facts changed with a 1962 legislative amendment to the *Municipal Act* that changed the employment relationship. Due to the amendment, NUPE won a Labour Board decision granting their certification at the jail.⁴² Once NUPE and the National Union of Public Service Employees merged in 1963 to form CUPE, jail staff became members of the new union. This lasted until the Committee on Taxation reported in 1967, and it was determined that a provincial takeover of Ontario's jails would save some \$7 million per year.⁴³

With the takeover, the guards at municipal and county jails became, once again, employees of the province. By legal necessity this mandated representation by the CSAO. This was not popular at the Don Jail. While the

⁴⁰ CSAO, *Memorandum to the Government of Ontario by the Board of Directors on behalf of the Civil Service Association of Ontario (Inc.)*, January 1960, 11. (AO RG 25 – Civil Service Commission – Joint Advisory Council – Box 5).

⁴¹ "Don Jail Guards Province's Men, Board Decides," *Toronto Daily Star*, 13 September 1961.

⁴² "Guards Ruled Metro Employees," *Toronto Daily Star*, 18 October 1962. (The amendment was *An Act to amend the Municipal Act*, S.O. 1961-62, c. 86. s. 40(1).)

⁴³ "Plan to run jails will save cities \$7,000,000—Grossman," *Toronto Daily Star*, 15 September 1967.

officers had no concerns over which level of government should control jails, at issue was workers' ability to choose their own union. Grace Hartman (then CUPE's secretary-treasurer) offered an analogy: "Just think what would happen if General Motors suddenly told its employees they could no longer be members of the United Auto Workers and offered them the GM Benevolent Society as the replacement."⁴⁴ Hartman's quote vividly evoked the difference between CUPE and an association that lacked significant bargaining rights, tying into CUPE's caricature of the CSAO as Premier "Robarts' company union."⁴⁵ Rhetoric aside, after joining CUPE, the guards had seen their salary and benefits increase by 25 per cent—"the biggest award ever handed down by a conciliation board in Ontario."⁴⁶ Simply by being folded into the existing CSAO work terms, the officers were poised to see certain terms of their work disappear or worsen, from "pay cuts, and loss of shift differentials, job security and right to strike to back wage demands."⁴⁷

With the transfer scheduled for January 1, 1968, the guards struck on December 30, 1967. Initially, the province attempted to wash its hands of the problem. Allan Grossman (the reform institutions minister) stated that the strike was the city's responsibility. Premier Robarts opined that the guards were not being forced to become civil servants, rather they merely had the "opportunity to

⁴⁴ David Allen, "Don Jail guards threaten mass resignations soon," *Toronto Daily Star*, 22 December 1967.

⁴⁵ Roberts, *Don't Call Me Servant*, 91.

⁴⁶ "Don Jail guards threaten strike action," *Toronto Daily Star*, 13 December 1967.

⁴⁷ "Court clerks back jail guards—2 fired," *Toronto Daily Star*, 2 January 1968.

join the Civil Service Association.” Though joining the CSAO was not a job requirement, and whether or not the guards seized the “opportunity” of membership, the CSAO was going to represent them at work. Donald Collins, chair of the CSC, stated that the dispute was “a jurisdictional battle between CUPE and the Civil Service Association.” Belying the last point, CUPE president Stan Little argued that if the matter was a mere jurisdictional dispute it could be cleared up with a simple vote.⁴⁸ For its part, a *Globe and Mail* editorial laid the blame for the dispute solely at the feet of the government: “this is an unnecessary strike, hastened by the Ontario Government’s high-handed attitude.”⁴⁹

Within days of the strike beginning, Premier Robarts met with CUPE leadership to end the strike.⁵⁰ The government offered a resolution that included no reduction in pay or working conditions, but made clear that the guards remaining with CUPE was not an option. The guards refused the offer. Notably, the government enjoyed support in the media for its position that all public servants should be represented by the CSAO: “If the government were to make an exception in the case of the guards, it would, as the premier says, threaten to fragment the service.”⁵¹

⁴⁸ Douglas Glynn, “Guards at jail walk out – police move in,” *Toronto Daily Star*, 30 December 1967. (Having not yet returned from its prorogation in advance of the October 1967 election, the Legislature was not in session at the time of the strike. As such the only record of the political debate around the strike is that recounted in media.)

⁴⁹ “Inviting a strike,” *Globe and Mail*, 1 January 1967.

⁵⁰ “Don guards call truce as Wishart steps in,” *Toronto Daily Star*, 3 January 1968.

⁵¹ “The guards should return to work,” *Toronto Daily Star*, 4 January 1968.

The situation worsened as numerous clerks working in the court system (workers who were also set to become provincial public servants) joined the strike.⁵² CUPE negotiated with the government over 10 days, and the guards returned to work on the morning of January 17. The deal saw the workers return to work and allowed CUPE to retain dues check-off for the balance of 1968, with all guards and clerks retaining their salary levels. The settlement left the matter of the ultimate jurisdiction of the Don Jail to outside advice. With this, the matter of the future of the Don Jail guards' representation was added to Judge Little's broader inquiry into collective bargaining. As John Caulfield, the president of the guards' CUPE local said, "we hung our hat on Judge Little's inquiry."⁵³

The Little Report

"People in a free society must not bargain with those who defy the law," Judge Walter Little intoned to the 55th Annual General Meeting of the Ontario Chamber of Commerce.⁵⁴ Little was speaking as one of the province's leading labour conciliators, a man who had been indispensable in resolving some of Ontario's most significant labour disputes.⁵⁵ A mere 60 days after his speech to the Chamber, Cabinet appointed Little the "Special Adviser to review and to report upon Collective Bargaining in the Public Service of Ontario."⁵⁶ As

⁵² "65 court clerks told 'Cross line—or else'," *Toronto Daily Star*, 5 January 1968.

⁵³ "Compromise ends strike Don guards back at work," *Toronto Daily Star*, 17 January 1968.

⁵⁴ James Simpson, "Judge Assails Wildcat Strike Weapon," *Globe and Mail*, 16 May 1967.

⁵⁵ Gordon McCafrey, "Walter Little — The man most often in the middle," *Toronto Daily Star*, 17 August 1966.

⁵⁶ Ontario, *Collective Bargaining in the Ontario Government Service: A Report of the Special Adviser His Honour Judge Walter Little*, (Toronto: Queen's Printer, 1969), 1.

recounted by the CSAO, the genesis of Little's study was the association's desire for a compulsory dues check-off in the OPS. As the government did not wish to deal with that issue in isolation, they instead devised a study which took into account "all of the developments since the collective bargaining legislation came into effect ... with a view to effecting such improvements as experience showed to be necessary."⁵⁷ Within this larger study, Little was charged with reporting on appropriate bargaining units, the proper scope of bargaining, the form of eventual agreements, and "the methods and procedures of negotiation within the bargaining system in which compulsory arbitration is the final means of resolving disputes."⁵⁸

At the outset of his report, Little informed readers that "it should be understood that the structure of a bargaining unit in the public service is without parallel in the private sector." Little was referring to the sprawling nature of the CSAO's bargaining unit, which covered both skilled and unskilled workers as well as "representatives of practically all professions." So wide was the unit that it gave rise to difficulties in determining appropriate exclusions.⁵⁹ Little noted how in the past exclusions had sometimes been negotiated and sometimes imposed—a fact noted above in the discussion of the OJC. Due to this, a "uniform standard" had never been applied in deciding whether a position was properly within the bargaining unit. Arguing that managerial authority was not delegated in the

⁵⁷ "Special Issue on the Judge Little Report," *C.S.A.O. News*.

⁵⁸ Ontario, *Collective Bargaining in the Ontario Government Service*, 1.

⁵⁹ *Ibid.*, 8.

public service to same extent as in the private sector, Little held that “the level of exclusions in the public service should be higher than in the private sector.”⁶⁰ The parties made various suggestions on the matter, with Little deciding to follow the government submission which recommended four categories of exclusions: (1) management employees, (2) non-supervisory employees “involved in the formulation of organization objectives and policy ... including persons involved in the formulation of budgets,” (3) positions confidential to labour relations, and (4) part-time and short-term employees. To these four, Little added the exclusion of professionals as in the *LRA*.⁶¹ Although similar, on exclusions the OPS deviated from the norms of the *LRA*. There is an irony that Little posited that the exclusion level in the OPS should be higher than in the private sector, while simultaneously recommending a novel category of exclusions through which the OPS could exclude non-management staff. Most notable here is the potentially massive scope of the second category, including as it did those working in primary public service disciplines of policy and budgets.

Little saw scant merit in replicating the federal system of numerous bargaining units, arguing that “the public interest is best served if the public service is not fragmented by the introduction of new units which would give rise to multiple bargaining, where the need is not apparent.”⁶² Arthurs excoriated

⁶⁰ Ibid., 11.

⁶¹ Ibid., 12-4.

⁶² Ibid., 28.

Little on this point as the “needs” being met by the current system were those of only two parties: the CSAO and the government. Arthurs further remarked that

Judge Little’s preoccupation with the potential diversity of conditions engendered by a multiplicity of units likewise indicates his recognition of government’s need for managerial convenience and efficiency. But of the “need” of employees for self-determination and autonomy, there is little perception.⁶³

However, Little was cognizant that, even in the context of one large unit, workers may wish—or should at least be legally entitled—to select their own bargaining agent. As such, Little recommended a process of displacement which replicated that in the *LRA*.⁶⁴

Happy to adhere to *LRA* standards around displacement as well as in his recommendation for automatic dues check-off for all CSAO-covered employees, Little was also willing to recommend variances with the *LRA*. Here, Little tended to recommend a variation for the public service when a unique approach to a topic was to the government’s convenience. This was most striking with the recommended process for collective bargaining. Notably, Little argued that “there are matters which should clearly not be bargainable,” including in this list “departmental organization, complement, classification, job evaluation, the merit system, and superannuation.”⁶⁵ No rationale was provided by Little for why this was “clear.” He did, though, offer reasons for another notable departure from the

⁶³ Arthurs, *Collective Bargaining by Public Employees in Canada*, 112.

⁶⁴ The means that a new union could “displace” an existing union by an application backed with a positive vote by a majority of the represented employees. In his report, Little noted the membership of the CSAO stood at 43,733 distributed throughout the province (*Ibid.*, 7). To say the least, any attempt to displace the CSAO would have faced long odds. This will be discussed in greater detail below.

⁶⁵ *Ibid.*, 32.

LRA standard: that public servants be denied the right to strike. This recommendation reflected the wishes of both the government and the CSAO—the two differed only on the matter of whether strikes should be specifically prohibited or, as the CSAO wished, that the legislation merely remain silent on the matter.⁶⁶

The sympathetic hearing Little's report offered both the government and the CSAO is further illustrated by those parties meeting with Little together. In a progress report issued in November 1967, Little (who was appointed by an order in council dated July 20, 1967) stated that he had "met with the representatives of the Government and the Civil Service Association of Ontario" on six different days, between July 11 (a date prior to the issuance of Little's appointing order in council) and November 16, 1967. Little wrote that the CSAO "made very able and extensive submissions ... to which the Government replied." The matters discussed included: (1) the determination of appropriate bargaining units, (2) the recognition and employee support of bargaining agents, (3) the scope of bargaining, (4) the form that agreements may take, and (5) the methods and procedures of negotiation within a system within which compulsory arbitration is the final means of resolving disputes. Little averred that it "was apparent from the discussions at these meetings that the Government is prepared to give favourable consideration to a number of the Association's proposals."⁶⁷ As a

⁶⁶ Ibid., 40.

⁶⁷ "Progress Report of His Honour Judge Walter Little," November 16, 1967, in CSAO, "Report and Recommendations of the Association's Study Group on Organization of The Civil Service Association of Ontario (Inc.)," n.d. (University of Toronto Centre for Industrial Relations Library Archive).

counterpoint, NDP MPP Reg Gisborn observed that the CSAO and management representatives were, aside from CUPE, “the only groups that made representation” to Little. And even then, “not once through the report is there any mention made of any recommendations, comments, ideas or propositions of (CUPE).”⁶⁸

Despite noting that federal public servants had gained the right to strike in 1967 (with postal workers having used the right by the time of his report), Little brushed past the federal reality, choosing instead to channel Rand. Little began his analysis by approvingly quoting a passage from the Rand report which, in keeping with the tenor of that work, used the fear of “social disintegration” to argue against allowing strikes in the public sector.⁶⁹ Beyond the passage Little quoted, Rand argued that “in public employment strikes ... the object is directly to coerce concessions from the public through taxation.” And that “such means, to compel the public to submit to arbitrary demands is repugnant to democratic government.”⁷⁰ Little’s position, as Bryan Evans and Carlo Fanelli put it, was that public sector strikes were “were inappropriate for public-sector workers by citing the ultimate sovereignty of government and the fact that the public was owed uninterrupted public services.”⁷¹

⁶⁸ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 28th Leg, 2nd Sess, No 207 (6 November 1969), 8117.

⁶⁹ Ontario, *Collective Bargaining in the Ontario Government Service*, 39.

⁷⁰ *Inquiry into Labour Disputes*, 112.

⁷¹ Bryan Evans and Carlo Fanelli, “Ontario in an Age of Austerity: Common Sense Reloaded,” in *The Public Sector in an Age of Austerity: Perspectives from Canada’s Provinces and Territories*, ed. Bryan Evans and Carlo Fanelli (Montreal and Kingston: McGill-Queen’s University Press, 2018), 130.

While this summary is accurate, Little did not merely resuscitate parliamentary sovereignty. He went further, clothing the concept with the garments of democracy:

Governments are elected to formulate policies and make decisions for the benefit of the whole community. No individuals in the community, and particularly those who are employed to ensure, and are actively engaged in, the effective implementation of such policies and decisions, should be able by concerted action to impede or frustrate such implementation, in order to enforce their will on the citizens as a whole.⁷²

By the time Little reported, parliamentary sovereignty was an expired idea in labour relations. The federal service was operating under a strike/lockout regime, and Saskatchewan had had a quarter-century of experience with the same. Indeed, seven years before Little issued his report, Saul Frankel had concluded that “the notion of a monolithic and all-powerful sovereign is now rather out of date.”⁷³ How then could Little plausibly employ parliamentary sovereignty as a barrier to strikes? The answer he settled on was, evidently, to transfuse democracy into the old concept.

Little argued that “our democratic processes provide the methods by which the interests of the community are to be safeguarded.” Implicit within this, Little held, was the “duty of those selected to provide, without interruption” public services. As such, Little argued that no one in the public service ought to have the right to withdraw their labour “with the sole objective of compelling a duly-elected government to meet their demands.” To suggest otherwise would be to

⁷² *Collective Bargaining in the Ontario Government Service*, 42.

⁷³ Frankel, *Staff Relations*, 12.

admit that public services could be “legally rendered ineffectual.” Were this to be so, “the result of such enforced repudiation of its obligations to the community by the government could be, as stated by the late the Honourable Mr. Rand, ‘the harbinger of social disintegration.’”⁷⁴

A ban on strikes necessitated an alternative mechanism for resolving those disputes for which a freely negotiated settlement remained elusive. Here, Little recommended maintaining the existing system of binding arbitration. This recommendation is, however, curious even on Little’s own terms. Why were strikes considered antithetical to democratic control, but not the ruling of an arbitrator? To put it differently, what of democracy if a government were to win office campaigning on (for example) a wage freeze for public employees, only to find this initiative overruled by an arbitrator? Little attempted to side-step such logical flaws by asserting “that governments have a duty to ensure that those who are not accorded the right to strike are rewarded for their services on a basis at least as favourable as those who have such a right.”⁷⁵ What, though, of a government who did not accept this duty? Or, what of a government that perceived a vastly different duty, such as Saskatchewan’s government in 1944 that perceived a democratic mandate to establish a strike/lockout regime in the public service? In this universe of hypotheticals, an endless array of possibilities exists for the public service. As Frankel had it, the public

may hold their civil servants in virtual bondage—recruit them by conscription and maintain them in monastic isolation; or they may grant

⁷⁴ *Collective Bargaining in the Ontario Government Service*, 42.

⁷⁵ *Ibid.*, 43.

them the right of association, provide channels for mutual consultation, and even, if they will, accept as binding the recommendations of a tribunal which owes its existence to the sovereign's caprice. ... The fact is that the concept of sovereignty can be defined so narrowly or so broadly that almost any kind of practical adjustment is possible.⁷⁶

Ultimately, Little was arguing for nothing more than the maintenance of the status quo in all fundamental respects of labour relations in Ontario's public service. He held this view despite changes in other jurisdictions, and despite occurrences like the wildcat strike at the Don Jail. Despite a pressing concern with his contemporary world informing his views, Little was—just as we saw with Rand—nonetheless out-of-step with those very times.

The Response to Little

In at least some quarters, Little's report enjoyed a better reception than had Rand's. One such venue was the editorial suite at the *Globe and Mail*, which praised the "sound common sense" that had informed Little's choice to forbid strikes in the public service. At the same time, though, that editorial expressed skepticism that an adequate arbitration system could be established: "the setting up of machinery to ensure that civil servants get a fair break—has not, at least in Ontario, proved easy to achieve, largely because the Government and its creatures have been unfair."⁷⁷

⁷⁶ Frankel, *Staff Relations*, 13-4.

⁷⁷ "No strikes, but justice," *Globe and Mail*, 20 May 1969. (At the time, the *Globe and Mail* was sharply critical of Ontario's public sector arbitration process, e.g., "Much of Ontario's history of (arbitration) so far has been a history of bad faith by Government and its creatures. Incompetent arbitrators, arbitrators with a conflict of interest, awards of competent arbitrators flouted, efforts made to provide fair ways for employees only at the expense of good service to the public." – "No strikes—and little justice," *Globe and Mail*, 30 May 1969.)

The CSAO determined the report to contain “a lot of labour relations common sense, some disappointments, but no real surprises.” What the CSAO adjudged to represent common sense was CUPE all-but being legislatively barred from representing provincial public servants. Of course, as seen above, Little recommended that any bargaining agent should be able to displace the CSAO. Yet in any practical sense, displacing the sprawling province-wide CSAO bargaining unit of 43,733 individuals, “ranging from clerks to hospital employees ... would be an almost impossible task.”⁷⁸ Consequently, it should come as little surprise that the most vociferous opposition to Little’s report came from CUPE.

To facilitate the settlement of the Don Jail strike, Little had been charged with determining the appropriate bargaining units at the facility. He chose to rely on the *LRA* standard for combining bargaining units represented by distinct bargaining agents, by which “it is customary to extend the bargaining rights to that bargaining agent having the greatest support.”⁷⁹ According to Little’s report, there were 941 jail staff (215 at the Don Jail) as of March 1, 1969. Even within only the Don Jail, Little found only minority support for CUPE.⁸⁰ Considering the jails as part of the larger whole-civil-service bargaining unit, the total number of jail guards comprised only 2 per cent of the total membership. These were near-

⁷⁸ Wilfred List, “CUPE meets amid threats of Toronto members to quit,” *Globe and Mail*, 8 September 1969.

⁷⁹ *Collective Bargaining in the Ontario Government Service*, 38.

⁸⁰ *Ibid.*, 37.

hopeless odds for CUPE, despite its publicly stated “ambitious plans to organize Ontario’s 46,000 civil servants.”⁸¹

And yet, despite the long odds, CUPE made various attempts to supplant the CSAO, including an attempted raid. For that attempt, CUPE hired two full-time organizers and had a plan to appeal to prospective switchers from the CSAO by pledging that CUPE would not charge dues until they had obtained bargaining rights.⁸² The beachhead for CUPE’s attempt at supplanting the CSAO was the United Government Workers of Ontario (UGWO). This union was started in April 1968 by hospital workers in Whitby, the new organization arising as “the culmination of a year’s dissatisfaction” with the CSAO.⁸³ So great was those workers’ dissatisfaction with both their working conditions and the CSAO that 76 per cent voted in favour of an illegal strike. In response, the CSAO withdrew the charters of the local branches in question and froze both branches’ funds.⁸⁴ The workers responded by creating their new union.

CUPE alleged that the union had been granted jurisdiction over provincial public services by the CLC. Robert Laxer quoted CUPE President Stan Little stating, in 1971, that CUPE had “written documents, adopted by the Executive Council of the CLC in 1967, stating categorically that, with the exception of B.C.,

⁸¹ List, “CUPE meets amid threats.”

⁸² Marc Zwelling, “Union plans ‘raid’ on Ontario civil servants,” *The Toronto Telegram*, 11 August 1969.

⁸³ “Hospital Workers Support New Union,” *Oshawa Times*, 30 April 1968.

⁸⁴ “Whitby union crisis boils charter lost,” *Oshawa Times*, 29 April 1968.

all provincial civil servants would be under the jurisdiction of CUPE.”⁸⁵ While there was truth to what Little said, Laxer noted that the document being referenced went on to state that the jurisdiction “will continue to be the case where there are no provincial government unions recognized or affiliated, or until the Executive Council determines otherwise.”⁸⁶ Thus, the truth was more nuanced.⁸⁷

With the jail guards, CUPE had attempted to establish a beachhead with Ontario public servants. Similarly, with the UGWO, CUPE set up a competing union for provincial public servants. Ultimately, though, CUPE’s efforts were “blocked by legislation which gives the Civil Service Association of Ontario exclusive rights to represent civil servants.”⁸⁸ The blockage by legislation of CUPE

⁸⁵ Robert Laxer, *Canada’s Unions*, (Toronto: James Lorimer and Company, 1976), 130. Little was quoted in the *Vancouver Sun*, 18 October 1971 with Laxer citing his source for the quote as *The Canadian Union of Public Employees, Provincial Government Employees and The Canadian Labour Congress*, brief submitted by CUPE to the special session of the Executive Council of the CLC July 11, 1973, Appendix E.

⁸⁶ *Ibid.*

⁸⁷ Much of this conflict played out through CUPE making it difficult for provincial public service unions to affiliate to the CLC as, by virtue of its size, CUPE was powerful enough to question affiliation proposals. See, e.g., Jim Selby, “Delaying, Disarming, and Deceiving the Union: The Loughheed Government, Alberta Government Employees, and the Public Service Employee Relations Act, 1977,” *Labour / Le Travail*, 75 (2015): 83 (“Although the (Alberta) CSA had joined the Canadian Labour Congress on 1 October 1973, that membership was accomplished only after lengthy debate as a consequence of the Canadian Union of Public Employees (CUPE) opposing the CSA’s entry because CUPE asserted that provincial employees were within their jurisdiction.”); Roberts, *Don’t Call Me Servant*, 205-6 (“In July, 1974, CSAO leaders applied to join the Canadian Labour Congress. ... Leaders of CUPE weren’t very happy about that. They thought provincial public employees belonged in CUPE. CLC president Donald McDonald didn’t care much what CUPE thought. ... CUPE had more delegates than any other union at the CLC convention (in 1974), one of the stormiest in the CLC’s history. If provincial public employees were going to be allowed in the CLC, CUPE leaders insisted, then they had to join through a national organization. This was seen as a compromise that saved face for CUPE by denying recognition as stand-alone unions to provincial upstarts.”) Thus, the National Union of Provincial Government Employees (NUPGE) was formed as an umbrella organization of the provincial unions to facilitate affiliation to the CLC.

⁸⁸ List, “CUPE meets amid threats.”

in this instance echoed the end of the Teamsters' 1951 attempt to organize Liquor Board employees.

Bargaining rights in the OPS featured heavily in the 1968 debate on the Estimates.⁸⁹ The Treasurer Charles MacNaughton detailed the many successes of the OPS and the CSC (which was celebrating its fiftieth anniversary that year). Among the accomplishments MacNaughton listed was the “outstanding service to the people of Ontario” provided by the OJC and the arbitration and grievance boards “in assuring just conditions of employment in the public service.”⁹⁰ In response, New Democrat MPP Cliff Pilkey (a prominent Oshawa labour leader in the UAW who had been integral to establishing the *Oshawa Times* picket) questioned the justice of OPS pay scales, in particular the very low wages of “unskilled” labour, noting bi-weekly take-home paycheques in the range of \$125.⁹¹ Moreover, Pilkey noted the CSAO’s unhappiness by reading verbatim a summary of a recent meeting of the CSAO’s Toronto branch:

The association’s negotiations are outdated. Let us talk about something beneficial to ourselves. The association has never threatened the government. It was also brought up that the association comprises members who do what the association says. The association is a membership and if the members do not do something, nothing will be done. It was then stated that we probably do not realize the potential power we possess as a group. Government knows we cannot act collectively. Let us get organized and show the government what we mean. Everyone else gets a good portion outside of government. They get 16 per cent to 25 per cent. We get 4 per

⁸⁹ The “main estimates” are where the government presents its detailed spending plans—the operating and capital spending requirements—for each Ministry for the upcoming fiscal year. This is done shortly after the presentation of the coming year’s Budget.

⁹⁰ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 28th Leg, 1st Sess, No 155 (17 July 1968), 5884.

⁹¹ \$125 earned every two weeks in 1968 equates an annual net income of approximately \$27,000 in 2023 dollars.

cent, 3 per cent, 2 per cent. Let us do something constructive. We are being exploited if we accept this. It is our own fault. We are at a standstill. The association cannot negotiate one agreement in six months. It takes them two years to negotiate one arbitration. People are becoming disgusted. Strike is illegal.⁹²

At the summarized meeting, the branch passed a motion requesting the CSAO board seek to amend the *PSA* to allow it to be certified under the *LRA* and, thus, to bargain as a typical union would.

The Toronto branch was the latest CSAO group to make their discontent with the limits of the bargaining system so explicit. As previously mentioned, CSAO members at the Whitby Psychiatric Hospital had illegally struck in against the advice and wishes of the CSAO. This precipitated the Whitby workers' split with the CSAO to form the United Government Workers of Ontario (UGWO)—which functioned as something of a Trojan Horse for CUPE's organizing efforts. However, this attempt to organize a new union was thwarted by the *PSA*, which as we know allowed the government to designate the employee organization with which it preferred to negotiate.⁹³

Attempting to Legislate the Little Report

Writing in the *Toronto Daily Star*, Ed Finn of the Canadian Brotherhood of Railway, Transport and General Workers took the position that “after two years of study,” Little's report merely “came down four-square for preserving the status

⁹² Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 28th Leg, 1st Sess, No 155 (17 July 1968), 5888ff. (Quoting from the CSAO Toronto Branch General Meeting, 27 May 1968.)

⁹³ *The Public Service Act, 1961-62*, SO 1961, c. 121, s. 20 (20 (1) The Commission, subject to the approval of the Lieutenant Governor in Council, may make regulations ... (r) providing for and establishing procedures for negotiations between the Commission and the Civil Service Association of Ontario or any other organization that the Lieutenant Governor in Council may designate respecting the conditions of employment of civil servants.”).

quo.”⁹⁴ While true of the report, the preservation of the status quo was not the approach the government took to implementing Little. In one important change, the government instituted the automatic check-off dues for the CSAO in October 1969.⁹⁵ The government sought to make further changes to status quo when, on November 2, 1970, Treasurer Charles MacNaughton rose to give first reading to Bill 217, *An Act to provide for Collective Bargaining for Crown Employees*.⁹⁶ This was the only time the bill was read.

Introducing the bill, MacNaughton stated that it “follows and provides for implementation of the recommendations of the committee headed by Judge Little.”⁹⁷ The proposed new law was “very restrictive,”⁹⁸ as it both banned strikes and limited the scope of bargaining.⁹⁹ Rather than strikes, bargaining impasses were to be resolved by a board of arbitration, with one member appointed by each party, as well as a chair appointed by Cabinet—arguably giving the management side a majority.¹⁰⁰ The restricted scope of bargaining made it the

exclusive function of the employer to determine complement, departmental organization, employment, classification, job evaluation, merit system, superannuation and the standards, procedures or processes governing the appointment, appraisal, promotion, demotion, transfer, lay-off or

⁹⁴ Ed Finn, “Little paves the way for revolution in the civil service,” *Toronto Daily Star*, 9 June 1969.

⁹⁵ Ontario Regulation 403/69.

⁹⁶ Ontario, Bill 217, *An Act to provide for Collective Bargaining for Crown Employees*, 3rd sess., 28th Leg., 1970.

⁹⁷ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 28th Leg, 3rd Sess, No. 143 (2 November 1970), 5822.

⁹⁸ Timothy Hadwen, *et al.*, *Ontario Public Service Employment and Labour Law* (Toronto: Irwin Law, 2005), 72.

⁹⁹ Bill 217, cls. 25 and 17.

¹⁰⁰ *Ibid.*, cls. 9-11.

termination of employment of employees, and that such matters shall not be the subject of collective bargaining.¹⁰¹

This clause effectively legislated management rights.

Beyond the enumerated exceptions from bargaining, the bill empowered Cabinet to make regulations “excluding from the scope of bargaining any matter or any position or classification.”¹⁰² This clause caught the ire of the CSAO, which argued that it gave the government the ability to “defeat whatever is achieved in bargaining by manipulation of job classifications.”¹⁰³ Going further, bargaining units were to be designated by regulation.¹⁰⁴ While any union could attempt to gain representation rights (by signing up at least 35 per cent of the bargaining unit), the bill allowed Cabinet to designate an employee organization upon the Act’s coming into force.¹⁰⁵ In an important variation from the practice at the federal level, and as opposed to remaining silent on the matter as the CSAO had desired, the bill sought to ban strikes.¹⁰⁶ Finally, the bill sought to establish the Ontario Public Sector Labour Relations Tribunal. The Tribunal would have been wholly appointed by Cabinet and was to have had “exclusive jurisdiction to ... determine all questions of fact or law that arise in any matter before it.”

Decisions of the Tribunal would have been “final and binding for all purposes.”¹⁰⁷

¹⁰¹ Ibid., cl. 17.

¹⁰² Ibid., cl 47(a).

¹⁰³ “CSAO general manager unhappy with new bill,” *Globe and Mail*, 3 November 1970.

¹⁰⁴ Bill 217, cl. 3(2).

¹⁰⁵ Ibid., cl. 2(5) and 4(1).

¹⁰⁶ Ibid., cl. 28.

¹⁰⁷ Ibid., cl. 33 and 34.

The *Globe and Mail* was harshly critical of the bill, arguing it was “completely at odds with the approach taken in the *Labour Relations Act*.” The paper’s chief complaint about the “unfair, ill-conceived and offensive” bill was its reliance on regulation: “It’s bad enough that bargaining was banned” in the areas listed above, but “it’s outlandish that whatever would be left could be prescribed by regulation.”¹⁰⁸ Of interest, the editorial quoted comments from James Chalmers McRuer, who had previously been tasked by Robarts with chairing a Royal Commission of Inquiry into Civil Rights.¹⁰⁹ That Commission’s final report had criticized “a growing indifference to the delegation of legislative authority to the Lieutenant Governor in Council and other bodies.” Specifically, McRuer had been troubled by the “abandonment of legislative responsibility” to executive discretion.¹¹⁰ Nonetheless, in terms of OPS labour relations, the Ontario legislature ceding such a degree of authority to the executive was simply part of a story stretching back almost a century. Recall that the 1878 amendments to the *Public Service Act* (detailed in Chapter 2) were marked by the legislature moving to end “unfettered executive authority over the public service.”¹¹¹ Subsequent amendments, however, saw the executive branch retake control over the process, with legislation leaving much of the specifics of OPS employment to regulation (as was detailed in Chapter 3).

¹⁰⁸ “Rule by regulations,” *Globe and Mail*, 16 November 1970.

¹⁰⁹ Patrick Boyer, *A Passion for Justice: The Legacy of James Chalmers McRuer*, (Toronto: Osgoode Society for Canadian Legal History, 1994), 300-1.

¹¹⁰ Ontario, Royal Commission Inquiry into Civil Rights, *Report Number One*, vol 2 (Toronto: Queen’s Printer, 1968), 946.

¹¹¹ Hadwen, *et al.*, *Ontario Public Service Employment and Labour Law*, 21.

The bill received a poor reception in the Legislature. Liberal MPP Vernon Singer argued that, while the Treasurer claimed the bill would “formalize collective bargaining procedures” in the OPS, it was “much more than that,” and beseeched the government to “let the bill sit on the order paper ... so that everyone concerned could have ample time to examine it.”¹¹² New Democrat MPPs Donald MacDonald and Stephen Lewis followed Singer’s line of attack, leaving MacNaughton to ask his opponents, in reference to labour disputes at the federal level: “do we want any more situations like the post office strike in this country?” The Treasurer continued:

This bill has not been introduced lightly. It has taken a great deal of time to develop. It is not brought into this House to particularly please the NDP caucus or the Liberals. It is brought into this House in what we feel to be the interests of the people who rely on public service, so that the performance of their public duties is in the public interest.¹¹³

The government’s lack of concern with pleasing the opposition parties evidently extended to the CSAO. The Association’s general manager (and former president) Harold Bowen stated that, with the bill, “the government has taken too much power unto itself.” Bowen further held that “to say we have absolutely no right to strike is too much.”¹¹⁴ The CSAO also seized upon the exclusion of job classification and merit systems from bargaining, with Bowen arguing that, with

¹¹² Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 28th Leg, 3rd Sess, No. 145 (3 November 1970), 5893.

¹¹³ *Ibid.*, 5894.

¹¹⁴ “Ontario to forbid civil service strikes,” *Toronto Daily Star*, 3 November 1970.

such a clause, the Government could simply “defeat whatever is achieved in bargaining by manipulation of job classifications.”¹¹⁵

The bill died on the order paper when the Legislature was prorogued on November 13, 1970. Nevertheless, the government stated that the bill would be reintroduced in the next session and made no commitment to any changes. The bill’s poor reception continued, with editorialists at the *Globe and Mail* calling the bill “unfair, ill-conceived, and offensive” and highlighting the volume of provisions left to regulation.¹¹⁶ As well, an appeal from Robert Hebdon, then CSAO’s Research Director, to John Crispo, then the head of the University of Toronto’s Centre for Industrial Relations, to intervene in the public debate suggests that the CSAO not only believed the bill could return, but also that it sought to publicly pressure the government. Referring to the Bill as “grossly unfair,” Hebdon told Crispo that his “comments on the proposed legislation would be most welcome.”¹¹⁷ As it happened, Bill 217 never returned to the legislature. A little more than a month after its first reading, the complexion of Ontario politics changed when John Robarts announced on December 8 that he had decided to resign as Premier. It would fall to the new Premier, Bill Davis, to legislate Little’s recommendations.

¹¹⁵ “CSAO general manager unhappy with new bill,” *Globe and Mail*, 3 November 1970.

¹¹⁶ “Rule by regulations,” *Globe and Mail*, 16 November 1970.

¹¹⁷ Robert Hebdon, CSAO Research Director to John Crispo, 18 November 1970 (University of Toronto Centre for Industrial Relations Library Archive).

Conclusions

The context of significant labour strife is vital to understanding the first attempt to create a unique legislative framework for public service collective bargaining in Ontario. As detailed above, beginning in the mid-1960s, Canada and Ontario were embroiled in a significant rise in labour disputes. The Robarts government attempted to stay out of the fray while simultaneously presiding over a system of laws which—despite claims of “balance”—favoured employer interests.¹¹⁸ Troubles in labour relations grew as labour militancy increased and the government was left no choice but to act. The first line of response was to establish a commission of inquiry on the private sector labour relations system. Though Rand’s eventual report discussed the public sector, the government subsequently sought an advisory report with a specific focus on labour relations in the OPS. Rand’s report was reactionary at its core and recommended wholesale systemic change, but it was ill-received. Little, though seemingly sharing Rand’s concerns, in contrast recommend the maintenance of the status quo. Of course, owing to the lack of labour rights within the OPS, Little could recommend only modest changes without concern of stoking further labour disputes. Nevertheless, when the government eventually attempted to legislate what it took from Little’s report, it significantly overshot the mark. As Wayne

¹¹⁸ See Charles W. Smith, “Fairness and Balance?: The Politics of Ontario’s Labour Relations Regime, 1949-1963” (PhD diss., York University, 2009), 369-72.

Roberts put it, the bill “was so one-sided in granting all rights to government ... that it was an embarrassment.”¹¹⁹

Importantly, Bill 217 would have solidified the CSAO’s role as the OPS bargaining agent. The bill allowed the government to designate a bargaining agent and then set a displacement standard that would have made a transition away from the CSAO a practical impossibility. The security this would have afforded the CSAO—along with the arrival of check-off dues in 1969—suggests that the government and CSAO were happy to work together. Indeed, recall that the parties met together with Little, with the first meeting taking place prior to the public announcement of his appointment.

While the CSAO and the government certainly had the capacity to work together, the beneficial position afforded the CSAO was merely a by-product of the government pursuing its own benefit. While one large bargaining unit, and a barrier to CUPE representing that unit, served the interests of the CSAO, these features also served the interests of the government. The employer was left only one unit to bargain with as well as barring the more militant CUPE—recall that when the Don Jail guards joined CUPE their salaries significantly increased.

The government’s focus on creating a labour relations system that suited its interests was on stark display throughout Bill 217. Not only did the government go further than Little’s report had recommended, vitally, the government also diverged from the federal government’s practice. As we have

¹¹⁹ Roberts, *Don’t Call Me Servant*, 130.

seen in earlier chapters, for decades Ontario had followed the pattern established at the federal level. Perhaps this was a choice borne of expediency as it was when, in 1948, the Drew government followed the federal labour statute.¹²⁰ Or, perhaps the province was happy to follow the federal lead only when the federal government's approach aligned with the provincial government's ideological commitments.

When Bill 217 was introduced, we find the Ontario government pointing to the federal government as an example of the wrong approach to public service labour relations. Here again, context is vital. In an environment of significant labour disruptions, by holding out the postal workers' strike at the federal level as an example of what Ontario did not want, the government was attempting to quell the potential for militancy. The Don Jail guards and the hospital workers in Whitby showed that this potential existed in the OPS. With the aim of ensuring the CSAO did not go militant, the government gave the Association security in the form of both the automatic dues check-off and the legislative designation of the organization with exclusive representation rights for OPS employees. However, as we have seen, Bill 217 significantly overshot the mark, with the consequence of the CSAO winding up opposed to proposed legislation. As we will see below in Chapter 8, the government quickly returned with new effort at legislation. Becoming law before the end of 1972, that law—*CECBA*—was amended in 1974, and was not amended again until 1993. Before turning to *CECBA*, however, the

¹²⁰ Smith, "Fairness and Balance?," 117.

next chapter assesses the state of public service collective bargaining across Canada.

Chapter 7: Public Service Collective Bargaining in Canada: A

Comparative Snapshot, 1974

One can imagine Parliament, as representative of the sovereign people, agreeing to a process of negotiation; but the notion of the sovereign submitting to a process which contains the possibility of a test of strength between itself and its servants is much more difficult to accept. On the other hand, a case for granting civil servants full collective bargaining rights, including the right to strike could also be made. The discussion, however, would be highly academic. The very minor significance of the issue in actual Canadian experience makes it unnecessary to belabour it.

- Saul Frankel¹

One cannot help but feel upon perusing this bill that the government of the Province of Ontario still looks upon its civil servants as some kind of permanent indentured labour; that there is a tremendous reluctance on the part of the government of Ontario to recognize in its own civil service, which serves it and the people of the province so effectively, the capacities which are given to all workers and the rights which are given to all workers in the private sector. ... It is profoundly wrong to remove the right to strike from all of the public service in the Province of Ontario.

- Stephen Lewis²

Introduction

The two quotations that make up this chapter's epigraph revolve around the concept of parliamentary sovereignty. Each considers that concept's impact on public service labour relations yet comes to an opposing conclusion. The two quotations also indicate a profound shift, occurring in the span of a decade, from Saul Frankel deeming "academic" any discussion of a right to strike in the public

¹ Frankel, *Staff Relations in the Civil Service*, 17-8.

² Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 56 (9 May 1972), 2232.

service to an opposition leader chiding the government for not yet having legislated this right. Proceeding from the premise that “the achievement of rights at work,” as Judy Fudge and Eric Tucker wrote, is “the outcome of complex, protracted struggles,”³ this chapter assesses the multiple factors that played a role in the struggle for bargaining rights, with a particular focus on the right to strike, in public services across Canada.

As various jurisdictions moved to collective bargaining arrangements, the concept of parliamentary sovereignty fell away. As public services rationalized and professionalized, the identity of the employer became evident. As other sectors caught up with, or even surpassed, the terms and conditions of public service employment, collective bargaining took on greater appeal for previously skeptical public servants. Thus, though delayed, the emergence of collective bargaining in Canadian public services was, as Jean Boivin argued, “natural and inevitable.”⁴ For Boivin, this inevitability sprang from the fact that there was simply no intrinsic difference between public and private sector workers. Here he quoted E. Wight Bakke, who wrote that “all the conditions and circumstances that have made employees ready for collective bargaining in sectors where it has

³ Judy Fudge and Eric Tucker, “The Freedom to Strike in Canada: A Brief Legal History,” *Canadian Labour and Employment Law Journal* 15 (2009-10): 335.

⁴ Jean Boivin, “Collective Bargaining in the Public Sector: Some Propositions on the Cause of Public Employee Unrest,” in *Collective Bargaining in the Essential and Public Service Sectors*, ed. Morley Gunderson, (Toronto and Buffalo: University of Toronto Press, 1975), 4.

been established are present in the employment relations of a critical mass of public employees.”⁵ More lyrically, the same theme was captured by Gus Tyler:

Although each subgroup of public employees undoubtedly had its special reasons to organize, there was an all-inclusive cause for their striking out in the 60’s. By that time the public employee was a large class in popular demand. Together with his confreres in the changed labor force—white-collar, service, professional, nonprofit—the public employee was a major presence. He was in the same position as the mass production worker in the 1930’s: numerous, needed, and neglected. In the ‘60’s the public employee repeated the history of the industrial employee 30 years before and of the craftsman 60 years before: having discovered his collective presence, he moved—like a teenager come of age—to express his collective power.⁶

Attitudes toward public sector bargaining “changed significantly after 1960.” And on this point, John Burton was perplexed as to why. He argued that the “initiating or sustaining causes of the changing attitudes” were “not entirely evident” and “hard to fathom.” Nevertheless, “during the 1960s many public sector workers began to ‘think the unthinkable.’”⁷ Despite Burton’s puzzlement, it is possible to describe the factors driving change in the 1960s and early 1970s, and Tyler’s alliterative characterization of public servants as “numerous, needed, and neglected” points us towards the answer. These driving factors will be drawn out by assessing developments in various Canadian provinces and the federal government. While, as Ponak put it, “once disenchantment with consultation set

⁵ E. Wight Bakke, “Reflections on the Future of Bargaining in the Public Sector,” *Monthly Labor Review* 93, No. 7 (July 1970): 21.

⁶ Gus Tyler, “Why They Organize,” *Public Administration Review*, 32, no. 2 (March-April, 1972): 100.

⁷ John F. Burton, Jr., “The Extent of Collective Bargaining in the Public Sector,” in *Public-Sector Bargaining*, eds. Benjamin Aaron, Joseph R. Grodin, and James L. Stern, (Madison: Industrial Relations Research Association, 1979), 10-11.

in, events followed swiftly,”⁸ it will be shown that those “events”—the outcomes—did not occur in a uniform fashion across jurisdictions.⁹ Indeed, as J. E. Hodgetts and O. P. Dwivedi said, the “evolution of collective bargaining” across Canadian jurisdictions “reveals no common pattern of growth.”¹⁰

This chapter compares the state of public service collective bargaining in jurisdictions across Canada. This comparative project (excluding Ontario, which will be covered in-depth in the next chapter) allows for an analysis of the relative importance of various factors in the development of public service collective bargaining. We will see that, while collective bargaining was widespread in public services throughout the country by the early 1970s, the mechanism for resolving bargaining impasses differed.

Owing to the different pace of evolution, these jurisdictions studied below are divided into two groups, based on whether the jurisdiction had implemented a right to strike by 1974. Establishing a cut-off point allows for the juxtaposition of jurisdictions based on the presence or absence of a right to strike. This provides a clear illustration of the relative impact of the various factors. The year 1974 was chosen as the cut-off point because, in Ontario, it marks the finalization of the first iteration of labour relations legislation for the OPS. At this point,

⁸ Ibid., 349.

⁹ This non-uniformity was also evident in the United States. See, e.g. Allen Weisenfeld, “Public Employees— First or Second Class Citizens,” *Labor Law Journal* 16, no. 11 (November 1965): 698 (“The development of the law of labor relations as it affects public employees has been as uneven in Canada as it has been in this country.”).

¹⁰ Hodgetts and Dwivedi, *Provincial Governments as Employers*, 174.

Ontario very well could have sided with most jurisdictions and implemented a right to strike in its public service. It did not do this.

This chapter argues that, in each jurisdiction, the emergence of these different approaches to resolving public service collective bargaining was determined by the interplay of several factors which were set out above in Chapter 2. These factors include:

- the rise of the welfare state and the resulting growth and professionalization of the public service;
- growth and professionalization of the public service which was accompanied by the rapid demographic change, with an influx of younger employees;
- the impact of the cultural milieu of the 1960s, which was marked by rapid, turbulent transformation in civil rights, including labour rights; and
- demographic change and the broader social setting, which fueled an increase in worker militancy.

As several of these factors were indistinguishable across jurisdictions, it will be argued that the key differentiating factor between jurisdictions has been the party in power. It will be argued below that the party in power's actions on public service bargaining rights were primarily determined by the competitiveness of elections and the winning party's ideological orientation.

The factors determining public sector labour legislation in practice

The next part of this chapter assesses how the various factors have come together in jurisdictions across Canada. This study is a snapshot of the legislation in each jurisdiction in 1974—that year chosen because it marked the last significant amendment to Ontario’s public service labour legislation until the 1990s. First, jurisdictions that offered a right to strike will be discussed. After that, attention will turn to those jurisdictions that denied public servants that right.

Jurisdictions with a right to strike

By 1974, most Canadian jurisdictions had enshrined a right to strike for their public services. The first was Saskatchewan, which had enacted the relevant law in 1944.¹¹ With that legislation, Jacob Finkelman and Shirley Goldenberg referred to Saskatchewan having “dented” the “sovereignty wall.” It was not until 20 years later that the wall “crumbled” when Quebec followed suit in 1965.¹² Next came the federal government (1967¹³) and then New Brunswick (1968¹⁴). Newfoundland’s 1970 legislation also allowed for public servants to collectively bargain and strike.¹⁵ There, though, the right to strike was severely constrained,

¹¹ *An Act respecting Trade Unions and the Right of Employees to organize in Trade Unions of their own choosing for the Purpose of Bargaining Collectively with their Employers*, S.S. 1944, c. 69. (*The Trade Union Act*)

¹² *Civil Service Act*, S.Q. 1965, c. 14.

¹³ *Public Service Staff Relations Act*, S.C. 1967, c. 72.

¹⁴ *Public Service Labour Relations Act*, S.N.B. 1968, c. 88.

¹⁵ *Public Service (Collective Bargaining) Act*, S.N. 1970, c. 85.

as the relevant legislation permitted “Cabinet to make regulations exempting any class or classification of employers or employees from the provisions of the act,” while also allowing Cabinet to “forbid or terminate any strike by declaring that an emergency exists.”¹⁶ British Columbia implemented a right to strike for its public servants in 1973.¹⁷ The balance of this section describes the processes that led to the right to strike in each jurisdiction.

Saskatchewan

Saskatchewan had long had Canada’s most permissive public service labour relations legislation, by virtue of its application of the province’s general labour relations statute to its public service.¹⁸ In 1944, the newly elected CCF government included public servants in the province’s *Trade Union Act*, thereby according public servants the same rights as other workers. The public servants had not asked for this right, however, and the initial response of the staff association to this development was “nonchalant.” Indeed, despite their new legal rights, the Saskatchewan Civil Service Association (SCSA) fully intended “to continue their role as polite civil servants making requests of their employer.”¹⁹ However, the SCSA wound up moving quickly towards unionization and

¹⁶ Shirley B. Goldenberg, *Public Service Bargaining: Implications for White-Collar Unionism* (Kingston: Industrial Relations Centre, 1973), 4.

¹⁷ *Public Service Labour Relations Act*, S.B.C. 1973, c. 144.

¹⁸ The only subject-matter that was exempt from bargaining in Saskatchewan as of 1970 was the service’s “classification plan” which “set forth for each class of positions an official class title and a statement of the duties and responsibilities of the class.” All collective agreements in the service were subject to the classification plan. *An Act respecting the Public Service*, R.S.S. 1965, c. 9, ss. 11(2) and 58.

¹⁹ Doug Taylor, *For Dignity, Equality and Justice: A History of the Saskatchewan Government Employees’ Union* (Regina: The Saskatchewan Government Employees’ Union, 1984), 15.

affiliation with the Trades and Labor Congress of Canada (TLC). Two facts motivated the SCSA. The first was directly related to the new government's ideology: upon bringing in the *Trade Union Act*, Premier Tommy Douglas made it clear to the Association "that he was a firm believer in the benefits" of unionization. More pointedly, the Premier told the SCSA that

there was only one way in which the Civil Service could embarrass the Government, and that was for us to fail to take advantage of the legislation which the Government is presenting for the benefit of employees throughout the province.²⁰

The SCSA's second motivation was a challenge from a union outside the public service. As soon as the government's legislative intentions were announced, the Canadian Congress of Labour (CCL) stated its intent to organize the province's public servants. Thus, the CCL dispatched Alex McAuslane, "a former coal miner and Congress first vice-president in charge of organization," to Saskatchewan.²¹ The goal was to establish a CCL-affiliated union in the public service, presumably a union with an aggressive orientation.

Unfortunately for McAuslane, Robert Lindsay argued that "his style and tactics bore the marks of his years in the turbulent coal-fields of western Canada, and his abrasiveness quickly earned him a position as *persona non grata* with the CCF."²² Based on the CCL and CCF having a close relationship—the CCL having

²⁰ Ibid., 16-7.

²¹ Robert A. Lindsay, "Co-operation and Conflict: The CCF and the Canadian Congress of Labour in Saskatchewan, 1944-1956," (master's thesis, University of Saskatchewan, 1987), 54-5.

²² Ibid., 55.

declared the CCF to be “the political arm of labour”²³—the CCL had dispatched its organizer in the belief that the government would “actively support” their effort to organize Saskatchewan’s public service. Upon arriving in Saskatchewan, McAuslane had assumed the government would enthusiastically back his efforts. Instead, “he was puzzled to discover that (Labour Minister Charlie) Williams declared the government neutral on the issue of the unionization of their workers.”²⁴

Perhaps McAuslane, and the Ottawa-based national CCL hierarchy, had been unaware that local CCL organizers in Saskatchewan had been having difficulties with the Douglas government. Indeed, Williams’ appointment as Minister of Labour had, Lindsay argued, upset the CCL who argued that the new Minister was “not ‘left’ enough.” The popular mayor of Regina prior to the election, Williams “enjoyed considerable support from businessmen who regarded him as an unlikely ‘threat’ to their interests.” Had Williams any pro-labour views, “he favoured the conservative craft unions” and was “suspicious of the militant CCL.”²⁵ Compounding the CCL’s distress with the government was the appointment of Harry Williams (no relation to the Minister) as Deputy Minister of Labour. Deputy Williams had performed what a local CCL organizer called the previous Liberal government’s “dirty work” by preventing the CCL from

²³ See, e.g. Clifford A. Scotton, *Canadian Labour and Politics*, (Ottawa: Canadian Labour Congress, 1967), 31-33.

²⁴ Lindsay, “Co-operation and Conflict”, 55.

²⁵ *Ibid.*, 52.

organizing in the province in the 1930s and early 1940s.²⁶ Indeed, a bias against the CCL was prevalent in the Douglas cabinet. The CCL believed that the government encouraged the less-radical craft union-focused TLC “because they feared the more militant industrial unions.”²⁷

Regarding the CCL’s efforts to organize the public service, Minister Williams advised McAuslane to direct his organizing efforts elsewhere. This led to McAuslane denouncing the Minister and demanding his resignation.²⁸ The government was unmoved by McAuslane’s tactics, a fact made clear by Douglas in a letter to David Lewis (then the national secretary of the CCL). Douglas argued his government had “a solid basis of support whatever the CCL does” and that, moreover, “with the communists running the show and McAuslane charging about like a bull in a china shop the CCL is well on its way to committing *hari kari* in Saskatchewan.”²⁹

At this point, Lewis mediated a cessation of hostilities between the organizers and the government (McAuslane was directed to apologize to the premier), and the CCL “still expected to capture the civil service.”³⁰ The organization of Saskatchewan’s public servants therefore occurred in an

²⁶ Ibid., 53, citing a letter from Hub Elkin to F.W. Dowling, 16 July 1944.

²⁷ Ibid., 53.

²⁸ Ibid., 55-6.

²⁹ Ibid., 57, citing a letter from Tommy Douglas to David Lewis, 18 August 1944.

³⁰ Ibid., 58-9.

“atmosphere of great acrimony.”³¹ The Association ultimately prevailed over the CCL, in no small part because public servants were

“perturbed” at having to make a decision to join a union. They viewed themselves as white-collar semi-professionals, and were unlikely to be sympathetic to unionism, especially the militant, industrial, blue-collar variety. The CCL, furthermore, were closely and publicly associated with the radical political party that was now their employer.³²

While this “white collar” orientation was important, also contributing to this outcome was the government’s antagonistic relationship with the CCL, its encouragement of the TLC, and McAuslane’s tactics. Along with his attacks on the government, one of McAuslane’s first acts was to “‘declare open war’ on the Saskatchewan Government Services Association (SGSA) executive, which he attacked as undemocratic.”³³ At the same time, the TLC organizer “pledged to not interfere with members’ religious or political beliefs, promised lower dues, and vowed not to alter the structure of the SGSA if it affiliated.” Moreover, the TLC “made ‘considerable capital’ out of the CCL’s political position and contrasted the TLC’s patriotism with the subversive wartime ‘industrial strife’ caused by the CCL.”³⁴

Under pressure from the government to organize as a union and to affiliate, a motion was adopted at SCSA executive meeting held on August 30 “to suggest to our membership affiliation with the Trades and Labour Congress of

³¹ Ibid., 59.

³² Ibid., 60.

³³ Ibid. (For a brief period in 1944, the SCSA changed its name to the SGSA.)

³⁴ Ibid., 60-1.

Canada.”³⁵ The membership overwhelmingly endorsed affiliation with the TLC, with the CCL not offered as an option in the vote. Doug Taylor argued that, ultimately, the TLC was seen to be the better option for the SCSA due to its non-partisanship and conservative character.³⁶ Saskatchewan’s experience demonstrates three elements. First, the conservative nature of public servants is evident—when faced with a more radical choice, they rejected it. The other two elements revolve around the importance of political parties. The first of these is the importance of labour-friendly parties winning power. The events in Saskatchewan are completely the result of the CCF forming government. The second here evokes what was discussed above in relation to Australia and New Zealand. That is, beyond the party in power’s view of labour, the party’s specific view of how public servants fit into the broader world of labour is vital. In Saskatchewan, this manifests itself both in the CCF’s determination to treat public servants like all other workers as well as in the government’s disdain for the allegedly Communist CCL.

Quebec

At the end of the 1950s, the labour rights of Quebec’s public servants were “strongly limited.” As Yvan Perrier recounted,

les fonctionnaires et les professionnel.le.s à l’emploi du gouvernement n’avaient pas le droit de se syndiquer, ni celui de négocier collectivement leurs conditions de travail et de rémunération ni le droit de faire la grève. ... La Loi du service civil (adoptée en 1868) prévoyait (à partir de 1943) que les

³⁵ Taylor, *For Dignity, Equality and Justice*, 18.

³⁶ *Ibid.*, 19.

conditions de travail étaient déterminées unilatéralement par la Commission du service civil.³⁷

Following the death in office of Premier Maurice Duplessis in 1959, his successor Paul Sauvé delivered raises for public servants along with promises of labour relations reforms. However, in early 1960 Sauvé also died in office. Months later, the Liberals led by Jean Lesage took power. At this time, Quebec's Quiet Revolution was beginning and with it the Quebec government's field of activity rapidly expanded, necessitating significant hiring. In 1961, a union was formed by employees of the province's Ministry of Finance.³⁸ By early 1962, representatives from the labour federation Confédération des syndicats nationaux (CSN), led by Jean Marchand, presented a brief to the government that demanded collective bargaining rights for public servants. While Lesage agreed with public servants forming an association, he ruled out full rights on the

³⁷ Yvan Perrier, "De la négociation en rang dispersé à la création des quatre Fronts communs intersyndicaux CSN-FTQ-CEQ," *Bulletin d'histoire politique* 30, no. 2 (Summer 2022): 99. ("Civil servants and professionals employed by the government did not have the right to unionize, nor the right to collectively negotiate their working conditions and remuneration, nor the right to strike. ... The *Civil Service Act* (adopted in 1868) provided (from 1943) that working conditions were determined unilaterally by the Civil Service Commission.")

³⁸ Sophie Imbeault, *Le Syndicat de la fonction publique et parapublique du Québec: Soixante ans d'histoire, 1962-2022* (Quebec: Syndicat de la fonction publique et parapublique du Québec, 2023), 10.

grounds of parliamentary sovereignty.³⁹ On this matter, Lesage famously remarked that the “The Queen does not negotiate with her subjects.”⁴⁰

Despite Lesage’s misgivings, in 1965 his government amended Quebec’s labour law to bring all workers (save for police, firefighters, and essential workers) under the province’s *Labour Code*,⁴¹ with a few specific limitations being applied to Quebec public servants’ right to strike. First, a lengthier notice period in advance of striking was required in the public service than in the private sector. Second, a public service strike could not commence unless an agreement was in place covering “essential services and the manner of maintaining them.” Finally, for the entire public sector, cabinet retained the option to suspend any strike if “in the opinion of the Lieutenant-Governor in Council a threatened or actual strike in a public service endangers the public health or safety.” In such a case, the government could seek an injunction suspending the right to strike for up to 80 days. It is important to note that this section applied beyond the province’s core public service and to areas such as

³⁹ Ibid., 20-1. (Lesage stated that full bargaining for public servants “est contraire à deux principes. Premièrement: il ne saurait y avoir aucune convention entre la souveraine et ses employés. Deuxièmement: le Parlement a une souveraineté exclusive et absolue sur les dépenses 21 des deniers publics”. Further: “un gouvernement ne peut recevoir d’ordres ou directives que du Parlement.” Citing Marcel Thivierge, “Lesage déclare en réponse au mémoire de la CSN : Les hôpitaux veulent un chèque en blanc, Québec n’a pas le droit de leur donner” *Le Devoir*, 20 February 1962, 1.)

⁴⁰ Though oft-cited, it is difficult to pin down precisely where and when Lesage made this utterance. It is sourced to both sometime in 1962 (see: Jean Boivin, “La négociation collective dans le secteur public québécois : une évaluation des trois premières rondes (1964-1972)” *Relations industrielles / Industrial Relations* 17, no. 4 (1972): 705) as well as being more precisely pinpointed at a 1963 Federal-Provincial Conference in Ottawa. (see: << [<< https://labourrights.ca/history>>](https://labourrights.ca/history))

⁴¹ Morton, *Working People*, 260.

education and hospitals, where the government was not the direct employer.⁴²

Despite these restrictions, Quebec's legislation had nonetheless brought its "public servants within the ambit of general labour relations legislation."⁴³

Quebec had moved swiftly from Jean Lesage's affirmation of parliamentary sovereignty to that same Premier instituting full collective bargaining, complete with the right to strike. As recounted by Desmond Morton, this abrupt change owes much to worker militancy as well as a significant miscalculation about the willingness of public servants to strike.⁴⁴ Indeed, Morton argued that the "two biggest" factors in achieving the right to strike in Quebec were illegal strikes in both that province and federally at the post office.⁴⁵ Indeed, Quebec saw multiple wildcat strikes as public workers pushed for equality of bargaining rights with the private sector. As Leo Panitch and Donald Swartz put it, these strikes, "in effect, were recognition strikes."⁴⁶ The illegal strikes were, Morton concluded,

⁴² Jean Boivin, "La négociation collective dans le secteur public québécois," 709-10.

⁴³ Harry W. Arthurs, "Public Interest Labour Disputes in Canada: A Legislative Perspective," *Buffalo Law Review* 17 (1968): 45.

⁴⁴ Desmond Morton, "Winning the Right to Strike" (Speech, Niagara Institute seminar for OPSEU, Chateau Montebello, Papineauville, Quebec, 18 November 1981), 8. (University of Toronto Archives, Desmond Morton Fonds, B1999-0023, Box 055, File 13.) (On the miscalculation, Morton: "In 1963, as a feature of the so-called 'Quiet Revolution,' Quebec's new Liberal government legislated collective bargaining for a wide range of public employees. Part of the deal was to ensure that the new union dues would go to the pro-Liberal CNTU in return for past favours. To his credit, the CNTU president, Jean Marchand, insisted that he did not want members who had no right to strike. At the time, no one could imagine Quebec's meek and mild civil servants daring to strike. The CNTU would get their dues without much bother. It was a serious miscalculation. Within months, Quebec's liquor store employees had hit the bricks and they were the first of many.")

⁴⁵ *Ibid.*

⁴⁶ Leo Panitch and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms*, 3rd ed. (Toronto: University of Toronto Press, 2009), 19.

what had “persuaded the Lesage government” to cover all workers under the province’s broader labour laws.⁴⁷

Party politics also played a role in these developments. This was indicated by Jean Boivin’s detection of “a soft attitude by the government towards the unions” immediately following the labour laws being amended. Boivin argued that, under the Lesage Liberals, “political intervention” allowed unions to make gains they had otherwise been unable to bargain. This governmental attitude abruptly changed following the election of the conservative Union Nationale (UN) government in 1966. Importantly, the UN’s return to power did not alter the fundamental shape of public service labour rights as, for example, the right to strike was not removed. Instead, the new government focused on bargaining outcomes. Thus, “unions faced a more rigid attitude” with the government going so far as to dictate outcomes in areas in which it was not the direct employer. The Liberals returned to power in 1970, whereupon the Quebec government further centralized public sector bargaining in 1971. This decision led to the “Common Front” general strike in 1972—an event which will be touched on next chapter regarding its impact on lawmaking in Ontario.⁴⁸ The Quebec experience in this period demonstrates shifting partisan approaches to public sector unions, with the shifting approaches grounded in perceptions of electoral advantage.

⁴⁷ Morton, *Working People*, 260.

⁴⁸ Boivin, “La négociation collective dans le secteur public québécois,”: 711-13.

Assessing the federal government's legislation, Arthurs stated that it borrowed "from the private sector virtually all of the familiar principles including the rights to organize, bargain collectively, and strike" but set them "into a special administrative framework for federal civil servants."⁴⁹ The federal law's most significant departure from the private sector framework was its presentation to unions of a choice between a strike/lockout model or binding arbitration to resolve bargaining if and when negotiations reached an impasse.⁵⁰

The federal experience of legislating public service bargaining rights confirms Blais, Blake, and Dion's study of the federal government that found "parties and governments of the left tend to be more generous toward public sector employees than parties and governments of the right."⁵¹ While the Liberals had pledged to "provide collective bargaining for federal civil servants" in their 1963 election manifesto, that promise had stopped short of implementing a right to strike.⁵² Importantly, as the Liberals had been unable to obtain a majority in either the 1963 or 1965 elections the NDP held the balance of power. Now led by

⁴⁹ Arthurs, "Public Interest Labour Disputes in Canada," 45.

⁵⁰ *Public Service Staff Relations Act*, S.C. 1967, c. 72, ss. 59, 63-76, 78-89. Hodgetts noted that, along with the right to strike, the 1967 *Act* designated "the Treasury Board as the 'real' employer." (Hodgetts, *The Canadian Civil Service*, 313.)

⁵¹ André Blais, Donald Blake, and Stéphane Dion, *Governments, Parties, and Public Sector Employees: Canada, United States, Britain, and France*, (Montreal-Kingston: McGill-Queen's University Press, 1997), 3.

⁵² Liberal Party of Canada, "The Policies of the Liberal Party," in *Canadian Party Platforms 1867-1968*, ed D. Owen Carrigan, (Toronto: The Copp Clark Publishing Company, 1968), 300. The text used comes from the collection of political texts made available at www.poltext.org by The Center for Public Policy Analysis (CAPP) from Laval University, with the financial support of the Fonds de recherche du Québec - Société et culture (FRQSC).

former Saskatchewan Premier Tommy Douglas, the NDP was in favour of fully normalized labour relations in the public sector.⁵³ As Douglas stated in Parliament, “the members of this party have long advocated and supported the introduction of legislation which would provide full and complete collective bargaining rights for all government employees.”⁵⁴ As the government was “occasionally in bad need of NDP votes,” this position was difficult for a “weak Liberal government” to ignore. Moreover, as the Liberal government was “dominated by a Quebec caucus,” that province’s example on public service labour relations could likewise not be ignored.⁵⁵ As such, the Pearson government had scant choice but to act.

Independent of this political setting, the federal service itself was changing and becoming more militant. As Hodgetts *et al.* argued, this had much to do with the demographic changes within the organization that had begun in the 1950s. As the public service grew, staff associations had been infused with a “younger, more energetic, and well-educated” leadership, one more amenable to organized labour and collective bargaining than the previous generation. This, plus the fact that many federal employees “were receiving wages below the average for private employees, and ... a plethora of competing associations were facing an

⁵³ New Democratic Party of Canada. *New Democratic Party Program*, (1963). The text used comes from the collection of political texts made available at www.poltext.org by The Center for Public Policy Analysis (CAPP) from Laval University, with the financial support of the *Fonds de recherche du Québec - Société et culture* (FRQSC). (In its manifesto, the party pledged to “develop new safeguards for the right of employees to organize and bargain collectively, extending these rights to groups now legally excluded from them.”)

⁵⁴ Canada, Parliament, *House of Commons Debates*, 27th Parl, 1st Sess, (25 April 1966), 4250.

⁵⁵ Morton, “Winning the Right to Strike,” 8.

arbitrary employer,” made the ability to bargain terms and conditions of employment more important.⁵⁶

Finally, public opinion was not averse to increased labour rights, which suggested positive labour legislation could be electorally useful to the government. For instance, at the end of 1965, Gallup reported that more than half of Canadians backed the right to strike for public servants.⁵⁷ Acknowledging this mood, Prime Minister Lester Pearson argued when introducing the new law that many “responsible Canadians also feel strongly that the right to strike is fundamental and should be qualified only where a clear case can be made to restrict that right in the public interest.”⁵⁸ Going further, Pearson argued that if the “traditional protection” of the association-consultation approach was to be removed then “employees themselves should be given the right to protect their own interests through appropriate collective bargaining procedures comparable to those in the private sector.”⁵⁹

A normalized system of collective bargaining—once abhorred as unfit for the public service—had now become a beacon of stability. As the association-consultation process had ceased to function effectively, strikes—although illegal—had become a real concern. With illegal strikes emerging as a plausible scenario, the federal legislation was “to preserve the capacity of the public

⁵⁶ Hodgetts, *et al. Biography of an Institution*, 237.

⁵⁷ See: Ian P. MacMillan, “The Passage of the Public Service Staff Relations Act, 1965-1967” (master’s thesis, Wilfrid Laurier University, 1986), 44-45.

⁵⁸ Canada, Parliament, *House of Commons Debates*, 27th Parl, 1st Sess, (25 April 1966), 4246.

⁵⁹ *House of Commons Debates*, 27th Parl, 1st Sess, (25 April 1966) at 4244.

service to function effectively.”⁶⁰ Accordingly, Bryan Palmer argued that postal worker militancy had served as a catalyst for the legislation as it was this strike that had “pushed the state to respond” with the new laws in 1967.⁶¹ In this way, the move to the modified strike/lockout model in the federal public service was guided by an effort to maintain stability in public administration, Stephen Adams argued.⁶² A legislative model that simultaneously authorizes and circumscribes the strike right—as Wagner-type labour legislation does—offers considerably more stability than the threat of wildcat strikes. As Morton concluded, the government had “decided that it might as well legalize what few people seemed to consider a crime.”⁶³

New Brunswick

In the New Brunswick public service, hiring had long been attached to patronage. Hugh Thorburn remarked that the province’s 1943 *Civil Service Act* had changed matters somewhat, arguing that the Act had increased “the security of tenure of public servants” as well as making it more difficult for the “clearly unqualified” to be hired. Yet, even as Thorburn was publishing his work in 1961, he admitted that “political patronage still plays an important part in placement.” Relating the typical hiring process as it then existed, Thorburn stated that

⁶⁰ Ibid.

⁶¹ Bryan D. Palmer, *Working Class Experience: Rethinking the History of Canadian Labour, 1800-1991*, (Toronto: McClelland and Stewart, 1992), 321.

⁶² Stephen Dean Adams, “Collective bargaining in the public sector: A comparative study of Canada and the United States” (master’s thesis, University of Windsor, 1970), 78, 93-4.

⁶³ Morton, “Winning the Right to Strike,” 9.

usually a minister names the prospective employee and the (Civil Service) commission tests his suitability. If he passes the test, he gets the job: if he fails he is usually rejected. Thus, politics is certainly not absent in recruitment, although the politicians are obliged to maintain a certain standard.⁶⁴

In 1960, Louis Robichaud became Premier as the Liberals returned to power after eight years of Conservative rule. At the same time, the rise of the welfare state and the growth in government programs and employment meant that

no premier could single-handedly direct the whole civil service machinery after 1960. ... The time had come to recognize that, in order to introduce and administer more modern social and economic programmes, professionals of all kinds had to be employed on a permanent basis.⁶⁵

A turn from patronage to professionalism was thus upon New Brunswick. There were several elements to this change. One, which had impacts throughout the public sector, was a 1960 amendment to the *Labour Relations Act* to cover municipal workers. As a result, upon its founding in 1963, CUPE represented some 2,500 municipal workers in the province.⁶⁶ However, in 1964, a royal commission on finances and municipal taxation recommended the centralization of public administration with an expanded provincial public service.⁶⁷ This change would require the transfer of many municipal employees to the

⁶⁴ Hugh G. Thorburn, *Politics in New Brunswick* (Toronto: University of Toronto Press, 1961), 159-60. Thorburn continued, observing that in New Brunswick “politics at the provincial level is largely a battle of the ins *versus* the outs for patronage plums” (163). On the province’s patronage, Dalton Camp remarked that “Politics in New Brunswick comes cruelly close to the bone. Life for most people is a hard struggle. The provincial government was, still is, the largest employer. Patronage, a matter of political favour and partisan right, is often a matter of survival as well. ... McNair’s Liberal Party ‘looked after its own.’” (Dalton Camp, *Gentlemen, Players, and Politicians* (Toronto: McClelland and Stewart, 1970), 20.)

⁶⁵ Della M. M. Stanley, *Louis Robichaud: A Decade in Power* (Halifax: Nimbus Publishing, 1984), 90.

⁶⁶ David Frank, “Public Goods and Good Jobs: The Byrne Report and the Labour Question in New Brunswick, 1963-1968,” *Acadiensis* 45, no. 1 (Winter/Spring 2016): 93.

⁶⁷ *Ibid.*, 95.

provincial public service, thereby excluding these workers from the province's labour relations legislation. Understandably, this pleased neither CUPE nor the province's labour federation. Labour consequently exerted pressure for change on the government, and Robichaud, who considered himself an ally to labour, was receptive.⁶⁸

Concurrent to these events, the province's public service continued its modernization efforts. To bring about the required reforms, the province sought new public service leadership. New Brunswick found these leaders in Saskatchewan, recruiting several CCF-aligned provincial officials who resigned following the 1964 Liberal election victory in that province. This "contingent of former CCF civil servants ... who became known as the 'Saskatchewan Mafia'" was to have a great impact on the development of the New Brunswick's public service labour relations.⁶⁹

Donald Tansley was the leader of this contingent, becoming New Brunswick's Deputy Minister of Finance in 1964, where he played a "very direct role" in collective bargaining rights coming to the province's public service. The Robichaud administration's initial tool for advancing public service labour relations was the establishment of a joint council for consulting the staff

⁶⁸ Ibid., 97-8. (Federation of Labour President John F. "Lofty" MacMillan (who had come out of CUPE) recalled (quoted in *ibid.*, 98): "We had rallies all over the province. These included the civil servants, the secretaries, clerical workers, liquor store workers, highway workers, public works, forest rangers, the general broad scope of public employees. We also had a policy of getting to the local MLAs. We kept on the backs of them all the time. We figured you're not going to get the legislation passed if you just present briefs to the cabinet.").

⁶⁹ Lisa Pasolli, "Bureaucratizing the Atlantic Revolution: The 'Saskatchewan Mafia' in the New Brunswick Civil Service, 1960-1970," *Acadiensis* 38, no. 1 (Winter/Spring 2009): 127.

association. However, “it was soon obvious” that, as in other jurisdictions, the joint council was not up to the task.⁷⁰ Additionally, the civil servants’ association was “largely ineffective,” with Tansley calling it the “poorest excuse for employee representation I’ve ever seen.”⁷¹ Nevertheless, based on his experience in Saskatchewan, Tansley sought to implement collective bargaining and a right to strike for public servants. For this, Tansley recruited Saul Frankel to head a Royal Commission on Employer-Employee Relations in the Public Services of New Brunswick.⁷²

Before getting to the commission’s recommendations, a note on the staff association, which had been formed in 1943. There are few records of the NBCSA’s activities prior to 1960 and the formation of the joint council. As an indicator of the Association’s demeanor, despite the shortcomings of the council, the NBCSA had claimed in 1961 that “in effect, collective bargaining had been achieved through Joint Council activities.”⁷³ That same year, the NBCSA joined the Canadian Federation of Government Employee Organizations (CFGEO), which had collective bargaining for public servants as its stated goal. The Canadian Council of Provincial Employee Organizations (CCPEO) had formed in 1944 and reorganized in 1962 as the CFGEO, an umbrella organization of the provincial public service staff associations. Though the CFGEO’s fundamental goal was

⁷⁰ Stanley, *Louis Robichaud*, 194-5.

⁷¹ Lisa Pasolli, “Bureaucratizing the Atlantic Revolution: The Saskatchewan Mafia and the Modernization of the New Brunswick Civil Service, 1960-1970” (masters’ thesis, University of New Brunswick, 2007), 101.

⁷² Pasolli, “Bureaucratizing the Atlantic Revolution,” 101; Stanley, *Louis Robichaud*, 195.

⁷³ Pasolli, “Bureaucratizing the Atlantic Revolution,” 103.

collective bargaining rights for public servants, Anthony Thomson noted that “paradoxically ... the CFGEO and its member associations were seen as an alternative to trade unionism such as that represented by the Canadian Union of Public Employees.”⁷⁴ Despite taking a stance for collective bargaining, Wayne Roberts remarked that both the CCPEO and the CFGEO “were largely ineffectual.”⁷⁵

However, by 1963, the NBCSA had become “wary of the CFGEO’s position on unionization and strike action of public employees.” The NBCSA withdrew from the CFGEO, the Association’s president “stating that he was concerned that the CFGEO was getting too close to organized labour, and that the CSA were satisfied with their present system of the Joint Council.”⁷⁶ The NBCSA was further concerned that CUPE going to organize the province’s public service. In response, the Association went on the attack, asserting that it was “unquestionably ... the lawful bargaining agent” of New Brunswick public servants and that they would “fight it to the last ditch” against any CUPE takeover attempt.⁷⁷

Into this setting came Frankel’s commission. Communicating their concern with CUPE entering the public service, the NBCSA’s brief to the commission announced “we do not believe that trade unions are the appropriate agencies” for the public service. The Association further warned of “pressures ... from the

⁷⁴ Anthony Thomson, “The Nova Scotia Civil Service Association, 1956-1967,” *Acadiensis* 12, no. 2 (Spring 1983): 94.

⁷⁵ Roberts, *Don’t Call Me Servant*, 205.

⁷⁶ Pasolli, “Bureaucratizing the Atlantic Revolution,” 103.

⁷⁷ *Ibid.*, 104.

outside” which sought to render it ineffective.⁷⁸ Finally, the NBCSA took the position that public servants should not have the right to strike.⁷⁹ Despite this, Frankel recommended full collective bargaining rights be extended to public servants. Importantly, Frankel recommended that employees be able to choose their own bargaining agent. As a more general illustration of the pace of change, Frankel issued this report seven years after referring to discussion of public servants’ right to strike as “academic.”

Several factors intertwine in New Brunswick. There is the challenge from CUPE, the impact of the welfare state and a professionalized public service, as well as the government’s ideological orientation. On the impact of the Robichaud government, a vital decision-point in the development of the province’s public service labour relations was the importation of social democratic public service leaders from Saskatchewan. The possibility of importing these public servants was tied to their sense that Robichaud “was a socialist ‘in everything but name.’”⁸⁰ Moreover, one commentator argued that the new law “was a document which would not have received serious consideration ten years before,” but more

⁷⁸ Ibid.

⁷⁹ Stanley, *Louis Robichaud*, 195.

⁸⁰ Pasolli, “Bureaucratizing the Atlantic Revolution”: 127. (Pasolli recounted that, “In early 1964 Tansley visited Fredericton to meet Robichaud and other members of the government and civil service. In a discussion with the premier, Tansley outlined his experience with state-managed programs such as medicare and government insurance, prompting Robichaud to declare: ‘Well, I’m for those things too, but I’m no bloody socialist!’ Undaunted, and armed with the conviction that Robichaud was a socialist ‘in everything but name,’ Tansley accepted an offer to become New Brunswick’s new deputy minister of finance and industry.”)

importantly that Robichaud was “very proud” of it.⁸¹ Another noted that “Robichaud and senior civil servants proved sympathetic” to labour.⁸²

British Columbia

Goldenberg noted that British Columbia’s “restrictive labour legislation and arbitrary decision making by the government as employer seemed firmly entrenched under the Social Credit regime that had been in power since 1952.”⁸³ In a further confirmation of Blais, Blake, and Dion’s hypothesis, British Columbia’s approach abruptly changed with the election of an NDP government in 1972. Among that government’s first acts in power was to repeal “the most restrictive aspect” of BC’s labour law—the *Mediation Commission Act*—by virtue of which the government had the sole discretion to refer *any* labour dispute (public or private) to binding arbitration.⁸⁴ Additionally, within a year of its election and after establishing a commission of inquiry, the new government introduced amendments to British Columbia’s public service bargaining legislation.⁸⁵ These amendments had been promised in the party’s election manifesto: “an NDP government will guarantee its employees all of the rights enjoyed by those who work in the public sector, including the right to strike.”⁸⁶

⁸¹ Ibid., 196.

⁸² Frank, “Public Goods and Good Jobs,”: 100.

⁸³ Goldenberg, *Public Service Bargaining*, 4.

⁸⁴ Ibid.; *Mediation Commission Act*, S.B.C. 1968, c. 26.

⁸⁵ Goldenberg, *Public Service Bargaining*, 5.

⁸⁶ New Democratic Party of British Columbia, “NDP—A new deal for people,” *Democrat* 12, no. 3 (September, 1972): 13. The text used come from the collection of political texts made available at www.poltext.org by The Center for Public Policy Analysis (CAPP) from Laval University, with the financial support of the Fonds de recherche du Québec - Société et culture (FRQSC).

Earlier, party leader David Barrett had promised the BCGEU “free collective bargaining” for all civil servants in a letter in which he also noted his past work as a union activist as a BCGEU member.⁸⁷

Though the change in government in British Columbia was obviously a critical step in the development of that province’s public service labour relations, the role played by the growing threats of militancy should not be underestimated. By the time of its 1970 convention, the BCGEU “was an inscrutable mix of firebrands ready to strike at the mere mention of collective bargaining ... a centre band of moderates, and more timid souls ready to settle for anything.” At that convention, though the motion was referred, consideration was given to establishing a strike fund to support “militant action” (meaning wildcat strikes for bargaining rights). However, delegates ultimately supported a shift to legal action in which the BCGEU took the government to court, arguing that the province’s *Civil Service Act* imposed a duty on the government to discuss employment matters with the union. Though the union lost the case, significant pressure was building for change.⁸⁸

The legislative change came in 1973 with the passage of the province’s *Public Service Labour Relations Act*.⁸⁹ The new Act provided for a right to strike, though with certain fetters on timing. This change was doubtlessly a result of the

⁸⁷ David Barret to John L. Fryer, General Secretary, BCGEU, 11 May 1972, in Bruce McLean, “A Union Amongst Government Employees”: *A History of the B.C. Government Employees’ Union, 1919-1979*, (Vancouver: BCGEU, 1979), 114.

⁸⁸ McLean, “A Union Amongst Government Employees”, 111-13.

⁸⁹ *Public Service Labour Relations Act*, S.B.C. 1973, c. 144.

NDP election victory, the impact of which cannot be overstated. As the BCGEU's self-produced history recounted:

Negotiations had been scheduled between the union and the Civil Service Commission for August 31, the day after the 1972 provincial election. Instead of their briefcase, BCGEU negotiators took their champagne and a set of glasses. Both sides drank the bubbly, with the union officers toasting the new government, and agreed to call off the negotiations. The old rules of the game were out the window.⁹⁰

Jurisdictions with no right to strike

As recounted in the previous chapter, since 1963 the OPS had offered its employees what Shirley Goldenberg referred to as “qualified bargaining rights.”⁹¹ In 1964, this approach spread to another jurisdiction when Nova Scotia implemented a framework “rather like that existing in Ontario.”⁹² In both provinces, the potential subject matter of bargaining was limited by legislation, with all unresolved disputes going to arbitration.⁹³ Both Manitoba (1960⁹⁴) and Alberta (1962⁹⁵) afforded limited bargaining rights to public servants, though vitally in both provinces there was no access to arbitration as the “governments retained the power to impose a settlement in the event of deadlocked

⁹⁰ Ibid., 116.

⁹¹ Goldenberg, *Public Service Bargaining*, 3.

⁹² Gordon Burnham and Robert Vaison, *Civil Servants by the Sea*, (Halifax: Nova Scotia Employees Association, 1976), 88; *Joint Council Act*, R.S.N.S. 1967, c. 35.

⁹³ In Ontario, successive amendments to the *Public Service Act* increased the scope of bargainable issues to, by 1968, explicitly contemplate the establishment of salary ranges through negotiation. (*An Act to amend The Public Service Act*, S.O. 1968, c. 110, s. 1.) See also: Hadwen, *et al.*, *Ontario Public Service Employment and Labour Law*, 67-70.

⁹⁴ *Civil Service Act*, R.S.M. 1960, c. 6.

⁹⁵ *Public Service Act*, R.S.A. 1970, c. 298.

negotiations.”⁹⁶ Such a situation understandably constrained the government employer’s incentive to engage in substantive bargaining. Two provinces lacked even this level of rudimentary collective bargaining: Prince Edward Island favoured a non-bargaining consultative approach, while British Columbia also employed a consultative approach, which “left decision-making authority clearly in the hands of the government.”⁹⁷

Alberta

Going into the 1970s, Social Credit had governed Alberta for decades, a control so complete that C. B. Macpherson coined the term “quasi-party system” to describe it.⁹⁸ In 1968, the government passed the *Civil Service Association of Alberta Act*, which set out in law the objectives of the public servants’ employee association that had existed since 1919.⁹⁹ With this legislation, the government essentially “took ownership” of the staff association, going so far as to set out the CSAA’s objectives as including “harmony between the members of the

⁹⁶ Goldenberg, *Public Service Bargaining*, 3.

⁹⁷ *Civil Service Act*, S.P.E.I. 1962, c. 5; Goldenberg, *Public Service Bargaining*, 3; *The Civil Service Act*, R.S.B.C. 1960, c. 56.

⁹⁸ C. B. Macpherson, *Democracy in Alberta: The Theory and Practice of a Quasi-Party System*, (Toronto, University of Toronto Press, 1953), 238-39. (The Alberta party system “shares the attributes of the ordinary party system, at least to the extent that it operates by permanently organized and publicly identified electoral machines with some opposition from other machines. It shares the attributes of a non-party system in its emphasis on ‘business government,’ that is, on administration rather than policy formation as the function of government and as the government’s main claim on the electorate. It shares, too, some of the qualities of a one-party system, especially in its rejection of the orthodox notion that party is beneficial, and in the belief in a general will of the community.”)

⁹⁹ The Civil Service Association of Alberta, which became the Alberta Union of Provincial Employees (AUPE) in 1975.

Association and the Government.”¹⁰⁰ Though this paternalistic Act “severely restricted” the association “and its ability to act on behalf of its members,” it remained in effect until 1976.¹⁰¹ This despite the Social Credit dynasty collapsing in 1971 to be replaced in government by the Progressive Conservatives, and despite the new government having pledged “to provide adequate bargaining rights for the civil service, similar to those enjoyed by other workers in Alberta.”¹⁰²

Under Social Credit, labour relations in the public service had adopted the association-consultation approach, with the province’s joint council the forum where Association and government representatives could discuss “matters of mutual interest.”¹⁰³ Under the *Public Service Act*, the Association and government negotiated periodic agreements “with respect to salaries, wages, fringe benefits or other terms or conditions of employment.”¹⁰⁴ Matters where the Association and the government could come to an agreement would be put into practice. Those matters on which there was no agreement would go to a mediation board,

¹⁰⁰ Jim Selby, *Forging a Real Union: From the CSAA to AUPE*, (Edmonton: Alberta Union of Provincial Employees, 2016), 6. *The Civil Service Association of Alberta Act*, S.A. 1968, c. 11, ss. 5(b) and 5(e).

¹⁰¹ Alberta Union of Provincial Employees, “History,” <<<https://www.aupe.org/about/history>>>

¹⁰² Alberta Progressive Conservative Party, *Now – New Directions for Alberta in the Seventies: The Platform of the Alberta Progressive Conservative Party and its Candidates*, 1971, 80. The text used come from the collection of political texts made available at www.poltext.org by The Center for Public Policy Analysis (CAPP) from Laval University, with the financial support of the Fonds de recherche du Québec - Société et culture (FRQSC).

¹⁰³ *The Public Service Act*, 1968, S.A. 1968, c. 81, s. 30(2)(a).

¹⁰⁴ *Ibid.*, ss. 2(a), 26-9.

after which it was for the government alone to decide if it wished to adhere to that board's recommendations.¹⁰⁵

The government's firm control of both the employees' association and the bargaining process stoked ill-will. Once "dismissed as a timid organization under their employer's thumb," the association staged its first protest in April 1971. In August of that year, correctional officers illegally struck and became "a public sensation," with the AUPE declaring that the strike was a factor in Social Credit losing that year's election.¹⁰⁶ However, despite its promise to grant public servants similar rights to the private sector, the new Progressive Conservative regime "proved just as heavy-handed as the previous government." Indeed, the only immediate amendment the government made to the labour relations legislation was to alter the mediation board to binding arbitration.¹⁰⁷ Thus, in Alberta, legislative change occurred around a change in government, with a new government making amendments soon after taking office. However, despite promises made in the face of growing worker militancy, the changes to the law were minimal. Vitally, in a reinforcement of the importance of governing party ideology, though the 1971 Alberta election saw the long-time incumbent party dispatched, the election featured a party of the right being displaced by another party of the right.

¹⁰⁵ *An Act to amend The Public Service Act, 1968*, S.A. 1970, c. 93, ss. 29a-29k.

¹⁰⁶ Selby, *Forging a Real Union*, 10; "Government defied at Calgary and Lethbridge: RCMP assume guard duties as strikes continues at 2 jails," *Globe and Mail*, 28 August 1971.

¹⁰⁷ *The Public Service Amendment Act, 1972*, S.A. 1972, c. 80.

From 1882 until 1925, Nova Scotia was governed by the Liberals. Beginning in 1933, the province enjoyed another 23 years of Liberal dominance before giving way to successive Progressive Conservative majorities. Largely due to patronage, Robert Vaison and Peter Aucoin argued that, in Nova Scotia, the “party political history of the province ... play(ed) a decisive role in the formulation of personnel policy and in the experience of staff relations.”¹⁰⁸ By the mid-1950s, the Nova Scotia Liberal party found itself in “a less firm position” vis-à-vis power. Consequently, “the imminent possibility of patronage appointments by another party was an incentive for innovation.” In the last year of their government, and two decades after the province’s *Civil Service Act* was first passed, the Liberals issued an order in council that “authorized the formation of an association of civil servants.” Vaison and Aucoin argued that this two-decade gap demonstrated that

partisan stability, strengthened by long-standing attitudes of those involved in public administration, made for continuance of an environment in which paternalism remained dominant in staff relations and in personnel management generally.¹⁰⁹

The order in council was issued “without the prior knowledge of the civil service community” and, in a demonstration of paternalistic dealings, made the association’s constitution, rules, and by-laws subject to government approval.

¹⁰⁸ Robert A. Vaison and Peter Aucoin, “Evolving Staff Relations in the Nova Scotia Civil Service,” *Canadian Public Administration* 12, no. 4 (1969): 572.

¹⁰⁹ *Ibid.*: 575.

With the election imminent, the move smacked of “political opportunism” and provided no pretence of an independent staff association.¹¹⁰

Both the province’s *Civil Service Act* and the authorization of the staff association “were innovations in periods of political insecurity, a causal impetus that appears to have subsided shortly after each of them.”¹¹¹ Nova Scotia’s next innovation, the establishment of a joint council like that in Ontario, came during a period of Conservative dominance and, Vaison and Aucoin argued “required the persuasive advocacy of the Minister of Labour ... to overcome Cabinet hesitancy.”¹¹²

An additional factor in Nova Scotia’s experience was challenges from other unions, particularly CUPE. Anthony Thomson argued that “the development of collective bargaining procedures was seen as necessary to undercut the potential appeal of trade unions.”¹¹³ By asserting control and in some cases going so far as to designate bargaining units, the suggestion is that government could both proscribe collective bargaining and keep strong unions out of the government’s own workplaces.

Manitoba

In 1922 the United Farmers of Manitoba won a majority government. This victory ushered in a one-party-dominant political system which lasted until 1958.

¹¹⁰ Burnham and Vaison, *Civil Servants by the Sea*, 23.

¹¹¹ Ibid.: 578.

¹¹² Ibid.

¹¹³ Anthony Thomson, “The Nova Scotia Civil Service Association, 1956-1967,” *Acadiensis* 12, no. 2 (Spring 1983): 94.

After winning a second majority, the UFM became the Progressive Party and merged with the Liberals to form the Liberal-Progressives in 1932, with that party governing the province until 1958. During their time in power, the Liberal-Progressives operated under “the principle that political parties are repugnant to the democratic workings of an elected assembly.” The government adopted a “business government” mentality that de-emphasized legislative partisanship and meant to extend some forms democratic participation.¹¹⁴ Although candidates ran in elections under various banners, they “were also expected to declare whether or not they were supporting the governing coalition. The effect was that party distinctions became less than clear.”¹¹⁵ In the late 1950s, the Progressive Conservatives came to power while the Liberals (having shed the “Progressive” half of their name) fell into a long decline. The Progressive Conservatives held power, including a decade with a majority, until the NDP took office in 1969.

Chris Adams argued that Manitoba was effectively a quasi-party system during its one-party-dominant era.¹¹⁶ Manitoba’s politics emulated Alberta’s in not only this respect, but also in the government’s treatment of Manitoba’s public services. Thus, Hodgetts and Dwivedi argued that “early developments” in public service staff relations “in Manitoba closely paralleled those in Alberta.”¹¹⁷ Indeed,

¹¹⁴ The same was apparent in Alberta and was an aspect of farmers’ parties. Macpherson argued that businesses government was “conceived primarily as means of strengthening the position of farmers in the monopolistic competitive order.” Macpherson, *Democracy in Alberta*, 232.

¹¹⁵ Chris Adams, “Manitoba’s Political Party Systems: An Historical Overview” (paper presented at the Annual Meeting of the Canadian Political Science Association, York University, Toronto, June 3, 2006) 3-4, 12. <https://www.cpsa-acsp.ca/papers-2006/Adams.pdf>

¹¹⁶ *Ibid.*, 3.

¹¹⁷ Hodgetts and Dwivedi, *Provincial Governments as Employers*, 168.

so similar were the two provinces that Frankel suggested that Manitoban officials “look to the experience of Alberta for their guidance.”¹¹⁸ Modelled on Alberta’s, Manitoba established its joint council in 1958. At the same time, the *Civil Service Act* officially recognized the Manitoba Government Employees Association (MGEA) as “the association” for public service employees.¹¹⁹

Notably, these amendments came at the end of the Liberal-Progressives’ time in power. Following the election of a Progressive Conservative government, and following, too, “lengthy discussions” with the Association, the Duff Roblin government introduced a basic form of collective bargaining in 1965. The Government and the MGEA then “signed a memorandum of Agreement which recognized the Association as the sole bargaining agent for provincial civil servants.” This recognition was “to continue as long as the Association maintains as members a majority of the employees.”¹²⁰

Hanging over the 1965 amendments was the spectre of CUPE. Early that year, the MGEA had “met with Roblin to remind him that CUPE had the CLC’s blessing to organize all public employees.” Pointing to “the threat from an outside organization,” the Association “urged Roblin to move quickly in granting the MGEA bargaining rights.”¹²¹ The 1965 legislation fell short of the Association’s desires, however, since it did not implement binding arbitration. The MGEA

¹¹⁸ Frankel, *Staff Relations*, 248.

¹¹⁹ *Ibid.*, 256.

¹²⁰ Cunningham, “Public Employment, Collective Bargaining and the Conventional Wisdom,” 416.

¹²¹ Doug Smith, Jock Bates, and Esyllt Jones, *Lives in the Public Service: A History of the Manitoba Government Employees’ Union*, (Winnipeg: Manitoba Government Employees’ Union, 1993), 143. (As discussed above, the CLC’s blessing was actually conditional at best.)

continued to pressure for this while also making it clear to the membership that the pursuit of arbitration was not a step towards unionization. Rather arbitration was presented as “a barrier between the association and union activity, particularly strike action.”¹²²

In 1969, an arbitration board was established to render binding decisions on bargaining impasses. In 1972, the new NDP government announced its intent to legislate a positive right to strike on the province’s public service (as the law in Manitoba was silent on striking, its legality was in question). In response to the government, the MGEA sprang into action. Surveying its members, the Association found that an overwhelming majority did not want the right to strike, a view shared by the Association’s leadership. The MGEA’s president, John Howden, argued that the right to strike was a poor fit for a sprawling association that covered the entire public service as “there is very little commonality of work or attitude” among the more than 700 classifications within the service. As such, it was very unlikely that any problem would be significant enough to attract sufficient support for a strike. Moreover, if such a problem ever did emerge, the association argued that its members would strike anyway, regardless of what the law said.¹²³

Howden further pointed to class differences amongst the MGEA membership. While the association’s “blue collar workers have similar attitudes

¹²² Ibid., 153.

¹²³ Ibid., 167. (At page 169: “At the MGEA’s fall 1972 convention Howden said the right to strike was “antagonistic to the philosophy of the civil servant,” and would be “difficult to use in a body of more than 11,000 members in 600-700 work categories. ... It would be unthinkable that we could ever get 50 per cent of our members to support strike action except on a very major issue.”)

of those characteristic of blue-collar workers everywhere,” the clerical and technical workers were different. These white-collar workers were, Howden said, “traditionally anti-union.” While they believed in a right for public servants to negotiate with their employer, they felt “a traditional obligation to honour their responsibility and serve the public.” Pushing back against the government, the MGEA took out full-page newspaper advertisements stating their anti-strike position (though numerous members expressed the opposite view in letters to the editor). Simultaneous with the debate about the right to strike, MGEA members appealed for political rights (including the right to join parties, campaign, and run for office). This was also strenuously opposed by the Association leaders, however, members approved this in a referendum.¹²⁴

By the early 1970s, fractures were apparent in the association with militant attitudes among the membership edging ahead of the leadership. This internal tension was exacerbated by the NDP government which, though supportive of providing the MGEA more rights, was nevertheless “toughminded in its approach to bargaining.”¹²⁵ An arbitrated wage settlement in 1973 was poorly received by both the MGEA leadership and membership. The reaction to the arbitration award set off a crisis within the MGEA and placed the right to strike at the centre of a membership debate, though members remained divided with a referendum on the question narrowly failing. Despite CUPE circling the MGEA (including dispatching more than 60 organizers to Manitoba and running an advertising

¹²⁴ Ibid., 167-71.

¹²⁵ Ibid., 175.

campaign critical of the MGEA), members decided to reform the association as opposed to joining an existing union. Among the steps taken was joining the CLC—not least to dissuade CUPE from raids.¹²⁶

Interestingly, Manitoba's *Civil Service Act* did not specifically prohibit public service strikes, instead it merely did not provide a statutory mechanism for striking. The Act's silence allowed the MGEA to speculate that public servants possessed a common law right to strike. The government took the position that the Act's silence was an implicit prohibition. The MGEA filed a motion with the Court for a determination but, without a concrete matter like a strike in front of it, the court declined to issue a ruling.¹²⁷ The question of a right to strike in Manitoba wound up being resolved in 1977 when corrections members walked off the job. This strike resolved the questions around the legality of striking in Manitoba—the strike was simply settled at the bargaining table, with no legal recriminations for the strikers.¹²⁸

Conclusion

In this chapter, we have seen that the development of public sector labour relations has occurred differently in jurisdictions across Canada, with these differences—as Ted Hodgetts and O. P. Dwivedi argued—“obviously” explained by the distinct “political, economic, and other factors indigenous to each

¹²⁶ Ibid., 176-91.

¹²⁷ Ibid., 196.

¹²⁸ Ibid., 206.

province.”¹²⁹ Here, several factors have been shown to drive change in public service labour relations legislation: professionalization due to staffing growth, the cultural climate, organizing challenges from CUPE, labour militancy, and party politics. It has also been shown that public service labour relations developed differently, and at a distinct pace, from jurisdiction to jurisdiction. While the factors listed above varied in their intensity from jurisdiction to jurisdiction, the evidence demonstrates that the primary factor in explaining the jurisdictional variance has been each jurisdiction’s local electoral politics.

Though electoral politics accounts for the different pace of change across the country, it is also important to note that much of the story across each jurisdiction has been similar. In the early years after Confederation, public services were small, with the Canadian state best described as passive—the proverbial night watchman state. One hundred years later, though, the state routinely found

itself refereeing at the heart and centre of all major social conflicts, dispensing welfare benefits, regulating major sectors of the market economy, and often operating in its own right some of the largest financial, commercial, and industrial enterprises.¹³⁰

What changed was the rise of the welfare state and the resulting growth and professionalization of the public service. As shown in Table 2, as the tasks undertaken by government grew, the number of public servants vastly expanded. Owing to the division of powers in Canada’s constitution, which gave provinces a

¹²⁹ Ibid.

¹³⁰ J. E. Hodgetts and O. P. Dwivedi, *Provincial Governments as Employers: A Survey of Public Personnel Administration in Canada’s Provinces*, (Montreal and London: McGill-Queen’s University Press, 1974), 1.

large role in the provision of social welfare, the staff complement of provincial public services exploded in the post-war period.

Table 2: Civil Service Employment, Provincial and Federal Governments, 1946-71¹³¹

Jurisdiction	1946	1951	1961	1971	Increase	
					Numerical	Per cent
Provincial	38,370	49,652	100,734	209,760	171,390	446.6
Federal	120,557	124,580	135,922	216,488	95,931	79.6

This significant growth occurred most rapidly during what Allen Ponak referred to as “the general climate of social change” in the 1960s, an environment that “was conducive to challenge of authority and the status quo in general.”¹³² Acknowledging the “pervasive restlessness” of the era, John Crispo and Harry Arthurs, too, pointed to “trade unionists, like so many in our society” being “less disposed today to accept the status quo,”¹³³ culminating in what Roy Adams described as the “general labour insurgency of the 1960s and 1970s.” This was a period during which “Canadian public-sector labour organizations, consistent with developments in many other developed countries, became more militant.”¹³⁴ It was in this volatile setting that, as Bryan Evans argued, “rapid public sector expansion created a large, educated labour force with few workplace rights.” For

¹³¹ Ibid., 10.

¹³² Allen Ponak, “Public-Sector Collective Bargaining,” in *Union-Management Relations in Canada*, edited by John C. Anderson and Morley Gunderson, (Don Mills: Addison-Wesley, 1982), 349.

¹³³ J. H. G. Crispo and Harry W. Arthurs, “Industrial Unrest in Canada: A Diagnosis of Recent Experience Industrial Unrest in Canada: A Diagnosis of Recent Experience,” *Relations Industrielles/Industrial Relations*, 23, no. 2 (1968): 247.

¹³⁴ Roy J. Adams, “Public Employment Relations: Canadian Developments in Perspective,” in *Public-Sector Labour Relations in an Era of Restraint and Restructuring*, ed. Gene Swimmer, (Toronto: Oxford University Press, 2001), 214. This is precisely what we saw Justice Rand railing against in the previous chapter.

these new employees, it soon became apparent that the “dominant employee association model was inadequate for addressing (public servants’) demands.”¹³⁵

Thus, a combination of demographic change and a changing cultural milieu contributed to an increase in worker militancy. In turn, this militancy played a vital role in expanding labour rights for public servants. In 1965, illegal strikes were endemic in Canada, with Evans noting that “a full third of all strikes, many involving public sector workers with few legal protections” were outside of the law. Among these were postal workers who, as Evans had it, “defied the government, the moderate leadership of their own employee associations, and public outrage” when they struck in 1965.¹³⁶ On this note of moderate leadership, Crispo and Arthurs argued that much of the labour unrest of the late-1960s was “less the product of labour leadership than the spontaneous outbreak of rank-and-file restlessness.”¹³⁷ This “moderate leadership” was another factor that drove change from within the staff associations, while also fuelling challenges from outside from so-called ‘real unions’—particularly CUPE.

However, these factors were, with some variance in intensity, evident in jurisdictions throughout the country. They alone cannot explain differences in the advancement of public service workers’ labour rights. The most significant

¹³⁵ Bryan Evans, “When Your Boss is the State: The Paradoxes of Public Sector Work,” in *Public Sector Unions in the Age of Austerity*, eds. Stephanie Ross and Larry Savage, (Halifax & Winnipeg: Fernwood Publishing, 2013), 20. Similarly, John Burton argued that the rapid expansion saw the public service “attract younger workers and members of minority groups.” Burton surmised that, given the 1960s milieu, these workers tended to be “supporters of more militant action.” (Burton, “The Extent of Collective Bargaining in the Public Sector,” 11).

¹³⁶ Evans, “When Your Boss is the State,” 21.

¹³⁷ Crispo and Arthurs, “Industrial Unrest in Canada,” 238.

difference between each jurisdiction, though, was the jurisdiction's politics, meaning the vital factor was the ideological orientation of the government. The fundamental driver of the emergence of a right to strike in a public service is which party was in power when. Informing this argument is David Smith's thesis "that party government, that is, the system of rule which places a party in government, has determined Canada's political development." For Smith, "party and government bear on each other; party enhances or limits what government can do." This is the case because, in Canadian politics, party and government are intermingled. Crucially, the Canadian model "confers exceptional power to the leader of the legislative party ... the legislative members, and a handful of notables."¹³⁸

Thus, driven by staffing growth brought about by the rise of the welfare state, public service labour relations were forced to professionalize. This staffing growth led to an influx of new, young, well-educated employees who became members of the existing staff associations. In numerous jurisdictions the threat of CUPE drew staff associations and governments together, with neither party desiring an external organisation coming into the public service. The defence against CUPE had the ironic outcome of driving the Associations to behave more like unions. For example, to keep CUPE "at the gates," the Associations (here speaking of the MGEA) had to become unions: "they had to negotiate contracts, they had to make sure that all those who benefited from those contracts

¹³⁸ David E. Smith, "Party Government in Canada," in *Canadian Political Party Systems: A Reader*, ed. R. K. Carty, (Peterborough: Broadview Press, 1992), 531-30.

supported the association, they had to link up with a national organization, they had to develop some clout in negotiations.”¹³⁹

At this same time, broad cultural factors at play in the 1960s, such a lack of trust in authority, began to have an impact, particular in contributing, along with economic factors like high inflation, to worker militancy. The level of militancy was not uniform across the country. In contrast to the docility of the MGEA (which pushed back against the right to strike), Quebec and the federal government saw illegal strikes which put the right squarely on the agenda. These illegal strikes served, effectively, as recognition strikes. Consequently, the government of Jean Lesage moved from a full-throated defense of parliamentary sovereignty to full bargaining rights in only three years. Despite the important role of militancy, it is important to note that neither Quebec nor the federal government were ruled by parties of the right at this time. Indeed, once the Union Nationale returned to power in Quebec, government attitudes toward labour hardened.

Conversely, in jurisdictions governed for long periods by parties of the right, we see little headway made on public service labour rights. While militancy was lacking in some of these jurisdictions (for example, Alberta or Manitoba) this was not true in other jurisdictions governed by the right, such as British Columbia. Yet even in that province it took the election of the NDP to see the legislation change. Ultimately, though the other factors contribute, the single

¹³⁹ Ibid., 155.

most important factor in the emergence of the right to strike has been the governing party's ideological orientation. In the next chapter, these factors will be considered in Ontario, a province in which the Progressive Conservatives came to power in 1943 and governed until the 1980s.

Chapter 8: The CECBA Era, Part 1: 1970-74

The *Crown Employees Collective Bargaining Act* is the most unfortunate piece of labour legislation in Canada.

- Ontario Division, CUPE¹

Because of the restrictive provisions in *CECBA*, crown employees are left with ¼ of a bargaining system.

- CSAO²

In my view, the *Crown Employees Collective Bargaining Act* provides a framework for collective bargaining which is reasonable to both employees and employers and, at the same time, contains those safeguards which are necessary in the public interest.

- Premier Bill Davis³

Introduction

“Why not Ontario?” asked Desmond Morton in a 1981 speech. Morton was enquiring about the lack of a right to strike for the province’s public servants. Acknowledging that most Canadian jurisdictions permitted their public servants to strike, Morton tentatively answered his own question by pointing to four elements. He hypothesized that the key culprits were Ontario’s wealth relative to other provinces, the demographics of the OPS workforce, the lack of worker

¹ CUPE, *A Submission of the Ontario Division of the Canadian Union of Public Employees to the Government of Ontario*, April 1974.

² CSAO, “What it’s like working under a giant! *CECBA* (Bill 105) and you,” (n.d.).

³ Premier William Davis to Harold O. Hughes, President CSAO Lambton College Branch, 19 April 1974 in Kaisree Singh Chatarpaul, “Labour Relations Law in the Public Service with some Emphasis on the Ontario Civil Service” (Master of Laws thesis, York University, 1978), 231. (Emphasis in original.)

militancy, and the province's long-standing conservative political landscape.⁴ These elements align (albeit with terminological differences) with those set out in the previous chapter's study of the development of the right to strike in other Canadian jurisdictions.

This chapter continues the exploration of the shift in Canadian public service labour relations that occurred between the mid-1960s and early 1970s. The focus is on Ontario, with the chapter detailing the process that began with the Little Report and culminated with the passage of the *Crown Employees Collective Bargaining Act* in 1972, an Act that was "quite different from the regime for the private sector, and from public sector regimes in other jurisdiction."⁵ As in the previous chapter, this analysis will show that, while various factors played a role in legislative developments, Ontario's conservative politics played the determinative role. Simply put, the long reign of the Progressive Conservative party was the fundamental factor that forestalled progress in OPS labour relations.

Ontario Through the 1960s

By the start of the 1970s, the Progressive Conservatives had governed Ontario for nearly three decades. Beginning with their minority government in 1943, by 1971 the PCs had won eight consecutive majorities under four different leaders. During this long period of stable one-party rule, the OPS had changed

⁴ Morton, "Winning the Right to Strike," 10-11.

⁵ Donald D. Carter, "Legal Regulation of Collective Bargaining in the Ontario Public Sector," *Relations Industrielles / Industrial Relations* 29, no. 4 (December 1974): 779.

significantly. Owing to the emergence of the welfare state, through the 1960s “the public service had effectively doubled in size.”⁶ Yet K. J. Rea argued that this seemingly shocking rate of growth (shown below in Table 3) was in fact “not out of keeping with the growth of the provincial labour force as a whole.” In 1965, Rea noted, the provincial government employed 1.65 per cent of the total Ontario labour force, with the figure rising to 2 per cent in 1970.⁷ While still representing real growth, it does put the terms of the absolute numbers into perspective.

Table 3: Headcount of OPS Employees and Government Spending, 1960-71

Year	OPS Headcount	Ratio Of Ontario Government Expenditures on Goods and Services and Capital Formation to Gross Provincial Product ⁸	Percentage Distribution of Government Expenditure on Goods and Services and Capital Formation by Level of Government ⁹
1960	30,433	0.106	23.5
1965	43,141	0.131	32.8
1970	62,280	0.166	38.0

Perhaps more telling than the rapidly expanding staff count was the fact that “spending had grown exponentially as the provincial government created

⁶ Evert A. Lindquist and Graham White, “Streams, springs, and stones: Ontario public service reform in the 1980s and the 1990s,” *Canadian Public Administration*, 37, no. 2 (June 1994): 275. (This pace of growth implies the OPS hiring more than 100 new employees every working day for ten full years.)

⁷ K. J. Rea, *The Prosperous Years: The Economic History of Ontario 1939-1975*, (Toronto: University of Toronto Press, 1985), 225.

⁸ Ontario Economic Council, *Issues and Alternatives – 1977: The Process of Public Decision-Making*, (Toronto: Ontario Economic Council, 1977), “Table 5: Ratio of Ontario Government Expenditures on Goods and Services and Capital Formation to Gross Provincial Expenditure,” 68.

⁹ Ibid., “Table 2: Percentage Distribution of Government Expenditure on Goods and Services and Capital Formation by Level of Government,” 65.

and expanded a host of policies and programs.”¹⁰ Table 3 presents the growth in spending on provincial governments between 1960 and 1970. There it is shown that, while in 1960 provincial spending accounted for 23.5 per cent of the total spending on government in Canada (federal, provincial, and local), by 1970 that share had risen to 38.0 per cent. Specific to Ontario, Table 3 sets out Ontario’s government expenditures as a percentage of the province’s gross provincial product (GPP). That spending figure increased from 10.6 per cent to 16.6 per cent between 1960 and 1971. In dollar terms, the GPP in 1960 was \$14.7 billion, which had risen to \$38.1 billion in 1971 (or \$28.0 billion in constant 1960 dollars).¹¹ Government spending was a growing slice of a growing pie.

During this period of rapid growth, the OPS undertook “aggressive recruitment of young, dynamic staff with specialized expertise” meaning to imbue the organization with “a thoroughgoing professionalism.”¹² As we saw in the previous chapter, the influx of new, younger staff was a factor in the shifting attitudes around unionization among public servants. In the speech quoted at the start of this chapter, Morton asserted that, prior to the 1960s, the average age of Ontario’s public servants “was much higher than in other provinces.” Consequently, “more of them had lively memories of the Depression when the

¹⁰ Lindquist and White, “Streams, springs, and stones,”: 275.

¹¹ See Ontario, *Budget Statement of The Honourable James N. Allan, Treasurer of Ontario*, (Toronto: Queen’s Printer, 1961), 106 and Ontario, *1972 Ontario Budget* (Toronto: Ministry of Treasury, Economics, and Intergovernmental Affairs, 1972), 72. Constant dollars calculation by author.

¹² Graham White, “Change in the Ontario State 1952-2002.” Paper Prepared for the Role of Government Panel, (2002), 15.

security of a civil service job made it a prize beyond yearning.”¹³ Though comparison with other provinces is difficult, we can demonstrate the change in OPS age demographics over the decade. As shown in Table 4, the percentage of staff under the age of 25 increased by 84 per cent between 1961 and 1971. As well, in 1961, 31 per cent of the OPS was under 34 years of age, a share that had increased to 41 per cent in 1971.

Table 4: Headcount of OPS Employees by Age Group, 1961 and 1971, per cent

Age Group	1961 ¹⁴	1971 ¹⁵
Under 25	8.8	16.2
25 – 34	22.4	24.9
35 – 44	25.7	19.5
45 and over	43.0	39.4

Whatever the attitudinal changes of OPS employees, there was no concurrent shift within the province’s leadership as Premier Robarts remained sceptical of the right to strike in the public service. Pugnaciously, Robarts noted that “at precisely the same time” Ontario had continued to constrain labour rights in the public sector, “the federal government of Canada and the provincial government of Quebec drafted legislation to give their civil servants the right to strike. All I can say is that if you give a man a new toy you must expect him to play with it.”¹⁶ With one of his last acts in office, Robarts meant to enshrine his

¹³ Morton, “Winning the Right to Strike,” 10.

¹⁴ Civil Service Commission of Ontario, *Report for the Periods April 1, 1960 – March 31, 1961, April 1, 1961 – December 31, 1961* (Toronto: Queen’s Printer, 1962), 30.

¹⁵ Civil Service Commission of Ontario, *Annual Report 1971* (Toronto: Queen’s Printer, 1972), 24.

¹⁶ Richard Jackson, “Strikes in the Public Service,” *The Daily Colonist* (Victoria), 30 June 1972.

public service labour relations philosophy, with the ultimately withdrawn Bill 217.¹⁷

Discussed above in Chapter 6, Bill 217 was withdrawn largely because of the degree of executive control it contemplated. According to Wayne Roberts, the bill's emphasis on executive discretion simply no longer fit with the government's broader approach to wielding power. By situating so much power over labour relations within the purview of Cabinet, Bill 217 had effectively "politicized labour relations" as it "put the politicians on the hot seat at a time when executives were groping toward an impersonal rule-based system."¹⁸ This new "impersonal" approach to governance had begun under Robarts with the Committee on Government Productivity (COGP), widely considered to be the "touchstone for all discussion of public service reform in Ontario."¹⁹ Active from 1969 through 1971, the COGP brought together leaders from the private sector and the OPS to "perform a thorough re-examination of the whole process of governing in Ontario." The aim was nothing less than making government "more effective by adapting the up-to-date management techniques used in modern business enterprise."²⁰ This was to be a new "blueprint for government," one that would cause "the ground that old-style labour relations stood on" to shift.²¹

¹⁷ Bill 217, *An Act to provide for Collective Bargaining for Crown Employees*, 3rd Sess, 28th Leg, 1970.

¹⁸ Roberts, *Don't Call Me Servant*, 130.

¹⁹ Lindquist and White, "Streams, springs, and stones," 270.

²⁰ Rea, *The Prosperous Years*, 233.

²¹ Roberts, *Don't Call Me Servant*, 96.

The “COGP’s central aim was to pave the way for the fullest adoption and implementation of the new management style.”²² The COGP was intended to lead to “restructuring of Ontario’s decision-making structure,”²³ and it was a “keystone recommendation that the Government adopt a similar (professional) approach to the management of its employees.”²⁴ Central to this quest of reinventing Ontario’s government was devising a means to “better control public expenditures.”²⁵ As Roberts recounted it, Ontario’s “top budget chiefs ... were fed up with the way government policy was set by political pressures at budget time.” In response, the COGP was born out of an effort to spread budgetary discipline throughout the OPS.²⁶

Roberts boldly argued that, when considered as a whole, the COGP “ranks as one of the great fiascos in the government’s history” as several of its key recommendations resoundingly failed. This is a questionable claim as even Roberts allowed that, despite his overall assessment, “the COGP succeeded in its fundamental aim. It made the civil service the kingpin of government and made it a bulwark against change.”²⁷ As part of this process, the Management Board of Cabinet was “created out of old cloth” by taking the Treasury Board (which had

²² George J. Szablowski, “Policy-Making and Cabinet: Recent Organizational Engineering at Queen’s Park,” in *Government and Politics of Ontario*, ed. Donald C. MacDonald, (Toronto: Macmillan, 1975), 116.

²³ Bryan M. Evans, “From Pragmatism to Neoliberalism: The Politics of the Remaking of the Ontario Administrative State, 1970-2002” (PhD diss., York University, 2008), 150.

²⁴ Roberts, *Don’t Call Me Servant*, 111.

²⁵ Evans, “From Pragmatism to Neoliberalism,” 151.

²⁶ Roberts, *Don’t Call Me Servant*, 109-10.

²⁷ Roberts, *Don’t Call Me Servant*, 113-14.

been the preserve of the Treasurer), supplying it with its own chair, and bringing it “under the general umbrella of Cabinet.” Equipped with its own staff secretariat, it was the role of the Management Board to “let Cabinet know what new spending proposals were likely to cost ... a consideration that had not always been felt important enough to impede good ideas in earlier and, perhaps, more affluent times.”²⁸ The new body took responsibility for the management of the public service.²⁹

The beginning of the Davis era

In February 1971, Bill Davis became the fourth Premier in the Progressive Conservative dynasty. His government’s first Speech from the Throne was read at the end of March of that year, announcing that “the men and women of Ontario are establishing fresh values,” and that

this search for new values stimulates and challenges government to match the zeal of the citizenry. The structure of government must evolve accordingly so that the instruments of public service will continue to be perceptive and sensitive to the needs of the people and responsive to the requirements of responsible democracy.³⁰

The speech foreshadowed a “new era in public policy-making and public administration ... characterized by a high degree of optimism at the elite level.” Driving the optimism was the sense that “powerful analytic and technological

²⁸ Edward E. Stewart, *Cabinet Government in Ontario: A View from Inside*, (Halifax: The Institute for Research on Public Policy, 1989), 14.

²⁹ Ontario, Committee on Government Productivity, *Interim Report Number Three: Report on the Structure of Government and Interim Recommendations to the Executive Council*, (December, 1971), 36.

³⁰ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 28th Leg, 4th Sess, No. 1 (30 March 1971), 3.

capabilities” were emerging that would give governments new “tools to do the job” of providing services.³¹

Though this was, perhaps, a practical application of the Throne Speech’s lofty principles, the reality is that the Davis government’s goal was primarily cost-containment. Indeed, the April 1971 budget highlighted the government’s “major emphasis on limiting the growth in the size of the civil service.”³² As Treasurer Darcy McKeough announced in the budget speech, the government was

aiming to contain the increase in wage and salary scales to an average of five per cent for 1971-1972. This cost-control target will minimize the impact of provincial wage settlements as a potential source of inflationary pressure in the economy.³³

It was in this setting, in which the government had stated its intent to throttle wages, that the government again moved to implement Judge Little’s recommendations.

Though the Progressive Conservatives had a new leader, when Bill Davis took office, the government had largely maintained its course. As Edward Stewart (who led the OPS as Secretary of Cabinet from 1976 to 1985) put it, when he succeeded Robarts, “theoretically” Davis

was free to structure his Cabinet and, therefore, his government in any way he felt appropriate. What he did, however, is what most new Premiers and Prime Ministers do on taking office—he simply repeated the basic structure that his predecessor had in place with some minor tinkering around the edges.³⁴

³¹ Szablowski, “Policy-Making and Cabinet,” 114.

³² Ontario, *1971 Ontario Budget*, (Toronto: Department of Treasury and Economics, 1971), 14.

³³ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 28th Leg, 4th Sess, No. 20 (26 April 1971), 869.

³⁴ Stewart, *Cabinet Government in Ontario*, 9.

Stewart flagged Davis's key inheritance as the COGP, with that Committee having "handed (Davis) a plan" for reshaping the government. As Stewart had it, Davis "in the course of the next year ... proceeded to put the basic recommendations of the COGP into place."³⁵ In this case, then, staying the course meant implementing significant change.

Testifying to the extent of this change, Evans argued that the 1971 budget signalled the "ascent of a fundamentally different" approach to governance in Ontario.³⁶ The implementation of the COGP's recommendations marked, in Evans's words, "the emergence of an awareness of the limits to public sector growth."³⁷ This awareness permeated the Davis government's budgetary approach.³⁸ The 1971 Budget had expressed a desire to limit the growth of the public service to 1.6 per cent over the next year while also seeking to "contain the increase in wage and salary scales to an average of 5 per cent."³⁹

The 1972 Budget extolled the success over the previous year of "limiting the growth of the civil service" to less than one per cent.⁴⁰ McKeough noted that the 1972 budget "purposefully slashes the growth in provincial spending" to "foster

³⁵ Ibid., 12.

³⁶ Evans, "From Pragmatism to Neoliberalism," 23.

³⁷ Ibid., 153.

³⁸ It is worth noting that the day that Ontario delivered its 1972 budget was the same day that Quebec's Common Front Strike began. (See: Richard Cleroux, "210,000 unionists in Quebec plan 24-hour walkout today," *Globe and Mail*, 28 March 1972.)

³⁹ Ontario, *1971 Ontario Budget*, (Toronto: Ontario Department of Treasury and Economics, 1971), 14-15.

⁴⁰ Ontario, *1972 Ontario Budget*, (Toronto: Ontario Department of Treasury, Economics, and Intergovernmental Affairs, 1972), 24-5.

maximum expansion in private sector activity and investment.”⁴¹ A newspaper profile of McKeough ran the day the budget was released. It recounted how he had, a year prior, visited his old school where “he noticed that much of what used to be done by college staff—cooking and cleaning—is being done by private companies on contract.” Further, McKeough had noticed that “the place is clean, the food is better, the school is saving money and a couple of private concerns are making money.” He sought to apply this notion to government:

There are armies of people in the civil service who are cooking meals and cleaning halls ... maybe it would be better to go and buy that service because the private sector can probably do it and make money and save the taxpayer some money.⁴²

In these words, Roberts heard “an echo of the COGP.”⁴³ Though as Evert Lindquist and Graham White argued, when the COGP was in operation “restraint, cutbacks, and downsizing were largely alien concepts,” it was only “within a few years” that “significant program review exercises were mounted.”⁴⁴ As touched on in the previous chapter, by the late 1960s, inflation in Canada was running over 4 per cent per annum. By 1973, following the oil shock, inflation had risen to over 5 per cent “and rates of wage increase in new major collective agreements were above 10 per cent.”⁴⁵ The impact of this on OPS labour relations will be discussed below.

⁴¹ Ibid., 5.

⁴² John Slinger, “Darcy the Regulator—tonight’s his night,” *Globe and Mail*, 28 March 1972.

⁴³ Roberts, *Don’t Call Me Servant*, 132.

⁴⁴ Lindquist and White, “Streams, springs, and stones,”: 275.

⁴⁵ John Sargent, “The 1975–78 Anti-Inflation Program in Retrospect,” Bank of Canada Working Paper 2005-43 (December 2005), 1.

CECBA: Legislating labour relations in the OPS

At the introduction of Bill 105,⁴⁶ a renewed effort to legislate OPS labour relations, Charles MacNaughton (then the Chair of the Management Board) reminded the Legislature that “although there was considerable public discussion” of Bill 217, that bill had ultimately not been “carried beyond first reading.”⁴⁷ Seeking to set the tone of the debate over the new bill, MacNaughton explained it was drafted following an effort to “seek the views of the various bargaining representatives of Crown employees.” Out of that process, five significant changes were made between Bill 217 and the new bill: (1) the broadening of bargainable items; (2) the deletion of the right of Cabinet to exclude any position or classification from bargaining; (3) the granting of representation rights upon winning 50 per cent of votes cast; (4) the application of penalties for transgressing the act to both employer and employee; and (5) the removal of the Ontario Provincial Police and colleges from the scope of the Act.⁴⁸

MacNaughton emphasised the absence of the right to strike from the new legislation. Linking limitations on bargainable subjects with the right to strike, he maintained that the two could not be separated, arguing that in the private sector “there is no limit to what can be put on the bargaining table ... but there is

⁴⁶ Bill 105, *An Act to provide for Collective Bargaining for Crown Employees*, 2nd Sess, 29th Leg, 1972.

⁴⁷ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 51 (4 May 1972), 1994.

⁴⁸ MacNaughton’s intervention was largely replicated as an explanatory note to the bill.

equally no limit on the right to strike.”⁴⁹ However, in the public service, there could be no right to strike because “those who voluntarily accept the responsibility of providing service to the public on behalf of their government” must “also accept voluntarily that they should not withhold the service.”⁵⁰ Once it was established that there can be no right to strike in the public service, MacNaughton argued that

there obviously must be limits to what may be so handed over (to arbitration) if the government of the day is to remain responsible for managing public programmes in the public interest. It is for that reason that Bill 217 spelled out in unmistakable language what matters were the exclusive rights of management and which were not, therefore, subject to the bargaining process.⁵¹

Bill 105 had its second reading on May 9, 1972, receiving a rocky reception in the legislature due to the prohibition on striking. NDP leader Stephen Lewis summed up the bill by stating that “one cannot help but feel upon perusing this bill that the government of the Province of Ontario still looks upon its civil servants as some kind of permanent indentured labour.” Lewis continued:

It is profoundly wrong to remove the right to strike from all of the public service in the Province of Ontario. The Province of New Brunswick has it, the Province of Saskatchewan has it, the Province of Manitoba has it, the federal government has it. All of those provinces take into account certain essential services. All of those provinces recognize that the government in the final analysis has the right to intervene, something which this government would have equally. It is profoundly wrong; it is in every sense a violation of the civil liberties of working people that the government should remove from a group in excess of 50,000 the basic right to withhold

⁴⁹ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 51 (4 May 1972), 1994.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, 1995.

its labour. That is an inherent right which seems to us to be one that is now recognized in most enlightened jurisdictions, if not this jurisdiction.⁵²

Notably, this debate occurred while more than 200,000 public employees were on strike across Canada.⁵³ This tally included both the “Common Front” strike in Quebec, as well as local public sector strikes. The debate on *CECBA* thus proceeded “against the backdrop of striking hydro workers,” and occurred the day after the end of a four-week strike by Toronto municipal workers.⁵⁴ These strikes unquestionably coloured the bill’s reception. Noting the Toronto strike, Liberal leader Robert Nixon suggested that “Bill 105 is presented at a time when public opinion ... seems to be for the time being much more in support of the government’s position” than it had been in 1970 when Bill 217 had been introduced. However, Nixon warned the Legislature against following “the peaks and valleys of public opinion” and instead extolled the federal government’s legislative model of a choice between arbitration or strike/lockout. Nixon, as Lewis had, took the position that the government did not require a full strike

⁵² Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 56 (9 May 1972), 2232. The NDP was clear on this position in its 1971 platform: “All workers without exception, including professional personnel, should have the right to belong to unions of their choice. The rights of workers to belong to unions, to bargain collectively, to strike and to picket are recognized in our law and are but specific instances of the citizen’s freedoms of association, contract, assembly and speech.” (New Democratic Party of Ontario, *Program for Ontario*, (Toronto: New Democratic Party of Ontario, 1971), 35. The text used comes from the collection of political texts made available at www.poltext.org by The Center for Public Policy Analysis (CAPP) from Laval University, with the financial support of the Fonds de recherche du Québec - Société et culture (FRQSC).

⁵³ “Nation-wide labor strife in Canada,” *Toronto Star*, 13 April 1972.

⁵⁴ Bryan Evans and Carlo Fanelli, “Ontario in an Age of Austerity,” 131; Rosemary Spiers, “Garbage pick-up may start throughout Metro tonight,” *Toronto Star*, 9 May 1972. (MacNaughton intervened in the debate to announce the results of the ratification vote by Toronto municipal workers. Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 56 (9 May 1972), 2223.)

prohibition when, instead, back-to-work legislation could be used on an *ad hoc* basis.⁵⁵ Some areas of the public service may well be essential, Nixon argued, “but blanket legislation of this type is bad legislation and I cannot lead my party in support of it.”⁵⁶ Speaking for the NDP, Ian Deans stated that he too saw “in this legislation the minister bowing, kowtowing if you like, to pressures of the day.”⁵⁷ Deans criticized the clause exempting certain management rights from bargaining.⁵⁸ Such a clause “destroys all of the normal bargaining procedures,” Deans argued, saying that it “takes away every single right that has been fought for over the years.”⁵⁹ So bad was this that Lewis found it “hard to believe that any union ... would agree to the exclusion of so many areas of free collective bargaining as the CSAO has allegedly done.”⁶⁰

In the event, the CSAO did not agree with Bill 105. In an object example of the state of OPS labour relations at the time, the union had not even received a

⁵⁵ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 56 (9 May 1972), 2218-9. Robert Hebdon summed up the prevailing public opinion of the time as being that “public sector employees were held in low esteem because of the strikes.” Hebdon, “Industrial Conflict Under Ontario’s No-Strike Laws,” 62.

⁵⁶ *Ibid.*, 2221.

⁵⁷ *Ibid.*, 2222.

⁵⁸ Bill 105 (first version), cl. 17(1). “Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage including the right to determine employment, appointment, complement, organization, work methods and procedures, kinds and location of equipment, discipline and termination of employment, assignment, classification, job evaluation system, merit system, training and development, appraisal, superannuation and the principles and standards governing promotion, demotion, transfer, lay-off, reappointment, and that such matters will not be the subject of collective bargaining nor come within the jurisdiction of a board.”

⁵⁹ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 56 (9 May 1972), 2225.

⁶⁰ *Ibid.*, 2233.

courtesy notification from the government that the bill was going to be tabled.⁶¹ On the day of its introduction, upon finding out about the bill, the CSAO called an emergency meeting to decide how to fight it.⁶² In a distorted echo of MacNaughton's stance, the CSAO also linked the scope of bargaining to the right to strike. However, while MacNaughton held that the limitation on striking necessitated a concomitant limitation on the scope of bargaining, the CSAO argued that his position "seeks to protect only management."⁶³ Instead, the CSAO linked the two issues by declaring that it would accept a prohibition on strikes, but only if all matters could be bargained and, ultimately, go to arbitration—precisely the outcome the government sought to avoid.

This position took shape at the Association's Bill 105 emergency meeting that was attended by some 300 out of 55,000 total members (a turnout which, perhaps, indicates the membership's level of interest). The *Globe and Mail* reported that the CSAO leadership favoured a cautious response to the bill. The report recounted that the leadership cautioned against a walkout to protest the bill: "one of the organization leaders told ... delegates ... that with the present atmosphere of widespread strikes in Quebec and recent garbage strike in Toronto any move to strike would be fatal." Nevertheless, some members proposed an

⁶¹ Roberts, *Don't Call Me Servant*, 143. ("On May 4, without so much as a tipoff, (CSAO assistant general manager Robert) Hebdon learned *CECBA* was before the legislature. He rushed into (CSAO President George) Gemmell's office. Gemmell said there was no reason to get upset, and left Hebdon to field media calls. On an emergency basis, Hebdon called a special general meeting of members for May 13 to consider CSAO's response. Then he started working up a brief on *CECBA*.")

⁶² "Civil servants plan no-strike protest," *Toronto Star*, 9 May 1972.

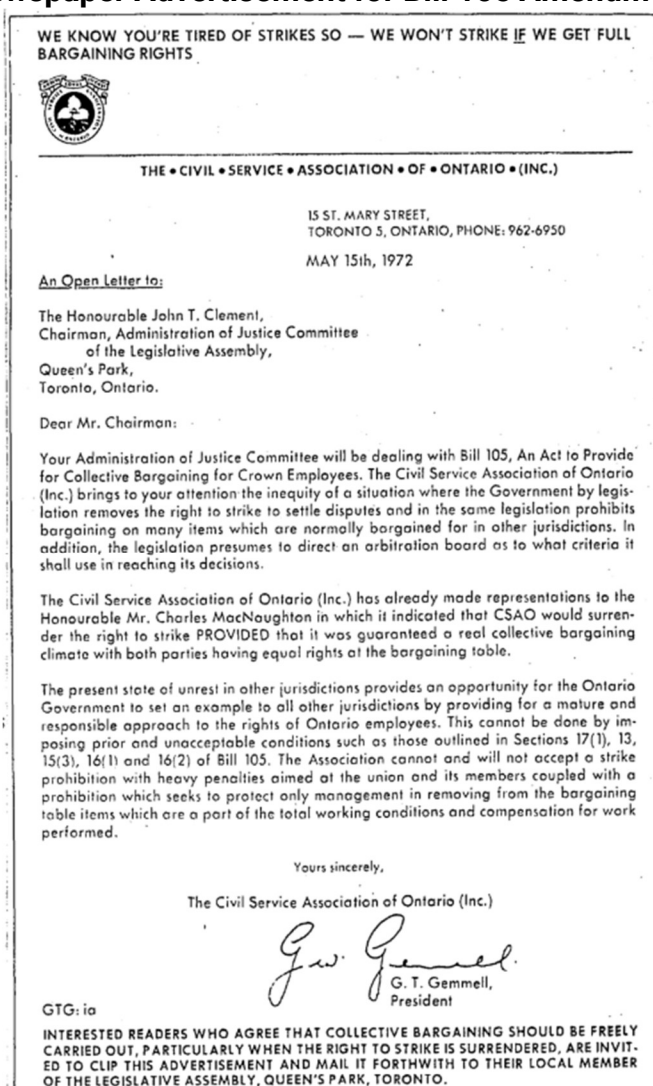
⁶³ George Gemmell to John T. Clement (open letter), *Toronto Star*, 17 May 1972.

immediate wildcat strike in opposition to the bill. In response, CSAO lawyer Donald Brown advised the meeting that “there is no question in my mind that if we take a strike posture, they will push this bill through so fast it will burn the doorway.” Taking leadership’s counsel, the meeting voted unanimously to send MacNaughton a telegram requesting a meeting, to prepare a detailed brief on the bill, and to authorize the directors to take any other steps felt necessary.⁶⁴ One of the those additional steps was an open letter (reproduced in Figure 6.1), which ran in 58 daily newspapers in mid-May 1972 under the heading “We know you’re tired of strikes so – we won’t strike if we get full bargaining rights.”⁶⁵

⁶⁴ “CSAO members decide to argue for strike right,” *Globe and Mail*, 15 May 1972.

⁶⁵ George Gemmell to John T. Clement (open letter), *Toronto Star*, 17 May 1972 (Emphasis in original). See also Roberts, *Don’t Call Me Servant*, 144.

Figure 6.1: CSAO Newspaper Advertisement for Bill 105 Amendments⁶⁶



Unmoved, MacNaughton made the government's position clear, stressing again that "when the government contracts to deliver a service to the people who pay for service, they are entitled to receive them."⁶⁷ MacNaughton continued, pointing to Quebec's Common Front strike as an example of the need for legislation just like that proposed: "if the Province of Quebec had possessed the

⁶⁶ *Toronto Star*, 17 May 1972.

⁶⁷ Here, MacNaughton evoked Judge Little's invention of the "duty of those selected to provide, without interruption" public services. *Collective Bargaining in the Ontario Government Service*, 42.

type of legislation that we are now discussing ... it wouldn't have approached the scope and almost disaster of 200,000 people on strike.”⁶⁸ MacNaughton also underlined “that this type of legislation will not permit” something like the Toronto garbage strike to occur at the provincial level.⁶⁹ Finally, he acknowledged that the proposed legislation was vastly different from that governing the private sector. He argued that the “evolutionary process” through which the *Labour Relations Act* had developed had “not affected the public service,” and that “during the past 10 years the process has evolved in the public sector in a natural and different way, and arbitration is the final step.”⁷⁰

While the debate was squarely focused on the right to strike and the scope of bargaining, the determination of bargaining units was also discussed. MacNaughton noted that Judge Little had recommended against fragmentation of bargaining units in the OPS. Interestingly, there is little evidence available to indicate the level of support that the CSAO had throughout the service. One commentary hostile to the CSAO alleged that “the association has only been able to maintain a thin majority” of support across the OPS. Nevertheless, as Marc Zwelling had it, “the government has negotiated exclusively with the CSAO without ever demanding proof of its membership support or submitting the question to a vote.” Indeed, in 1969 when the dues check-off for the CSAO was implemented, “the association by its own claims had signed no more than 56 per

⁶⁸ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 56 (9 May 1972), 2239.

⁶⁹ *Ibid.*, 2240.

⁷⁰ *Ibid.*, 2247.

cent” of its potential membership. “According to association sources,” Zwelling continued, at the time check-off was implemented the CSAO “had a majority in just two departments. ... Overall, it could claim a majority of all government employees, but in other departments, only handfuls of employees belonged, in some cases fewer than one per cent.”⁷¹

After a review at the legislative committee, Bill 105 was again reviewed in the Legislature by a committee of the whole. NDP MPP Reg Gisborn raised the same issue Zwelling had in his article: why entrench—with no realistic prospect of displacement—the CSAO without ever canvassing employees as to whether they wanted that union? MacNaughton’s only answer was to quote Judge Little’s admonition that the “public interest is best served if the public service is not fragmented.”⁷² On bargaining rights, amendments made before the bill’s passage served only to further make it clear that management rights were paramount.⁷³ The opposition howled, with Lewis calling the restrictions on bargainable issues

a pathetic little clause The way in which you have circumscribed the bargaining rights of your Crown employees is really something to behold;

⁷¹ Marc Zwelling, “The Civil Service Association of Ontario, Inc.: The ‘Inc.’ really means it; it’s not a union,” *The Last Post*, 2, no. 4 (February-March 1972), 32.

⁷² Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 72 (29 May 1972), 2894.

⁷³ Bill 105 (second version), cl. 6. (In the first version of the bill, clause 6 stated that “the employee organization is the exclusive bargaining agent authorized to represent employees in the bargaining unit in bargaining with their employer on...” followed by a list of bargainable items. The second version of the bill added stronger language, making clearer the fetters on the scope of bargaining: “the employee organization is authorized to bargain with the employer on terms and conditions of employment, except as to matters that are exclusively the function of the employer under subsection 1 of section 17, and, without limiting the generality of the foregoing...” preceding the list. As a concession, one more item was added to the list of bargainable items: mileage rates for use of a personal vehicle.)

and if their own association acquiesces in that, more is the pity. But that doesn't mean that we on this side of the House have to acquiesce in that.⁷⁴

Frustration with the CSAO was evident throughout Lewis' remarks. Bluntly, he intoned that

although it may be inappropriate, I want to express disappointment ... in the energy, submissions and purpose of the Civil Service Association of Ontario in pursuing the defence of the rights of its members as delineated or as denied by this legislation. It may be that it is profoundly comfortable for the minister to have a CSAO which appears to be so extraordinarily acquiescent in the face of what any other employees' organization I know would consider a most extraordinary provocation. But the CSAO, for whatever reason, has accepted the proscriptions of this bill.⁷⁵

Perhaps implied in Lewis's remarks, some observers of the CSAO continued to sense, as Zwelling put it, the presence of "sweetheart-dealing and pleasant accommodation to the status quo" in the CSAO's works.⁷⁶ In his history of OPSEU, Roberts agreed that the "CSAO did very little to lobby against" Bill 105. Contextualizing the NDP's admonishment of the CSAO, Roberts argued the party had "stuck out their necks to defend the rights of the CSAO, instead of taking up the complaints of CUPE or other unions, many affiliated to the NDP, who lost out most as a result of the monopoly given to the CSAO."⁷⁷

⁷⁴ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 72 (29 May 1972), 2904.

⁷⁵ Ibid., 2956. (Lewis' comments were magnified by the press, e.g. "Opposition criticizes civil servants over reaction to bill on bargaining," *Toronto Star*, 30 May 1972. This was not the only time Lewis was incredulous about the CSAO: "I find it hard to believe that any union, knowing the interests of its workers, would agree to the exclusion of so many areas of free collective bargaining as the CSAO allegedly have done. I don't believe it. I just don't believe it. I just don't believe that, in any way, that clause can reflect the wishes of the civil servants in the Province of Ontario." Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 56 (9 May 1972), 2233.).

⁷⁶ Zwelling, "Civil Service Association of Ontario," 34.

⁷⁷ Roberts, *Don't Call Me Servant*, 133.

The CSAO's response ought not to have been a surprise. Although the Association organized rallies against the bill, as noted above, these were quiet, lightly attended affairs. A photograph of CSAO members protesting at Queen's Park ran in the *Toronto Star* with the caption quipping that the protesters picketed "in so quiet a fashion that two dogs nap in front of them." Despite the leadership's opposition to the bill, former CSAO president and then-general manager Harold Bowen stated that "the issues are such that we might have difficulty generating sufficient enthusiasm among the members." According to the CSAO leadership, the membership's lack of interest was related to "the issues being ones of principle and long-term effect, rather than those of money or working conditions."⁷⁸

At least in its communications to its membership, the CSAO judged its efforts rather differently, a headline in the *CSAO News* blared that "CSAO's battle against Bill 105 forces amendments." While taking full credit for the few changes made to the bill, the CSAO concluded that *CECBA* represented little more than a missed opportunity for the government. "The time had come for the Government to show a genuinely progressive attitude to employee relations," stated the Association, but "it fumbled that chance. Again, it turned a deaf ear to reason." Hence, the government "must now feel the backlash of 53,000 public servants who have too long been the victims of government hypocrisy." No longer could

⁷⁸ "Ontario provincial employees 'unlikely' to test no-strike act," *Toronto Star*, 17 May 1972.

the government “go on making one law for ‘the people’ and another for its employees.”⁷⁹

Tempering this enthusiasm, the same edition of the newsletter echoed Stephen Lewis when it described the “disappointingly and inexplicably small response” the CSAO had from its members in its fight against the bill.⁸⁰ Yet, perhaps the response was not beyond explanation. Discussing the CSAO’s disorganized opposition to the bill, Robert Hebdon (who at the time of Bill 105 was the Association’s acting assistant general manager) offered that the Association was, when the bill was debated, “too busy stabbing ourselves in the back.” Indeed, as Roberts has it, “from 1968 to 1973” the CSAO “ran out of control.”⁸¹ During this period, the CSAO was racked by an internal power struggle in which Bowen (along with a large segment of CSAO staff who remained loyal to him) was eventually displaced by a more militant board.⁸² Roberts remarked that the CSAO’s saga “was a case study” of what H. C. Pentland called “the most novel and revealing feature of the labour militancy of the 1960s ... the frequent revolt of union membership against their leaders.”⁸³ The same shift was seen in other Associations as they became unions, including in British Columbia, Manitoba,

⁷⁹ “CSAO’s Battle Against Bill 105 Forces Amendments,” *CSAO News*, May 1972, 1. (University of Toronto Centre for Industrial Relations Library Archive).

⁸⁰ “The Battle of Bill 105,” *CSAO News*, May 1972, 1. (University of Toronto Centre for Industrial Relations Library Archive).

⁸¹ Roberts, *Don’t Call Me Servant*, 134.

⁸² *Ibid.*, 141-45. See also Rosemary Spiers, “48,000 civil servants put heat on Davis for right to strike,” *Toronto Star*, 16 September 1974.

⁸³ *Ibid.*, 134; H.C. Pentland, “A Study of the Changing Social, Economic and Political Background of the Canadian System of Industrial Relations,” *Report on the Task Force on Labour Relations (The Woods Commission) No. 1* (Ottawa 1968), 259.

Saskatchewan, and federally.⁸⁴ In each case, a timid association learned the lesson that “a bargaining strategy based on (what PIPSC referred to as) corporate humanism was not going to work.”⁸⁵ Instead, an “identity change” became necessary where the erstwhile associations had to begin to act like unions.⁸⁶ Below, we will return to this point vis-à-vis the CSAO.

Exclusions under CECBA

After being “rammed through three readings in three weeks,”⁸⁷ *CECBA* was passed by the Legislature on May 30, received royal assent on June 23,⁸⁸ and came into force on December 29, 1972.⁸⁹ Beyond its constraints on collective bargaining and its ban on strikes, *CECBA* was also notable for the “high proportion of the OPS ... excluded from the bargaining unit.”⁹⁰ While *CECBA*’s definition of employee began by suggesting it might cover all “crown employees as defined in the *Public Service Act*,”⁹¹ from there it moved to exclude: Ontario Provincial Police

⁸⁴ See: McLean, “a union amongst government employees”, 92-98; Smith, Bates, and Jones, *Lives in the Public Service*, 157-91; Taylor, *For Dignity, Equality and Justice*, 25, 49-72; Russell, *Leading Progress*, 40-41, 68-74, 90, 104-105.

⁸⁵ Russell, *Leading Progress*, 40-41. (“Corporate humanism” was a concept created by PIPSC—though never formally adopted—which rejected adversarial labour relations, instead promoting shared employer and employee interests in a “truly democratic relationship.”)

⁸⁶ *Ibid.*, 90.

⁸⁷ Roberts, *Don’t Call Me Servant*, 133.

⁸⁸ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 102 (23 June 1972), 4182.

⁸⁹ Ontario, “Table of Proclamations: R.S.O. 1970; 1971; 1971 (2nd Session); 1972; 1973; 1974; 1975; 1975 (2nd Session); 1976; 1976 (2nd Session); 1977; 1978; 1979; 1980,” Ontario: Annual Statutes: Vol. 1980, Article 133, 682.

⁹⁰ Lindquist and White, “Streams, springs, and stones,”: 272. See also Hadwen, *et al.*, *Ontario Public Service Employment and Labour Law*, 73-4.

⁹¹ *Public Service Act*, R.S.O. 1970, c. 386, s. 1(e) (“‘Crown employee’ means a person employed in the service of the Crown or any agency of the Crown, but does not include an employee of The

officers; college employees; those “employed in a managerial or confidential capacity;” members of the “architectural, dental, engineering, legal or medical professions” employed in a professional capacity; casual or temporary employees unless employed for six months or more; temporary employees on non-recurring projects; those working outside Ontario; and, anyone “employed in the office of the Provincial Auditor or of the Speaker, Deputy Speaker or Clerk of the Assembly.”⁹² The Act defined employment in a “managerial or confidential capacity” to mean a person who: was employed in “a position confidential to the Lieutenant Governor, a Minister of the Crown, a judge of a provincial court, the deputy head of a ministry;” or, who was “involved in the formulation of organization objectives and policy in relation to the development and administration of programs ... or in the formulation of budgets of the Government;” or, was in a supervisory position; or, was required by the employer to deal with employee grievances; or, adjudicated or determined “claims for compensation which are made pursuant to the provisions of any statute;” or, employed in a position confidential to labour relations; or, one who was not otherwise described “but who in the opinion of the Tribunal should not be included in a bargaining unit by reason of his duties and responsibilities to the employer.”⁹³

Hydro-Electric Power Commission of Ontario, the Workmen's Compensation Board, or the Ontario Northland Transportation Commission.”).

⁹² *The Crown Employees Collective Bargaining Act, 1972*, S.O. 1972, c. 67, s. 1(g).

⁹³ *Ibid.*, s. 1(m).

This list has been quoted at length both to make clear the vast scope of exclusions as well as to suggest that, with this, the government sowed the seeds of future problems. Contrasting *CECBA* with the *Labour Relations Act* makes clearer the scope of the former Act's exclusions. Under the *LRA*, exclusions in 1972 consisted of: managers and those working in a position related to labour relations; members "of the architectural, dental, land surveying, legal or medical profession ... employed in a professional capacity;" domestics employed in a private home; those employed in agriculture, hunting or trapping; agricultural employees; police; firefighters, and teachers.⁹⁴ A motley list to be sure, yet one that had some logic to it beyond a naked effort to exert management authority. For example, the labour rights of police officers, firefighters, and teachers were all covered by other Acts.⁹⁵ Though more questionable, the grounds for the exclusion of agricultural workers was a combination of "the seasonal nature of farming, the perishable nature of the product and the need for uninterrupted husbandry of crops and livestock," along with the more ideological claim "that a collective bargaining regime would be incompatible with the effective operation of the family farm."⁹⁶ A more questionable rationale applied to the listed "professional" classes of employees, who were not excluded for policy reasons

⁹⁴ *The Labour Relations Act*, R.S.O. 1970, c. 232, ss. 1(3) and 2.

⁹⁵ *The Police Act*, R.S.O. 1970, c. 351, *The Fire Departments Act*, R.S.O. 1970, c. 169, and *The Teaching Profession Act*, R.S.O. 1970, c. 456.

⁹⁶ *Dunmore v. Ontario (Attorney General)*, 1997 CanLII 16229 (ON SC).

but rather merely because “the national organizations representing those professions ... asked.”⁹⁷

As shaky as these *LRA* rationales may be, *CECBA* proceeded on yet wobblier ground. Some exclusions were either sensible or simply replicated the *LRA* (e.g. those working in management or positions confidential to labour relations, and the professional classes). Other exclusions were variously arguably unwarranted (e.g. temporary employees with less than six months of tenure), unclear (e.g. “involved in the formulation of organization objectives and policy in relation to the development and administration of programs”), or boundless (e.g. anyone who the Tribunal chose to exclude “by reason of his duties and responsibilities to the employer.”) Small wonder the exasperation of Ian Deans when he asked the government “what it means when it says a person shall be excluded if he spends a significant portion of his time in the supervision of employees? What in heaven’s name is a significant portion of his time and who is going to decide?”⁹⁸

⁹⁷ David J. Doorey, “The Stubborn Persistence of the Lawyer Exemption in Canadian Collective Bargaining Legislation,” *Dalhousie Law Journal* 45:2 (2022): 67.

⁹⁸ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 2nd Sess, No. 56 (9 May 1972), 2224.

Labour Relations Under *CECBA*

On March 6, 1974, Harold Hughes, president of the CSAO branch at Lambton College, sent Premier Davis a petition stating that the signees considered *CECBA* “to be both unjust and repressive.” The petition decried the list of non-bargainable issues enumerated in the legislation and specifically questioned the impartiality of chair of the arbitration board. Given that the chair was appointed by Cabinet, with an additional member appointed by the employer, any three-person board would have two members appointed by one side. “In the name of fair dealing between employer and employee,” the petition asked the Premier “to press for a change in legislation.”⁹⁹

In a letter replying to Hughes, Davis set out the government’s position. Davis first argued that *CECBA* did not “in any way change the means of resolving impasses,” as just as prior to the implementation of *CECBA*, any impasse would be arbitrated. Davis further asserted that Ontario was not alone in how it appointed boards of arbitration and pointed out that the current chair of the arbitration board had been in place since 1963, with his latest reappointment made only after consultation with the CSAO.¹⁰⁰

Regarding the list of non-bargainable items, Davis suggested that one “will find similar reservations in collective bargaining legislation in other public

⁹⁹ Harold O. Hughes to Premier William Davis, 6 March 1974, in Kaisree Singh Chatarpaul, “Labour Relations Law,” 227-28.

¹⁰⁰ Premier William Davis to Harold O. Hughes, President CSAO Lambton College Branch, 19 April 1974 in Chatarpaul, “Labour Relations Law,” 229-31.

jurisdictions and virtually every collective agreement in the private sector.”¹⁰¹

While Davis was quite correct in stating that collective agreements typically contain a “management rights” article, his argument was disingenuous as such articles are negotiated. They are not simply imposed by the employer, let alone imposed by law. On this point (as well as throughout his letter) Davis elided the fact that Ontario was a laggard in Canadian public service labour rights.

Davis maintained that *CECBA* was reasonable legislation because it provided a framework for bargaining that “contains those safeguards which are necessary in the public interest.”¹⁰² The Premier went on to note that the Act had “only been in force for 15 months,” consequently he “would not anticipate any review of the legislation until we have had considerably more experience on which to judge its effectiveness.”¹⁰³ Davis closed by suggesting that Mr. Hughes

make my comments known to all your associates ... because I feel their concerns may stem from a misunderstanding of the provisions of the *Crown Employees Collective Bargaining Act* and a lack of information on collective bargaining in other jurisdictions.¹⁰⁴

Despite the Premier’s position, Roberts argued that neither the government nor the CSAO was happy with labour relations under *CECBA*. Notwithstanding the government’s purported effort to avoid creating an adversarial system of labour relations, that was precisely what *CECBA* delivered. Roberts noted that the limitations on bargainable matters left little more than wages to negotiate. This,

¹⁰¹ Ibid., 231.

¹⁰² Ibid. (Emphasis in original)

¹⁰³ Ibid. (Though, as will be seen below, *CECBA* would be revisited before the end of 1974.)

¹⁰⁴ Ibid., 232.

he argued, aided the CSAO by framing organizing around compensation. As well, and on a more deterministic note, Roberts asserted that the raft of exclusions had removed middle managers and with them “the filter that up-and-comers might have put on demands from lower-echelon workers.” Similarly, the lack of a right to strike (or possibility of a lockout) also removed a filter, inasmuch as it freed CSAO negotiators from tempering their demands. Finally, rather than accumulating money in a strike fund, the CSAO could instead channel its revenue purely into public campaigns. Roberts summed it up: “the government got the union it deserved.”¹⁰⁵

A demonstration of what Roberts described came in early 1974 when the CSAO launched a new campaign with the goal of compelling the government to bring public servants under the *Labour Relations Act*. The campaign, for which \$600,000 (equivalent to \$3.8 million in 2024 dollars) had been earmarked, was a “slick, professional, high-profile” affair. As Roberts recounted it, there

were ‘Free the Servants’ billboards, bumper stickers and buttons, featuring handcuffed trilliums. There were Davis Dollars, issued by the Bank of the Big Blue Machine, which paid civil servants 63 cents on the dollar. Activists carried a safety kit, with deodorant and Clorets to ward off the government’s stench, and Alka-Seltzer and Tums for indigestion caused by management. Public relations, (CSAO’s new general manager, Jake) Norman thought, were “the soft underbelly of government. They didn’t expect this. They weren’t used to having a lot of static coming from a union. It had never been a challenge before.”¹⁰⁶

In addition to the public relations aspect of the campaign, the CSAO sought to influence the government in a brief meant to “urge the case for full and free

¹⁰⁵ Roberts, *Don’t Call Me Servant*, 147.

¹⁰⁶ *Ibid.*, 152-3.

collective bargaining.”¹⁰⁷ The brief argued it was “undeniable” that *CECBA* was a “reactionary, discriminatory piece of legislation.” With their brief, the CSAO stated their intent to make clear “the determination of Ontario’s public servants to break out of their chains and move into a position of equality in other public jurisdictions.”¹⁰⁸

The substance of the brief began by recounting the history beginning with the “rudimentary collective bargaining” established in 1962 up to the passage of *CECBA* in 1972, accusing the government of creating the new law while “completely ignoring CSAO’s recommendations.”¹⁰⁹ The brief noted that the Premier was satisfied with *CECBA* (his letter to Mr. Hughes had been carbon-copied to the CSAO office). The CSAO, however, declared *CECBA* a failure, noting that since 1963 the Association had “lived with compulsory arbitration ... lived with the Government having the right to sweep off the table any matter it chose not to discuss.”¹¹⁰ As such, the problems with *CECBA* were already clear. Despite the Act only having been in place for little more than a year, the CSAO had seen enough to enable them to put forward 24 distinct recommendations for changing *CECBA*. These are summarized below.

Exclusions: The CSAO criticized the scope of exclusions mandated by *CECBA*. Here, the numbers the CSAO set out tell the tale, with some 15,000 of

¹⁰⁷ Civil Service Association of Ontario, *Full and Free Collective Bargaining for Crown Employees: A Brief to the Ontario Government*, May 1974, 3.

¹⁰⁸ *Ibid.*, 55.

¹⁰⁹ *Ibid.*, 8.

¹¹⁰ *Ibid.*, 9.

67,000 full-time OPS employees (more than 22 per cent) excluded from union coverage. This rate marked a phenomenal difference from comparator jurisdictions, as shown in Table 5.

Table 5: Rates of Exclusion in Selected Jurisdictions¹¹¹

Jurisdiction	Excluded Full-Time Staff (%)
Federal	7.6
British Columbia	3
Alberta	8.7
Saskatchewan	7 to 10
New Brunswick	7
Nova Scotia	10
Prince Edward Island	3

The CSAO argued that most exclusions were positions that had nothing to do with labour relations, this being the essence of the usual test of whether a position should be within a bargaining unit. The exclusions did little more than suggest that “the Government does not believe such persons would be faithful ... if they were members of a union.”¹¹² Accordingly, there simply “can be no justification whatsoever for the wholesale and arbitrary exclusion” of so many OPS employees. As a remedy, the CSAO recommended *CECBA* be amended to language like that in the *LRA*.

Bargaining Scope: The CSAO called for the removal of all restrictions on the scope of bargaining.¹¹³

¹¹¹ Ibid., 17.

¹¹² Ibid., 19.

¹¹³ Ibid., 58-60.

Right to Strike: The CSAO sought to replicate the federal model by providing the union with a choice between arbitration and striking. On this issue, the Association argued that the right to strike was “a basic, fundamental freedom in a democratic society, comparable to the right of free speech or free assembly.”¹¹⁴ In a nod to parliamentary sovereignty, the CSAO noted that the extension of the right to strike to Crown employees “has been long in coming, because the theory of the Divine Right of Kings has taken a long time to die.” Noting that (at the time the brief was drafted) five provinces had given their public servants the right to strike, Ontario was left “in the dubious company of Alberta, Prince Edward Island, and Nova Scotia.”¹¹⁵

The CSAO allowed that certain essential positions ought to be excluded from striking, with those positions determined through good faith negotiation between the parties. The CSAO pointed out that this approach would represent a significant advance in the security of public services over the current system, since making strikes illegal did not actually prevent strikes (as had been shown time and again across the country). Importantly, in an illegal strike, there would be no essential services on offer.

Arbitration Board Composition: The CSAO recommended that Cabinet no longer appoint the Chair of the arbitration board. Instead, the Chair would be

¹¹⁴ Ibid., 30.

¹¹⁵ Ibid.

appointed by the two parties' nominees to the Board, with Cabinet deciding in the event the parties could not come to an agreement.¹¹⁶

Political Activity: The Association sought to end restrictions on political activity by public servants. The restrictions in Ontario were onerous, forbidding not just actions like running for office, but (contained in the *Public Service Act*) a bar on any public expression of opinion on the platform of a federal or provincial party.¹¹⁷ The CSAO brief referred to this as “the most blatant denial of human rights to be found in any statute in Canada.”¹¹⁸

Other Matters: The brief made several more recommendations. These dealt, variously, with the certification threshold, unfair labour practices, successor rights, and financial reporting. For the most part, the CSAO recommended that *CECBA* replicate the *LRA*.

The 1974 Amendments

With the passage of *CECBA* in 1972, the CSAO began a process of reinvention. The *Toronto Star* quoted the Association's general manager: “The CSAO is a sleeping giant that at last is coming awake.” The article informed readers that the CSAO was “attempting to throw off a 47-year image of pussyfooting” with the goal of metamorphosing into a “strong and militant

¹¹⁶ *Ibid.*, 61.

¹¹⁷ *Public Service Act*, c. 386 R.S.O. 1970, s. 14 (“Except during a leave of absence granted under subsection Speaking, 2 of section 12, a civil servant shall not at any time speak in public or express views in writing for distribution to the public on any matter that forms part of the platform of a provincial or federal political party.”)

¹¹⁸ CSAO, *Full and Free Collective Bargaining for Crown Employees*, 52.

union.” The Association’s new president Charles Darrow said “his members may have to walk out just to prove the government has a real union to deal with now—one determined to win the rights enjoyed by other unions and ready to stage illegal mass walkouts to prove it.”¹¹⁹

In the 1974 bargaining round, the CSAO was seeking a one-year wage increase of 61.5 per cent, the amount meant to account for inflation and achieve wage parity with the private sector. To increase pressure on the government, the CSAO began job actions such as refusing to participate in arbitrations and refusing to use personal vehicles. The Association was also tentatively making plans to withdraw labour in January 1975 in what would be an illegal strike. In addition to new leadership, the CSAO had doubled its staff (largely drawn from other unions) and renewed organizing efforts with members. In support of bargaining and *CECBA* reform, the CSAO had held 16 rallies, reaching 8,000 members. Said Darrow: “We found militancy in places we least expected,” which convinced leadership that militancy was “widespread.”¹²⁰ As an illustration of the change, a CSAO advertisement from September 1974 (Figure 6.2) represents a remarkable change in tone from the advertisement that ran nearly two-and-a-half years prior (seen above in Figure 6.1).

Factors driving the CSAO’s rapid growth of militancy were identified at the time, including inflation and an influx of younger workers. As in other provinces,

¹¹⁹ Rosemary Spiers, “48,000 civil servants put heat on Davis for right to strike,” *Toronto Star*, 16 September 1974.

¹²⁰ Wilfred List, “Tea-and-crumpets union gains new militancy as membership changes,” *Globe and Mail*, 7 September 1974.

the spectre of CUPE also played a role, though a different one than seen in other jurisdictions. As *Globe and Mail* labour reporter Wilfred List argued, “a leavening factor was the transfer to the Ontario government of groups of employees like jail guards, assessors and others who were previously members of the Canadian Union of Public Employees.”¹²¹ To these we may add Wayne Roberts’s observation that it was “no accident” that the “CSAO’s lurch from association to union coincided with the phasing-in of COGP recommendations.”¹²² Steven Lewis made this same point in August 1974, when he decried the Davis government’s approach to labour relations throughout the public sector:

May I remind (the government) of the extraordinary radicalization, if I can put it that way, of the civil service association in the last number of months, as they feel themselves trapped by the Crown Employees Collective Bargaining Act? You see, in the name of what appears to be a momentary public favour, the government is wrecking collective bargaining in Ontario. ... They are turning reasonable people into angry people who feel their rights are denied and their objects are frustrated.¹²³

¹²¹ Ibid.

¹²² Roberts, *Don’t Call Me Servant*, 116.

¹²³ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 4th Sess, No. 97 (30 August 1974), 4111.

Figure 6.2: CSAO Newspaper Advertisement 'Free the Servants'¹²⁴

“We’ll play if the referee’s on our side.”

The Davis government doesn't play fair with its own employees.

It passed a repressive piece of legislation called CECBA (Crown Employees Collective Bargaining Act).

It denies us many of the basic rights of collective bargaining that other public and private employees enjoy.

For instance, the right to choose the method by which disputes are settled.

We are forced to accept compulsory settlement of disputes. Handed down by a stacked arbitration board to which the government appoints two out of three members.

Including the chairman.

So our employer forces us to go to a tribunal whose voting they control.

It ties our hands.

It means we fall farther behind as others negotiate to keep up with inflation.

In short, it makes us second-class citizens.

We want CECBA changed.

We just want the same rights as other workers.

At the very least, we want a referee who stays in the middle.

Free the servants!

Civil Service Association of Ontario



In late 1974, the government proposed “temporary interim” changes to CECBA.¹²⁵ The bill was introduced on December 12, 1974, as bargaining continued in the face of a possible illegal strike.¹²⁶ The Association’s 61 per cent wage ask had had the desired effect of putting the government on the defensive.

¹²⁴ *Toronto Star*, 28 September 1974.

¹²⁵ Hadwen, *et al.*, *Ontario Public Service Employment and Labour Law*, 83.

¹²⁶ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 4th Sess, No. 150 (12 December 1974), 6331.

These interim changes did not come close to capturing what the CSAO had recommended, a fact that government freely acknowledged.¹²⁷ Speaking for the government, Eric Winkler stated that, with *CECBA*, it had “always been the aim ... to avoid the worst features or an adversary approach to collective bargaining.” As such, the right to strike was off the table, with arbitration favoured as the means of resolving any impasse. The continuing prohibition on strikes was decried by the opposition. Arguing that the proposed amendments still left *CECBA* “unnecessarily restrictive,” Liberal James Breithaupt argued that, by barring strikes, all the Act did was acknowledge that “if there is a strike in the public service that strike would be illegal.” As such, the prohibition did little to actually prevent striking. Indeed, Breithaupt suggested that the prohibition on striking “may prove to be a provocation in the long run.”¹²⁸ Turning his attention to bargaining rights more generally, Breithaupt noted that, out of 67,000 full-time public servants in the OPS, some 15,000 (or 22 per cent) were excluded. Speaking on behalf of his party, he argued that the “ratio of excluded persons ... is far too high.”

NDP MPP Ted Bounsell stated that his party would be voting against the bill “with a great deal of enthusiasm because it doesn’t grant the right to strike.”¹²⁹

¹²⁷ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 4th Sess, No. 167 (30 January 1975), 7054. (Winkler: “While it is conceded that the amendments do not need all of the changes proposed by the bargaining agents, we believe that the bill constitutes a sincere and not insignificant attempt to improve bargaining procedures, while continuing to recognize the government’s responsibility to protect the public interest.”)

¹²⁸ Ibid.

¹²⁹ Ibid., 7055.

Bounsell, too, offered a greater illumination of the government's position by reading into Hansard a speech delivered by Winkler a week earlier. The CSAO, said Winkler, were

demanding the so-called right to strike for civil servants. I say 'so-called right' because I cannot accept the suggestion that some fundamental freedom equivalent, say to the right of free speech or religious freedom, is at stake here.

As opposed to a right, the presence of the opportunity to strike "should be seen more as a condition of employment." As with any other such condition, any person could simply "refuse employment should he not find the conditions attached to it acceptable to him."¹³⁰ Incredulous, Bounsell remarked that what "the minister is saying to the civil servants of Ontario is, 'We are not going to give you the right to strike. And if you don't like it, get the hell out of the civil service.'"¹³¹

Moving beyond a focus on the right to strike, Lewis reminded the Legislature that the government also "prescribes the area which can be collectively bargained in a way which gives it, the management, certain prerogatives which very few managements have."¹³² Harkening back to the establishment of the JAC, Lewis continued, arguing that "the government has existed in a state of paternalism vis- à-vis its civil servants for ... 33 years. It has never taken them seriously. There's never been serious bargaining." But Lewis

¹³⁰ Ibid., 7057. (Quoting a speech of the Chairman of the Management Board of Cabinet to the Kiwanis Club of Ottawa at the Chateau Laurier Hotel on 24 January 1975.)

¹³¹ Ibid.

¹³² Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Leg, 4th Sess, No. 168 (30 January 1975), 7086.

noted that there had been a change. While the CSAO “had a lousy representation until the last year,” Lewis argued that—as was detailed above—the Association had reinvented itself.¹³³

The advertisements in Figures 6.1 and 6.2 were separated not only by some two-and-a-half years, but also by a gulf in their content. The CSAO had completely changed its course over this time, from bland acceptance of *CECBA* to the Free the Servants campaign. A 1974 editorial in the official publication of the Canadian Brotherhood of Railway, Transportation and General Workers bequeathed upon the CSAO a “bouquet” in honour of their rapid radicalization. Noting that the CSAO had “up to the first of this year the unenviable reputation of being one of the weakest employees’ organizations in the country,” the editorial enthused that in only the “span of 10 months” the CSAO had “transformed itself into one of Canada’s most dynamic and militant unions.”¹³⁴

With inflation running at 11 per cent in 1974, the “ideal bargaining situation for setting up some sort of power play” had presented itself.¹³⁵ And thus, the CSAO had moved on from a multi-decade period of weakness to being a militant union that threatened illegal strikes. The CSAO’s new posture paid off at the bargaining table, with a one-year contract awarding a wage increase of 21.5

¹³³ Ibid., 7087.

¹³⁴ “Transport throws a bouquet to the CSAO,” *Canadian Transport*, November 1974: 2.

¹³⁵ Roberts, *Don’t Call Me Servant*, 165.

per cent.¹³⁶ Despite helping win a better settlement at the bargaining table, the Association's newfound militancy was insufficient to force an overhaul of *CECBA*.

Conclusion

This chapter began with Desmond Morton asking, about the right to strike, “why not Ontario?” Unlike most other provinces, the bargaining structure in the OPS remained throttled into the mid-1970s, the right to strike denied to public servants. In this and the previous chapter, four key drivers of developments in public sector labour relations have been considered: the economic and social milieu, staff demographics, militancy, and party politics. In line with the conclusion of the previous chapter, the answer to “why not Ontario?” is because of the province's politics. A hypothetical question illustrates this. Given the party's election manifesto, and given the tenor of the debate about *CECBA*, had the Lewis-led NDP prevailed in the 1971 provincial election, would Ontario public servants have had the right to strike?

Unquestionably, the answer to the hypothetical question is “yes.” The barrier to establishing public servants' legal right to strike was the Conservative government. It is difficult to disentangle the degree to which opposition to a right to strike was fueled by ideology or by a simpler desire for control, though it appears that the latter was the primary motivation. Alas, *CECBA* contemplated collective bargaining, but only on matters the government wanted to bargain. On

¹³⁶ Robert Williamson, “Biggest one-year settlement for CSAO: 21.5% pay increase accepted by civil servants in Ontario,” *Globe and Mail*, 30 December 1974.

bargainable items, where a resolution could not be achieved at the table, an arbitration board (which, to the extent possible, the government controlled) would decide. This was a plausible plan for continued governmental control when the government was faced with a weak association.

As we have seen, though, after *CECBA* became the law, the CSAO became significantly more militant. Here again, the same factors that promoted militancy amongst other provinces' civil servants were at play. The economic and cultural setting (high inflation, labour militancy), demographic change (a younger membership), and politics (a government denying rights) came together to effect a rapid change in the CSAO's orientation. Although the CSAO's newfound fibre had been enough to obtain better bargaining outcomes, it was insufficient to force the government to make significant changes to *CECBA*. Nonetheless, the government's recalcitrance and the CSAO's turn to militancy set the table for further change.

Chapter 9: The CECBA Era, Part 2: 1975-2017

OPSEU has opposed the provisions of the *Crown Employees Collective Bargaining Act* since it was passed into law in 1972. Our position has been consistent in a series of briefs presented to the former Conservative and Liberal governments and to the current government. After 20 years of virtually complete inaction, it has taken an NDP government to accomplish meaningful change.

- OPSEU¹

It is important to keep in mind that the Government does not function exclusively as an employer, but fulfils a distinct (separate) and overriding role as the body responsible for the social and economic welfare of its citizens. ... Any shift from the current framework must take into account the inherent balance between (a) mature, fair and equitable labour relations which support and enhance economy, efficiency and effectiveness, and (b) organizational flexibility withing a framework of political accountability and public interest.

- Government of Ontario²

Introduction

In this chapter, we find the right to strike finally arriving in the OPS. The 1993 reforms to *CECBA* represent the government's turn away from its long-held positions not just against the right to strike but also on fragmentation of representation in the OPS. While the first change is best explained by the election of Ontario's first NDP government in 1990, the second change is more complex. Essentially, as we will see, both the government and OPSEU intended for employees gaining bargaining rights to be folded into OPSEU's bargaining unit. For a variety of reasons, this did not come to pass. A new union—the Association

¹ OPSEU, *The rights of public servants: OPSEU's response to Bill 117, the Public Service and Labour Relations Statute Law Amendment Act*, 6 December 1993, 1.

² Ontario, Human Resources Secretariat, *CECBA Reform Consultation Paper*, June 1991, 1.

of Management, Administrative, and Professional Crown Employees (AMAPCEO)—emerged on the scene (with the organization choosing to style itself as a “professional association,” largely defining itself in opposition to OPSEU).

With the 1993 reforms we also see the return of significant government consultation with the bargaining agent. However, consultation was now considered by the government to be an informal negotiation. As such, government negotiators made efforts to put many issues on the bargaining table, placing themselves in a position to secure trade-offs against legislative change. This negotiation-style of consultation continued into the 2000s, when the government made further efforts to address fragmentation.

Finally, this chapter marks the onset of the third era of labour relations. While the *CECBA* reforms were triggered by political change, the legislation was (largely) left in place by later governments of all partisan stripes. It is argued below that this is due to governments becoming fixated on cost-containment—to wit, a strike/lockout model provides a greater opportunity than the arbitration model for the employer to seek meagre compensation increases. In the contemporary era, economic concerns trump all else, and the strike/lockout model of collective bargaining provides the government with the greatest degree of control of wage settlements which contribute to constraining the cost of labour.³

³ This is a slightly different point than suggesting that arbitrations necessarily have higher wage settlements. Rather, strike/lockout allows more room for the government to impose its will at the bargaining table.

1975 – 1990: The Intervening Years

As detailed in the previous chapter, the CSAO changed virtually overnight.⁴ Driving this rapid change were economic factors (particularly high inflation), the *CECBA*'s limitation on labour rights, and an aggressive new union leadership that had been installed by a (consequently) restive membership. Utilizing a more aggressive approach, as recounted above, the CSAO secured significant wage increases through bargaining in 1974.

Despite these new ways of acting, old ways of doing things also persisted in OPS labour relations. As an example, Wayne Roberts pointed to the continuing use of the “parish pump method” of politics (meaning a focus on parochial concerns). In his example, Roberts recounted how a small change led the government to amend *CECBA* in 1975. At that time, a psychiatric attendant in Brockville “got an inkling” that the government was considering ceasing its direct responsibility for psychiatric hospitals. The attendant wanted to ensure that the union remained in place in the event of a change to the employer. Such successor rights did not exist at the time under *CECBA*, though it was part of the *LRA*. As Roberts put it, “Brockville was a government town, a strong and loyal Tory town, and it always got one local member appointed to Cabinet.” The attendant went to see Jimmy Auld, the local Conservative MPP, and lobbied the local PC riding association. Auld was consequently persuaded to sponsor the *Crown Transfer Act*, which guaranteed successor rights for public servants. This is the political factor

⁴ Roberts, *Don't Call me Servant*, 147 (“A new union popped up overnight, ‘like a peony bud where the flower opens instantly.’”).

operating at the micro-level. Given the focus on government cost-cutting soon to come to Ontario, Roberts noted that, when cutbacks began in earnest a few years later, the addition of successor rights turned out to be “OPSEU’s salvation.”⁵

1975: Election and Program Review

Several developments in 1975 had long-term ramifications for OPS labour relations. Among these are the imposition of wage and price controls across the country by federal government and the CSAO beginning to officially refer to itself as a union when it reinvented itself as the Ontario Public Service Employees Union (OPSEU). In this section, the focus will be on two other developments. First, the Ontario election in 1975 reduced the PCs to a minority government; the election also marked a turning point for the CSAO/OPSEU as the union got heavily involved in the campaign. Second, the release of the Special Program Review report marked a turning point for the province inasmuch as “it signalled a reconsideration, at least in the minds of some political and administrative elites, of what the state should involve itself with.”⁶

The 1975 provincial election

The fall election did not go very well for the Progressive Conservatives as the party was reduced to a minority for the first time since 1943. As inflation in Canada had spiked, returning to highs not seen since the 1950s, the consequent economic constraints stopped the government from campaigning on spending

⁵ Roberts, *Don’t Call Me Servant*, 164.

⁶ Evans, “From Pragmatism to Neoliberalism,” 129.

promises. In lieu of promising new programs, the PCs chose to build their campaign around a “law-and-order” themed battle against vaguely defined societal “permissiveness.”⁷

The CSAO involved itself in the election, running a series of print and radio commercials calling for an increase of members’ political rights.⁸ At the time, Ontario’s *Public Service Act* still barred public servants from political activities—a holdover from the Garrow resolution described above in Chapters 3 and 4. Both the NDP and the Liberals supported the union position.⁹ The PCs remained opposed, attempting to use this position to galvanize the electorate. Indeed, Davis referred to the CSAO’s campaign “in the formula speech that he makes several times a day to large and small groups of Tory supporters.”¹⁰ In this speech, Davis outlined his firm opposition to political rights for public servants, rhetorically asking “what kind of administration ... what kind of system would we have if those who are responsible for implementing and administering government policy among the most vocal and vociferous critics of it?”¹¹ Instead, Davis argued that the OPS must put a premium on “impartiality and public neutrality.” It should be stressed that a healthy dose of hypocrisy was at play here, as there was

⁷ “Davis vs. the unknown enemy,” *Toronto Star*, 15 September 1975.

⁸ “Servants fight back: CSAO makes CECBA an election issue,” *Labour Review* 1975 (September/October): 9. (University of Toronto Centre for Industrial Relations Archive).

⁹ Daniel Stoffman, “Singer promises strike right for most government staff,” *Toronto Star* 25 August 1975.

¹⁰ Robert Williamson, “Civil servant demand for rights becoming big issue for Premier,” 5 September 1975.

¹¹ Progressive Conservative Party of Ontario, “Notes from an Address by the Honourable William G. Davis, Premier of Ontario RE The Rights of the Civil Service,” Cambridge Ontario, 30 August 1975, 9. (University of Toronto Centre for Industrial Relations Archive).

a close affinity between the Davis government and high-level public servants: while Davis “argued for civil servants’ impartiality, head civil servant Ed Stewart actually appeared in Tory campaign advertising.”¹²

In his stump speech, Davis also declared his “firm” position that public servants should not enjoy the right to strike. “The Government of Ontario,” Davis said, was “standing alone in its position that Crown employees do not have the right to strike. The union is opposed to our position. So is Mr. Lewis. And so is Mr. Nixon.”¹³ Writing in the *Globe and Mail*, Robert Williamson argued that Davis chose to highlight the right to strike because “the question ... is simple for voters (imagine a strike of snowplow operators in February?), and there are clear and easy distinctions between Conservative policy” and that of the other parties. Beyond this discrete issue, though, Davis was attempting to “turn a concentrated advertising campaign by the CSAO into a rallying point for Conservative support.”¹⁴ In the same vein, a PC advertisement ten days before the election was simply an open letter from Davis on the rights of public servants. After outlining why limitations on political activity should stand, the letter forcefully condemned

¹² Claire Hoy, *Bill Davis* (Toronto: Methuen, 1985), 155. Writing about the early 1980s, Rosemary Spiers noted that “with the arrogance of nearly four decades in power, the Conservatives presumed it was their right to use deputy ministers and other bureaucrats as an arm of the Conservative party.” Rosemary Spiers, *Out of the Blue: The Fall of the Tory Dynasty in Ontario* (Toronto: Macmillan, 1986), 9.

¹³ *Ibid.*, 12.

¹⁴ Williamson, “Civil servant demand for rights becoming big issue for Premier.”

the right to strike for public servants.¹⁵ To whatever extent this strategy worked, the PC lost 27 seats and returned to government with a minority.

Election outcome aside, the CSAO—and the rights of its members—had played a central role in the campaign, with the PCs’ response providing an interesting window into the pragmatism of Ontario’s politics. While the previous decades of OPS labour relations should leave little doubt as to the sincerity of the PC position, in 1975 the party was primarily interested in using public servants’ rights at work as an issue on which to differentiate themselves from the other parties. The party was doing this while, during the same election campaign, it reversed its long-held position on rent control. The cost of rental housing had been forcefully highlighted by the NDP, the issue giving the party traction. In response, the PCs simply switched sides and backed rent control and rent subsidies.¹⁶

The switch on rent control points us towards the PCs’ ideological malleability. This malleability was (along with continued economic prosperity, reinvention by way of new leadership every 10 years, appeal to moderate voters, a well-organized party structure, and a split opposition) a significant part of why the party remained in power for decades.¹⁷ As detailed above, while the PCs held an ideological opposition to public servants having the right to strike, the party’s

¹⁵ Progressive Conservative Party of Ontario, “Premier Davis speaks out: the public servants of Ontario must be neutral, non-partisan and impartial,” *Toronto Star*, 8 September 1975.

¹⁶ Hoy, *Bill Davis*, 128-9.

¹⁷ See A. Brian Tanguay, “‘Not in Ontario!’ From the Social Contract to the Common Sense Revolution,” in *Revolution at Queen’s Park: Essays on Governing Ontario*, ed. Sid Noel, (Toronto: James Lorimer and Co., 1997), 19.

volte face on rent control (also ideologically objectionable to that party) suggests that the opposition to strikes was likely not absolute. That is, the party may well have abandoned this opposition had doing so offered a clear electoral advantage to the party. As it was, no such advantage existed here, with the public uninterested, opposition parties on the other side, and the CSAO's intervention providing the PCs the opportunity to leverage the matter as a wedge issue.

The Special Program Review Report

Prior to the 1975 election, the government established a Special Program Review charged with enquiring “into ways and means of restraining the costs of government.”¹⁸ Issued days after the newly constituted legislature began its first session after the election, the Review's report began by decrying the prior decade's growth in government spending and emphasizing the importance of not merely constraining, but reducing, those expenditures.¹⁹ The vital context of the report was high inflation. With the oil shock of 1973, inflation in Canada had spiked to highs not seen since the 1950s. The rapid decline in purchasing power had obvious significant effects for government, including increased public demands for assistance and increased demands from employees for wages.²⁰

The report of the Special Program Review sought to address these concerns by rethinking the role and growth of the state and marked the beginning of

¹⁸ Ontario, *The Report of the Special Program Review*, November 1975, n.p.

¹⁹ *Ibid.*, 1.

²⁰ The federal government's *Anti-Inflation Act* was introduced after the Ontario election and prior to the issuance of the Special Program Review report. The *Anti-Inflation Act* empowered the federal government to make regulations to restrain profit margins, prices, dividends and compensation. *The Anti-Inflation Act*, S.C. 1974-75-76, c. 75, s. 3(1).

Ontario's turn towards an era of cost constraint. The report thus fit into a "resurgence of conservative economic ideology," which held that "government spending was 'out of control' and that government intervention ... was at least partly responsible for its perceived 'failures.'" K. J. Rea asserted that, with the report, the government of Ontario adopted this world-view "with remarkable agility."²¹

The report made numerous recommendations to either reduce expenses outright or shift responsibility for programs to other levels of government. The recommendations ranged from strengthening the multi-year planning process to ensuring that government agencies conformed to the government's spending priorities²² to cutting ministry overhead costs.²³ Seeking significant savings, the report focused on labour, "the largest single element of Ontario Government spending."²⁴ Acknowledging continuing public demand for government-provided services, the report argued that "further growth in public sector employment would have a significant impact on the provincial economy."²⁵ Caught between the demands of the public and the cost of labour, the report made several recommendations for constraining wage growth.

²¹ Rea, *The Prosperous Years*, 234.

²² Ontario, *The Report of the Special Program Review*, 54.

²³ *Ibid.*, 69-75.

²⁴ *Ibid.*, 95. (For fiscal year 1975-76, the Report stated that "wage and fringe benefit payments will amount to \$6 billion, representing over 60 per cent of total provincial expenditures.")

²⁵ *Ibid.* (As an example, the report stated that a 4 per cent increase in employment levels would cost about \$250 million – the equivalent of one per cent of sales tax revenue.)

In the most significant of these recommendations, the Report discussed collective bargaining as the matter “of central importance to the problem of cost control.”²⁶ Arguing that the process was “not working adequately, at least from the point of view of the public interest,” the report pointed to the role of arbitration in escalating wage settlements.²⁷ Even in non-arbitrated areas of bargaining, the report noted that “the Government performs a dual role as employer and guardian of the public interest,” and argued that the public interest side of the equation was “insufficiently emphasized.” What was required was a bargaining process that could “ensure that all interests are voiced in the collective bargaining process – the interests of the employee, the employer, and the taxpayer.”²⁸ As a remedy for this, the Report recommended the Legislature establish annual “guidelines” which would provide a framework for public sector collective bargaining.²⁹ Notably, the report did not consider the possibility of moving away from an arbitration model in the OPS.

The full agenda of the Special Program Review was never implemented, Bryan Evans noting that “budget speeches and committee reports, important as they may be, alone are not the raw material of politics and policy.”³⁰

²⁶ Ibid., 108.

²⁷ Ibid., 109. (At the time the report was issued, in Ontario’s public sector strike/lockout bargaining occurred in the municipal sector, universities, colleges of applied arts and technology, school boards, the Ontario Educational Communications Authority, Ontario Northland, and Ontario Hydro. Compulsory arbitration was used in the OPS, LCBO, Niagara Parks Commission, Ontario Housing Corporation, the Ontario Provincial Police, and the hospitals.)

²⁸ Ibid., 111.

²⁹ Ibid., 112-15.

³⁰ Evans, “From Pragmatism to Neoliberalism,” 167.

Implementation requires political will, and that was not present under Davis's pragmatic leadership, the premier believing in

the balance of private sector-public sector that our present-day capitalism seems to indicate. Some people think we should go back to earlier things, the earlier principles of private enterprise and capitalism, free enterprise. ... I don't think Bill Davis believes you can go back.³¹

Thus by 1979, as Evans recounted it, "the public expenditure status quo ante was restored."³² Yet, as Evans also made clear, "if one can point to a defining moment in the post-war politics and history of public policy and management in Ontario where the state 'changed its mind' (to use Michael Pusey's words), this document and the government's response, is it."³³

1979 – Illegal strike in jails

OPSEU's militant approach hit a zenith in 1979, when jail guards undertook a wildcat strike. The background to this conflict goes back to 1968 and the transfer of jail guards to the province. That transfer had precipitated its own wildcat strike which was recounted above in Chapter 6. In 1968, the guards became part of the CSAO's operational group, which consisted of some 20,000 members, and was one of five occupational groups. Each occupational group formed a subdivision of the bargaining unit (which numbered approximately 50,000) and existed for the sole purpose of wage negotiations. In 1975, OPSEU

³¹ Hoy, *Bill Davis*, 217. (Hoy was quoting Hugh Macaulay, a former chair of Ontario Hydro and a close friend and confidant of Davis's. As Hoy further opined, "Davis never avoided using right wingers as scapegoats.", 216.)

³² Evans, "From Pragmatism to Neoliberalism," 167.

³³ *Ibid.*, 164.

negotiated an expansion to eight occupational groups and, with that, the 3,000 jail guards became part of the Institutional Care and Correctional Services category. In addition to the guards, this group contained approximately 6,000 other members, primarily working in psychiatric hospitals.³⁴

The jail guards wanted their own group because this would offer the power—sought since 1968—to turn down a contract offer without the chance of being outvoted by non-jail guards in the same group. This was a critical interest for the guards, because of a growing gap between their wages and those of OPP constables (whom the jail guards saw as their wage comparators).³⁵

Compounding this widening wage gap were the wage controls established by the federal government's *Anti-Inflation Act*, which precluded the opportunity for catch-up. Additionally, implantation of the Special Program Review's recommended cuts (which had reduced the number of guards and overcrowded the jails) had impacted the mood in the jails. For the guards, their workplace had seen increased danger and stress. This led to increased absenteeism which in turn exacerbated the staffing problems.³⁶ In this maelstrom, some "guards committed to changing OPSEU from within, rather than grumbling about it," with

³⁴ Hebdon, "Industrial Conflict," 105-7.

³⁵ Ibid., 107. (Hebdon referenced an OPSEU brief which argued that the wage gap "between jail guards and the first-class constable with the Ontario Provincial Police (OPP)" had "from 1969 to 1979 ... increased from \$1,000 to about \$5,500 per year.")

³⁶ Ibid., 109.

these reformers fighting for wage parity with police, better scheduling, better pensions, and an end to overcrowding.³⁷

To address the guards' concerns, OPSEU pursued a ninth wage group for corrections alone. The government was unwilling to concede on this, a position informed by concern that this concession would lead to a proliferation of wage groups. Exemplifying its longstanding opposition to fragmentation in the OPS, the government simply did not want to expand the number of categories as they

liked dealing with a small number of union bargaining teams. They saved negotiating time on separate agreements. Large teams also diluted the weight and militancy of minority groups with special problems not shared by other workers.³⁸

In a surprise to union and employer alike, at a November 10 guards' meeting, a motion for a strike vote was "spontaneously" moved by then-jail guard Frances Lankin.³⁹ A week later (and after another rejection by the government), OPSEU's executive board backed the guards. The government offered, and OPSEU rejected, arbitration to settle the matter. On November 29, 77.5 per cent of the guards voted to strike. The government immediately obtained an injunction barring the strike and sought leave to prosecute the strike leaders. Undaunted, the guards struck from December 3 to 5, the strike ending when the matter was referred to Harry Arthurs for an expedited arbitration. Arthurs found for the

³⁷ Roberts, *Don't Call Me Servant*, 214. (Roberts noted that "until two new Toronto jails were built in 1977, the Don (jail) often jammed 1,000 prisoners into a holding tank built for 300.")

³⁸ *Ibid.*

³⁹ Hebdon, "Industrial Conflict," 110; Roberts, *Don't Call Me Servant*, 214. As Roberts recounted it: "Kevin Wilson, chief bargaining spokesman for the guards, told a tense meeting from across the province that the government wouldn't give them a separate bargaining team. Frances Lankin was first at the mikes. "We'll take it." Lankin later went on to be an NDP MPP and Cabinet Minister in the Rae Government.

guards and created a corrections group. Prosecuted for the strike, OPSEU president Sean O’Flynn served 23 days of a 35-day sentence in jail.⁴⁰

Hebdon argued that the strike had four important features. The first two speak to member militancy. First, the strike was an unplanned reaction by the rank and file, and second, the strike happened quickly. The third feature Hebdon noted was the strike’s aggressive nature. This was evident in picket-line violence, the threat to public safety that loomed throughout the strike, and the jailing of O’Flynn. The most interesting feature for our purposes was Hebdon’s fourth: the inability of the existing labour relations system to regulate the conflict. Recalling Dunlop’s industrial relations system, an agreement on the rules is a vital component; both sides must understand the precept within which the conflict is occurring. In this instance, OPSEU turned down arbitration and engaged in an illegal withdrawal of labour. For its part, the government was powerless to forestall or stop the strike. Hebdon argued that, as there was no “agreement on the rules of conflict,” a complete systemic breakdown had occurred.⁴¹

1985-1990: The end of the Progressive Conservative Era

Though there was some shakiness during his premiership—represented by the minorities of 1975 and 1977—when Davis surprisingly resigned at Thanksgiving in 1984, “all the polls said the government party was more popular

⁴⁰ Hebdon, “Industrial Conflict,” 110-13.

⁴¹ Ibid., 113-4.

than ever.”⁴² When Frank Miller emerged as PC leader after a bruising leadership race, “polls showed the Tories holding an awesome lead at 55 per cent of the popular vote.”⁴³ However, in the election held in May 1985, the PCs won 37 per cent of the vote, which was good for 52 of 125 seats and a minority government. In the 1970s, the PCs had governed with minorities through ad hoc cooperation with the opposition. There was hope that this functionality could be replicated, with some Tories convinced that labour leaders would advise the NDP to maintain the “ad hoc system of supporting the government in return for legislative favours and some appointments to government agencies.”⁴⁴ However, unlike the more pragmatic Davis, Miller represented a turn to the right.⁴⁵ Thus, there was pause within the NDP about backing this version of the Progressive Conservatives. When labour, led by autoworkers president Bob White, came out for a change of government, the die was cast for the NDP.⁴⁶

A pact—*An Agenda for Reform*—was then struck between the David Peterson-led Liberals and the Bob Rae-led NDP. Establishing that there would be

⁴² Rosemary Spiers, *Out of the Blue*, xv. (On the day he resigned, it was reported that “Davis will meet senior aides today to decide whether to retire or call a fall election. The betting is heavy that he will call an election this afternoon.” John Cruickshank and Sylvia Stead, “Davis meets aides today; election likely,” *Globe and Mail*, 8 October 1984.)

⁴³ Georgette Gagnon and Dan Rath, *Not Without Cause: David Peterson’s Fall From Grace*, (Toronto: HarperCollins, 1991), 23.

⁴⁴ Speirs, *Out of the Blue*, 147.

⁴⁵ Ibid., 15, 32. (In 1981, Davis had warned delegates to a party conference that, if Ontario PCs delegates wished to continue winning, they ought to remember that “were not the same as the Conservative Party of England or the Republican Party in the United States.” With Miller, though, “a neo-Conservative tide appeared to be sweeping the western democracies, and the hard-core of the Ontario Tory party felt now it could safely afford to choose a leader close to its own heart.”)

⁴⁶ Ibid.; Bill Walker and Denise Harrington, “Looking hard at unions’ call to defeat PCs Rae confirms,” *Toronto Star*, 10 May 1985.

no election for at least two years, the pact covered myriad issues, with Legislation expected on, *inter alia*, freedom of information, rent control, and the reform of farm financing and pensions. Specific to the OPS, the accord called for “redefinition and broadening of the rights of public service workers to participate in political activity.”⁴⁷ The right of public servants to strike was not mentioned.

On November 14, 1986, OPSEU president James Clancy met with Peterson. Clancy made the case that *CECBA* needed to change, in terms of both legislated management rights and the right to strike. Wrote Clancy: “we told the premier about the contradiction between *CECBA* and the *Charter of Rights*: *CECBA* is a holdover of the ‘divine right of kings’ theory that the king does not negotiate with his public sector subjects.”⁴⁸ To Clancy’s surprise, he received a positive response, the premier’s chief of staff stating that “the timing couldn’t be more perfect” to look at *CECBA*. The Minister of Labour offered that OPSEU would “find we have a more open attitude” than the previous government. For his part, the premier simply said: “let’s have a go.”⁴⁹ OPSEU assigned senior staff to prepare a brief for government. Though research did not locate this particular brief, OPSEU had been consistent since 1972, with the union’s position proclaimed in the union’s

⁴⁷ “Here’s the deal Peterson, Rae signed,” *Toronto Star*, 29 May 1985.

⁴⁸ James Clancy, “President’s Report: Our priorities must not be swamped,” *OPSEU News*, November-December 1986. (In 1984, OPSEU, with the OLBEU, had launched a *Charter* challenge against *CECBA*, the unions arguing that the law unconstitutionally hindered workers’ rights to organize, negotiate, and strike. See: “*CECBA* challenged in Court,” *OPSEU News*, March-April 1984.) (University of Toronto Centre for Industrial Relations Library Archive.) (In 1984, OPSEU, with the OLBEU, launched a *Charter* challenge against *CECBA*, the unions arguing that the law unconstitutionally hindered workers’ rights to organize, negotiate, and strike.

⁴⁹ James Clancy, “President’s Report: Our priorities must not be swamped,” *OPSEU News*, November-December 1986. (University of Toronto Centre for Industrial Relations Library Archive.)

CECBA briefs of 1976, 1980, and 1983.⁵⁰ On the right to strike, OPSEU consistently took the position that “employees under *CECBA* should have a choice of ‘routes to finality.’”⁵¹ By this, OPSEU meant that the union should have a choice between binding arbitration and strike/lockout to resolve bargaining disputes. Despite the Peterson’s seeming openness and the government’s working relationship with the NDP, no progress was made on *CECBA* reform at this time.

True to its intent, the Liberal/NDP accord lasted for two years. While the pact saw numerous legislative changes advance, there was little progress on matters of concern to OPS employees. For instance, notwithstanding the commitment to do so, no changes were made to public servants’ political rights. In the election following the end of the pact, the Liberals won the largest majority in Ontario’s history. In a demonstration of the little credit the party had received for the previous two years, the NDP lost four seats. The NDP’s loss of support could be ascribed to the fact that, as the sole party of government, the Liberals were seen as the source of legislation as well as a credible party on “progressive issues.” On this point, Daniel Crow noted, “much of the legislation passed under the Accord already had support within the Liberal caucus.”⁵² Underscoring Crow’s argument, Peterson’s Attorney General Ian Scott argued that the accord

⁵⁰ OPSEU, *The Crown Employees Collective Bargaining Act: Urgently Needed Changes*, 1976; OPSEU, *First Class Rights for First Class Employees: A brief to the Government of Ontario*, 29 April 1980; OPSEU, *Agenda for Change: A brief to the Minister of Labour by the Ontario Public Service Employees Union*, 12 April 1983.

⁵¹ OPSEU, *Agenda for Change*, 7.

⁵² Daniel W. Crow, “From Protest to Powerlessness: A Marxist Analysis of the Ontario NDP,” MA thesis, Brock University, 1999, 88.

consisted only of “obvious, easy things to do,” which the government would have undertaken even without the NDP’s input.⁵³

One significant event in OPS labour relations that took place during the Peterson government’s time in office was a rethink of professional exclusions under *CECBA*. As noted above, one of *CECBA*’s many categories of exclusion was any employee “who is a member of the architectural, dental, engineering, legal and medical professions entitled to practise in Ontario and employed in a professional capacity.”⁵⁴ The large number of exclusions became a labour relations problem for the government when, as a result of strong negotiated wage settlements for OPSEU, “the compensation differentials between unionized groups (both within and outside the public service) and these excluded professionals narrowed rapidly.”⁵⁵ By the mid-1980s, this wage compression had given rise to “considerable discontent within professional employee groups in the OPS.” As a history of the Ontario Crown Attorneys’ Association recounted, “the poor salaries and working conditions ... and the lack of response from the government of the day, caused a mass exodus.”⁵⁶ To address this concern, in March 1987 the government appointed Paul Weiler to make recommendations on mechanisms for establishing the terms and conditions of employment for OPS

⁵³ Gagnon and Rath, *Not Without Cause*, 27.

⁵⁴ s. 1(1)(g)(iv).

⁵⁵ Richard Loreto, “The Bureaucracy,” in *The Government and Politics of Ontario*, 4th ed., ed. Graham White, (Scarborough: Nelson, 1990), 121.

⁵⁶ Kate Matthews, “Neither Fish nor Fowl: The Evolution of the Ontario Crown Attorneys’ Association,” *Crown’s Newsletter*, December 2017, 4.

professionals.⁵⁷ Reporting in 1988, Weiler recommended that professionals in the OPS have the right to organize and collectively bargain, with salaries determined by interest arbitration.⁵⁸ Following the report, the government began to bargain with professional associations under “framework agreements,” which set out the rules for bargaining culminating in arbitration.⁵⁹

The NDP forms government

On July 30, 1990—and despite having difficulty explaining why—the Peterson government called an election only three years into their mandate. The media suggested that, with the election, the government was attempting to get ahead of, variously, looming embarrassing trials related to fundraising, the introduction of a federal Goods and Services Tax, and a possible recession.⁶⁰ Despite polls showing the Liberals entered the campaign with a substantial lead, the Bob Rae-led NDP surprised even itself by winning the election.⁶¹ Though many factors led to the Liberal loss, firm opposition during the campaign from interest groups (with commentators placing unions in this category) was a key

⁵⁷ *Government of Ontario and Association of the Professional Engineers of the Government of Ontario (PEGO)*, 3 June 1991 (Dissanayake), 3-4.

⁵⁸ Paul C. Weiler, *The Professional Employee in Government: A Report to the Honourable Murray Elson, Chairman, Management Board of Cabinet on the Appropriate Methods for Establishing Salaries and Employment Conditions for Professional Employees of the Government of Ontario*, January 1988, 67.

⁵⁹ See: *Government of Ontario and Association of the Professional Engineers of the Government of Ontario (PEGO)*, 3 June 1991 (Dissanayake), 4. (The groups included professional engineers (PEGO), in-house counsel (ALOC), crown attorneys (OCCA),

⁶⁰ Matt Maychak and Derek Ferguson, “Critics reject Nixon’s election ‘excuses,’” *Toronto Star*, 26 July 1990.

⁶¹ A July 1990 poll had Liberals with 50 per cent support versus 26 per cent for the NDP and 22 per cent for the Progressive Conservatives. Maychak and Ferguson, “Critics reject Nixon’s election ‘excuses.’”

element. Notably, the Ontario Medical Association, the Ontario Teachers Federation, and OPSEU came together—as a “peculiar group of three musketeers”—to oppose the government’s re-election.⁶² In addition to this collaboration, OPSEU managed to differentiate itself as “the special-interest group working hardest against the Liberals.”⁶³

Georgette Gagnon and Dan Rath dubbed the OPSEU campaign “unprecedented,” “massive,” and “intricate,” with the union focused on “clobbering the government” on four distinct fronts. First, an OPSEU “SWAT team”—consisting of members working in jails and psychiatric hospitals—followed Peterson’s tour in order “to jam on the premier and ask him questions.” Second, OPSEU spent approximately \$700,000 (\$1.4 million in 2024) on an advertising campaign with the theme “Who’s in charge here?” Third, OPSEU sponsored—and stacked with its members—all-candidates forums around the province. Finally, OPSEU sent direct mailings to its members.⁶⁴

Both OPSEU and the NDP denied any formal alliance, though OPSEU president James Clancy agreed that union-party cooperation would “happen naturally because the people who were organizing locally were also active in the NDP.” The issues driving OPSEU’s campaign included a planned pension contribution increase as well as a plan to shift thousands of OPS jobs out of

⁶² Gagnon and Rath, *Not Without Cause*, 229-31; Virginia Galt, “3 musketeers take aim at Liberals: MDs, teachers and public servants denounce record,” *Globe and Mail*, 15 August 1990.

⁶³ Gagnon and Rath, *Not Without Cause*, 223.

⁶⁴ *Ibid.*, 226-8.

Toronto.⁶⁵ “To the lasting resentment of the union,” despite the pledge in the pact with the NDP, the Liberal government had not enacted the promised changes to public servants’ political rights. Thus, throughout the campaign, OPSEU “carefully avoided specific partisan attacks” to not run afoul of the law. Nevertheless, Clancy opined that the barrier did not matter:

I remember in 1989 saying to the management board of cabinet, ‘Well, fuck political rights. You think that’s number one on our list?’ I mean, we’ve taken it. In 1990 I didn’t hire one lawyer to protect my members. Our members just went out and took it.⁶⁶

After winning the election, Rae “moved quickly to calm fears that the province’s first NDP government will drive away business.”⁶⁷ The government immediately backed away from parts of the party’s manifesto, the “Agenda for People.” That document, unveiled during the surprise election, had variously pledged an eight per cent tax on corporate profits, a freeze on income and sales taxes, indexed pensions, public auto insurance, and increases to the minimum wage and education spending. There were also specific pledges on labour rights.⁶⁸

Upon taking office, the Rae government received briefings from the permanent bureaucracy. The Secretary of Cabinet, Peter Barnes, offered a presentation to the NDP that explained the machinery of the provincial

⁶⁵ “Willing to consider park sale probe, Premier says,” *Toronto Star*, 13 August 1990.

⁶⁶ Gagnon and Rath, *Not Without Cause*, 229.

⁶⁷ Matt Maychak and Peter Gorrie, “NDP Majority: Rae moves to ease fears of business,” *Toronto Star* 7 September 1990.

⁶⁸ New Democratic Party of Ontario, “Agenda for People,” 18 August 1990. (Ontario Archives, F 4338-12 (Bob Rae, Office of the Leader, New Democratic Party of Ontario, David Agnew’s election files).)

government and touched on the OPS. Focusing on the public service's size, the Secretary stated that "for the past 15 years, there has been effectively ZERO GROWTH in the OPS." In a demonstration of the continuing impact of the Special Program Review, he attributed to "a conscious political commitment to contain the size of the public service" and "significant growth in transfer payments, enabling service delivery through agencies and the private sector."⁶⁹

Additionally, the incoming government was briefed on "policy issues confronting the various ministries." Though these materials are unavailable, the record shows that among these policy issues were briefings on "employees collective bargaining act reform," "collective bargaining in the public sector," and "civil servants and political rights: issues and options."⁷⁰ The fact of these being policy issues discussed during the transition period indicates that, as had been suggested to Clancy, the matters had been on the Liberal government's agenda. However, just as importantly, the government had not advanced this agenda over several years.⁷¹

⁶⁹ Ontario, Cabinet Office, *Ontario Government Overview: A Presentation to the New Democratic Party Caucus*, Peter Barnes, Secretary of the Cabinet, September 1990. (Ontario Archive, F4338-12) (Emphasis in original.)

⁷⁰ Bernard Shapiro, Deputy Secretary of the Cabinet to Ross McClelland, 14 September 1990, Briefing Material. (Ontario Archive, F4338-12)

⁷¹ See also, Weiler, *The Professional Employee in Government*, 70. (Discussing CECBA's "managerial exclusion," Weiler determined that it was beyond the scope of his inquiry, though he noted that "the Minister of Labour now has a review underway about a variety of concerns with both CECBA and the *Labour Relations Act*. In my view that is the proper forum within which to raise and to settle the appropriate scope of the managerial exclusion from collective bargaining.")

CECBA Reform

In March 1991—six months after coming to power—the Government directed Management Board to begin consultations on *CECBA* reform. Acknowledging that the government was “committed to the reform of the provincial labour relations framework,” a discussion paper stated that this overall commitment included a review of *CECBA* as it was “considered to be outdated by the Bargaining Agents, the Employer, and the Ministry of Labour.”⁷² The recommended course of action was consultation with bargaining agents because it was felt that this approach allowed an opportunity to reach understandings and “ameliorate, somewhat, the adversarial nature of existing labour/management relations.”⁷³

Despite the submission’s vague references to “bargaining agents” and “consultation,” the briefing note prepared for the Chair of the Management Board was less circumspect. Despite *CECBA* being the responsibility of the Ministry of Labour, the note made clear it had been “agreed by Cabinet that the Chair of the Management Board would undertake consultations with OPSEU.” The note went on to state that “both the employer and the union (were) dissatisfied with the Act.” The “union” was, of course, OPSEU. There was no contemplation of further consultation with other actors by Management Board. The briefing note

⁷² Ontario, Human Resources Secretariat/Ministry of Labour, *Cabinet Submission, CECBA Reform Consultation: Discussion Paper*, 20 March 1991. (Beyond *CECBA*, the government’s commitment to labour law reform was made clear with its Bill 40 (introduced in June 1992) which significantly amended the *LRA*.)

⁷³ *Ibid.*

emphasized that, despite the discussions with OPSEU being referred to as “consultations,” the discussions were “in effect, informal negotiations.” Thus, a risk for the government was that any agreement with OPSEU could “limit flexibility for the Ministry of Labour at a later date in reform of the Act.” Asserting that *CECBA* was “outdated,” the briefing note stated that the Act “exacerbates relations between the Government and its employees; it results in costly litigation; and it possibly undermines community-based service delivery.”⁷⁴ Another notable aspect of the briefing note is its statement that, “in view of the government’s desire to work toward a ‘social contract’ with organized labour, it is advisable to get as much on the table as possible.” This may be an early notice of the government’s full public sector labour agenda, but here it only means to underscore that, in discussing these amendments, the government meant to negotiate and not merely consult with OPSEU.⁷⁵

Of considerable interest, the Chair of Management Board at this time was Frances Lankin. Lankin, of course, was first mentioned above in the context of her former career as a jail guard, where she had moved the motion for the strike vote that led to the 1979 wildcat. Lankin was working for OPSEU by 1980 and continued to be employed there until her election in 1990, whereupon she was charged with negotiating with OPSEU amendments to *CECBA*. On these facts, MPP

⁷⁴ Ontario, Briefing note for the Chair of Management Board, Frances Lankin, Re: Cabinet Committee on Economic and Labour Policy, Human Resources Secretariat/Ministry of Labour Consultations on the Reform of *The Crown Employees Collective Bargaining Act (CECBA)* 28 March 1991. Document available as appendix to Ontario, Commission on Conflict of Interest, *Report of the Honourable Gregory T. Evans, Commissioner Re: The Honourable Frances Lankin Chair of Management Board of Cabinet and Minister of Health*, 2 May 1991.

⁷⁵ Ontario, Briefing note for the Chair of Management Board, Frances Lankin.

Robert Runciman of the Progressive Conservatives made a conflict of interest allegation against Lankin. Though it might reasonably be argued that this represented a perceived conflict of interest, the *Members Conflict of Interest Act, 1988* only entertained actual conflicts of interest. As such, Runciman's complaint was found to be groundless.⁷⁶

The government's reform agenda did not ultimately unfold as the briefing note foresaw. To explain why the process unfolded differently, the balance of this section focuses on two issues: the right to strike and bargaining unit fragmentation. The focus is on these two issues as they were the subjects of a decades-long struggle by labour and because, in its eventual amendments, the province reversed itself from long-held positions on both. First, on the right to strike, the government turned away from arbitration as its preferred mechanism to settle bargaining impasses, as the amended *CECBA* moved to a strike/lockout framework. Second, the government reversed its position on the fragmentation of the OPS workplace, with the amended *CECBA* ushering in new bargaining units. For clarity at the outset of this discussion, Table 6 sets out a chronology of the major impactful events that occurred between March 1991 and April 1995.

Table 6: Chronology of 1990s CECBA reform

1991	
March	Cabinet Submission authorizes negotiations
June	Management Board issues consultation paper

⁷⁶ Ontario, *Report of the Honourable Gregory T. Evans, Commissioner Re: The Honourable Frances Lankin*, 3-5. (The distinction here being that in an actual conflict of interest one is in a position to be influenced by their private interests when carrying out their duties. In a perceived conflict of interest, one only appears to be influenced by private interests.)

July	Negotiations begin with OPSEU
1992 April	OPSEU convention announces agreement with government on <i>CECBA</i> changes that will: reduce exclusions from the bargaining unit; right to strike; essential services; no legislated management rights or exclusions from bargaining Convention resolution endorses union choice between arbitration and strike for bargaining resolution Excluded employees at the Ontario Insurance Commission form an association, expressing concern at being included in OPSEU unit
September	OPSEU warns government may stall reforms Alleges the government is concerned about further dalliances in labour legislation following the critical reception of reforms to the <i>LRA</i>
October	OPSEU and government agree on <i>CECBA</i> reform Agreed changes include: right to strike, without union choice on arbitration; reduction in exclusions with choice of bargaining unit for most; essential services; no legislated management rights or exclusions from bargaining Employer report with recommendations on <i>CECBA</i> reform is issued
1993 May	AMAPCEO formally founded
June	<i>CECBA</i> amendments (Bill 117) introduced OPSEU critical of lack of choice for arbitration
December	<i>CECBA</i> amendments passed Final package includes changes to political rights and whistleblowing protections
1995 March	Tripartite agreement between Management Board, OPSEU, and AMAPCEO regarding bargaining unit definitions

The turn from arbitration

The government's consultation paper noted that the government had supported the right to strike when the party had been in opposition, thus it was "assumed that the Crown would support the right to strike for public servants."⁷⁷ Given the longtime support from both the NDP and OPSEU, it was clear that a right to strike in some form would be a part of a reformed *CECBA*. Within this framework several options were set out, including a right to strike with or without a legislated recourse to arbitration, and with or without designated essential services that would be barred from any work stoppage.⁷⁸

In their opening statement at the consultation, OPSEU "firmly committed to the choice of routes as a dispute settlement mechanism." Such a choice, the union argued, "is needed to reflect the unique cultural and historical differences of public sector workers in government employment."⁷⁹ The government was unmoved by these arguments and instead fixated on providing a meaningful right to strike, though this was to be balanced with the government's need to provide certain services. Consequently, the amended *CECBA* contained an essential services barrier to a full withdrawal of labour.

As OPSEU's OPS bargaining unit numbered some 55,000 members, the government believed that the unit's sheer size made it "very unlikely that OPSEU would ever be able to mount an effective strike." Accordingly, "giving the right to

⁷⁷ Ibid., 8.

⁷⁸ Ontario, "CECBA Reform Consultation: Discussion Paper," 8-15.

⁷⁹ Ibid., 9-10.

strike under the structure of one bargaining unit is tantamount to giving OPSEU a right it could never use.” The government therefore took the position was that OPSEU’s unit structure should be revisited. OPSEU appears to have been taken by surprise with this suggestion. For example, in its remarks the union found time to decry the “privatizing, downsizing, contracting out, or moving the work of our bargaining unit to contractors, fee for service employers, or various crown funding agencies of for the sole purpose of paying lower wages and benefits” that the OPS had been undertaking since 1975, directly referencing the Special Program Review report.⁸⁰ Yet, on the matter of bargaining unit structure, OPSEU simply stated that the union has “no mandate” on the matter and would be consulting the membership.⁸¹ In the end, it was agreed that OPSEU’s unit would be split into six smaller occupational groupings.⁸² Ostensibly, the purpose was to facilitate strike action by allowing for smaller strike votes and smaller communities of interest as the constituencies for each vote.⁸³ On the other hand, the fracturing of the unit could arguably work to forestall a full strike, thereby limiting the structural power of the union. In any event, when OPSEU went on strike in 1996 none of this was relevant as OPSEU secured a strike mandate from each group.

⁸⁰ OPSEU, *Reform of CECBA: Opening Remarks*, July 1991, 6. (University of Toronto, Centre for Industrial Relations Archive.)

⁸¹ OPSEU, *Reform of CECBA: Opening Remarks*, 5.

⁸² *Memorandum of Agreement between The Crown in Right of Ontario (Management Board of Cabinet) and Ontario Public Service Employees Union*, 14 January 1994.

⁸³ Ironically, when OPSEU went on strike in 1996 none of this was relevant as OPSEU secured a strike mandate from each group.

The turn from non-fragmentation

As detailed above, in his report Judge Little took the view that “the public interest is best served if the public service is not fragmented by the introduction of new units which would give rise to multiple bargaining, where the need is not apparent.”⁸⁴ Still adhering to this dictum, the original agreement between the government and OPSEU was for all employees gaining bargaining rights due to *CECBA* reform to be included in the OPSEU unit. Yet, for reasons explained below, this is not what transpired.

The government’s consultation paper noted that the exclusion rate in the OPS at the time was 24.7 per cent—a figure “significantly higher than other provincial governments.”⁸⁵ Were the amended *CECBA* to use *Labour Relations Act* standard, the exclusion rate was expected to fall between 7 and 15 per cent. Further, if the *LRA*

standards are applied to the OPS, it is anticipated that OPSEU might gain between 7,000 and 12,000 members (these would not include currently excluded professionals). If bargaining agent designation is not retained, then management, professional associations and/or other bargaining agents may be successful in their applications to represent some of the previously excluded employees.⁸⁶

Thus, the *CECBA* amendments were going to provide collective bargaining rights to thousands of OPS employees. Given the scale of the change, and the number of potential members at stake, it is a notable omission that OPSEU’s opening statement to the consultations did not mention the issue.

⁸⁴ Ontario, *Collective Bargaining in the Ontario Government Service*, 28.

⁸⁵ Ontario, “CECBA Reform Consultation: Discussion Paper,” 16.

⁸⁶ *Ibid.*

The reason exclusions were not discussed is because OPSEU and the government simply assumed that the newly included workers would form part of OPSEU's bargaining unit. This is clear from the record. For example, at OPSEU's 1992 convention, president Fred Upshaw announced that the union had just completed a "year of 'heavy negotiations'" on *CECBA*. Reporting on the outcome of those negotiations, *OPSEU News* simply stated that the parties had agreed to "cut the number of Public Service workers excluded from the bargaining unit."⁸⁷ Going into greater detail was OPSEU's full report to its members on the *CECBA* negotiations, which stated that "the government has agreed to change the definition of the bargaining unit to include most of those who are currently denied access to bargaining rights," with a new exclusion rate of between 5 and 7 per cent of the OPS workforce.⁸⁸ OPSEU argued that the inclusion of the new positions marked "an important victory for all employees, since it strengthens the bargaining unit, providing more leverage in negotiations." The union then went on to make what turned out to be a catastrophic strategic error:

The government has taken the position that employees coming into the bargaining unit should bring all their Public Service seniority with them. We will do everything we can to negotiate limits on the seniority rights of currently excluded employees.⁸⁹

⁸⁷ "Convention supports right to strike promised by NDP government," *OPSEU News*, 29 April 1992. Emphasis added. (University of Toronto Centre for Industrial Relations Archive).

⁸⁸ OPSEU, *It's time for change: Report on talks for a new law to govern Public Service bargaining*, April 1992, 7-8.

⁸⁹ OPSEU, *It's time for change*, 8. Later, Upshaw described the union's position on seniority rights as a negotiating tactic "everybody knows the process: you come in high and hopefully there'll be a win-win situation at the end. But take our opening submission and put it out in the press, drop it into the House without consulting the parties and say, 'that's what's happening,' it's unbelievable." Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, Standing Committee on Resources Development, 35th Leg, 2nd Sess, R-32 (2 September 1992) at R-1068.

It is certainly understandable why the union would seek to appease current union members. It is equally understandable why those who might soon be included in the bargaining unit would look askance at losing seniority rights. The context here is important as the changes to *CECBA* were occurring in difficult economic times: the 1992 Budget (delivered on April 30, 1992) had acknowledged on its very first page that “for two years our province has been in the grip of a recession.”⁹⁰ That Budget went on to set out several efforts to control spending by reducing ministry budgets, compensation controls (including a freeze on senior managers’ salaries and a 1 per cent wage increase for OPSEU-represented staff), and—most relevant—a reduction of 2,500 people in the OPS staff complement.⁹¹ It is also important to make clear that it was not completely unreasonable for the union and employer to agree that the employees gaining bargaining rights would be slotted into the existing bargaining unit. In labour relations, positions found to be wrongfully excluded are routinely placed into an existing bargaining unit. The rub in this case is that most of the excluded positions had not been *wrongfully* excluded—the positions had been *rightfully* (though, perhaps, controversially) excluded by *CECBA*.⁹²

⁹⁰ Ontario, *1992 Ontario Budget: Meeting Ontario’s Priorities*, (Toronto: Ministry of Treasury and Economics, 1992), 1.

⁹¹ *Ibid.*, 71-2. Ultimately, between 1992 and 1995, the Rae government shrunk the OPS by more than 5,000 full-time equivalent positions (David Rapaport, *No Justice, No Peace: The 1996 OPSEU Strike against the Harris Government in Ontario* (Montreal and Kingston: McGill-Queen’s University Press, 1999), 69).

⁹² The distinction here is whether the exclusion complied with the legislation—a wrongful exclusion did not, a rightful exclusion did.

To say the least, OPSEU's approach had "showed little understanding of the needs and concerns of middle managers."⁹³ And so, the day after Upshaw's announcement to the OPSEU convention, two employees of the Ontario Insurance Commission wrote to the Chair of the Civil Service Commission. Expressing concern about the negotiations to move presently excluded employees into OPSEU. The letter stated that, while it had been known that the government was discussing *CECBA* with OPSEU, the outcome of the discussions were only rumoured—including that "a deal had already been struck between the employer and OPSEU" in which the union accepted a 1 per cent wage settlement "in exchange for ... the government's commitment to transfer some or all" of the presently excluded employees into that bargaining unit.⁹⁴ Speaking on behalf of their colleagues, the letter writers argued for allowing "supervisory employees" to "organize and to establish their own bargaining unit (or vote not to)." Summarizing the mood, the letter stated that the "feeling runs to 'we do not believe we need to be unionized, but if we do, we want our own bargaining unit.'"⁹⁵

By July 1992, the employer was advising OPS staff that "no employer recommendations" had yet been approved by Management Board and, further,

⁹³ Graham White, "Revolutionary Change in the Ontario Public Service," in *Government Restructuring and Career Public Services*, ed. Evert Lindquist (Toronto: Institute of Public Administration of Canada, 2000), 317.

⁹⁴ Recall here the Cabinet briefing note which advised the government "to get as much on the table as possible" when negotiating with public sector unions.

⁹⁵ Arthur F. Halpert and Christine Gooderham, Association of Management Compensation Plan Non-Supervisory Employees to Glenna Carr, Chair of the Civil Service Commission, 24 April 1992. (AMAPCEO Archive.)

that no “recommendations will be approved until the consultation process has been concluded.” Denying OPSEU’s claims that an agreement had been reached, the employer announced several information sessions for employees, the establishment of a voice mail telephone line for recorded comments, as well as that Management Board would be meeting with “management associations that have been formed.”⁹⁶ In October 1992, Management Board issued a new report on *CECBA* reform which detailed a 10-week consultation period with management and excluded employees.⁹⁷ The report contained recommendations for discussion along with several items that were closed to further consultations. Here, the government was clear that it was going allow new bargaining unit members to retain their seniority dates and be dovetailed into OPSEU’s existing list (were they to join that unit); impose no change to leave provisions; add wrongfully excluded positions to existing units; allow newly included positions to have a choice of bargaining units; and extent the right to strike to the OPS.⁹⁸

At this point, an organizing campaign began. While OPSEU (having now resiled from the position that incoming members would not bring any seniority with them) and the Office and Professional Employees International Union (OPEIU) both made attempts at organizing, AMAPCEO was the only organization

⁹⁶ Glenna Carr, Secretary, Management Board of Cabinet to All SMG, MCP and Excluded Employees Ontario Public Service, 8 July 1992. (AMAPCEO Archive.)

⁹⁷ Ontario, Management Board Secretariat, *Employer Report on the Reform of the Crown Employees Collective Bargaining Act*, October 1992, 5.

⁹⁸ John Kirk, Manager, Employee Relations and Compensation to Assistant Deputy Ministers, Regional Directors, Directors, Facility Administrators, Area Managers, Long Term Care Managers, 9 October 1992.

that generated any momentum. A significant part of AMAPCEO's organizing success was attributable to classism. This factor has been seen repeatedly in this study, as in the CSAO's long-term positioning as an association that eschewed the trappings of unionism. It was also seen in Saskatchewan, where the public servants' desire to be unionized was much less enthusiastic than their government employer's and where affiliation with the 'radical' CCL was eschewed in favour of the more conservative TLC. Also discussed above was Morley Gunderson's hypothesis that professional employees would have an attitude of "aloofness" towards other unions, arguing that this was due to professional unions having "no history of working class struggle." While Gunderson was discussing self-regulated professionals as opposed to self-styled professionals—that is, white collar knowledge workers—his analysis is relevant to this case. Particularly important is Gunderson's observation that "the occupational prestige of professionals rests on their being able to distinguish themselves as something apart from other workers."⁹⁹

This feeling is, essentially, class privilege. Marion Crain argued that this privilege manifests itself in professionals being interested in alliances with neither the working class nor with other professionals.¹⁰⁰ As an example of this, we find the nascent AMAPCEO members strongly against joining OPSEU while simultaneously being only tepidly interested in forming their own union. Larry

⁹⁹ Gunderson, "Professionalization of the Public Sector," 115.

¹⁰⁰ Marion Crain, "The Transformation of the Professional Workforce," *Chicago-Kent Law Review* 79, no. 2 (June 2004): 597-98.

Savage and Michelle Webber’s research on professional unions in the public sector demonstrated that at the same time AMAPCEO described itself “in opposition to their nonprofessional counterparts in the same sector” that is, OPSEU.¹⁰¹ This belief was evident in AMAPCEO’s founders. Arthur Halpert (the letter-writer mentioned above who went on to serve as AMAPCEO’s first vice-president) stated in an interview that the impetus for forming the organization was merely to get

a seat at the table with the government to let them know what we felt. ... we wanted a seat at the table saying, “No, we don’t want OPSEU. We would rather represent ourselves as an association.” We didn’t, at least I didn’t certainly intend to create a union or start that type of thing. It was an association of like-minded people who wanted to stay out of OPSEU.

Halpert summed up his view of AMAPCEO’s founders as not “trying to create a union per se, we were trying to stay out of a union.”¹⁰²

While Halpert’s lack of interest in unionization is not necessarily representative of all—after all, AMAPCEO’s union organizing drive was successful—the theme of not wanting to be in OPSEU was pervasive. As Margaret Kipp, another founding activist, put it,

When we were told that we would be put into OPSEU, essentially, everybody was very upset. First of all, a lot of people were upset about going into a union. But, second of all, people were upset about going into OPSEU.¹⁰³

¹⁰¹ Larry Savage and Michelle Webber, “The Paradox of Professionalism: Unions of Professionals in the Public Sector,” in *Public Sector Unions in the Age of Austerity*, eds. Stephanie Ross and Larry Savage, (Black Point, NS and Winnipeg: Fernwood Publishing, 2013), 117.

¹⁰² Art Halpert, interview by Denise Hammond, Toronto, November 2012. (AMAPCEO Archive)

¹⁰³ Margaret Kipp, interview by Denise Hammond, Toronto, November 2012. (AMAPCEO Archive)

The same message came through from Gary Gannage, an AMAPCEO founder who went on to serve as the union's president for twenty years:

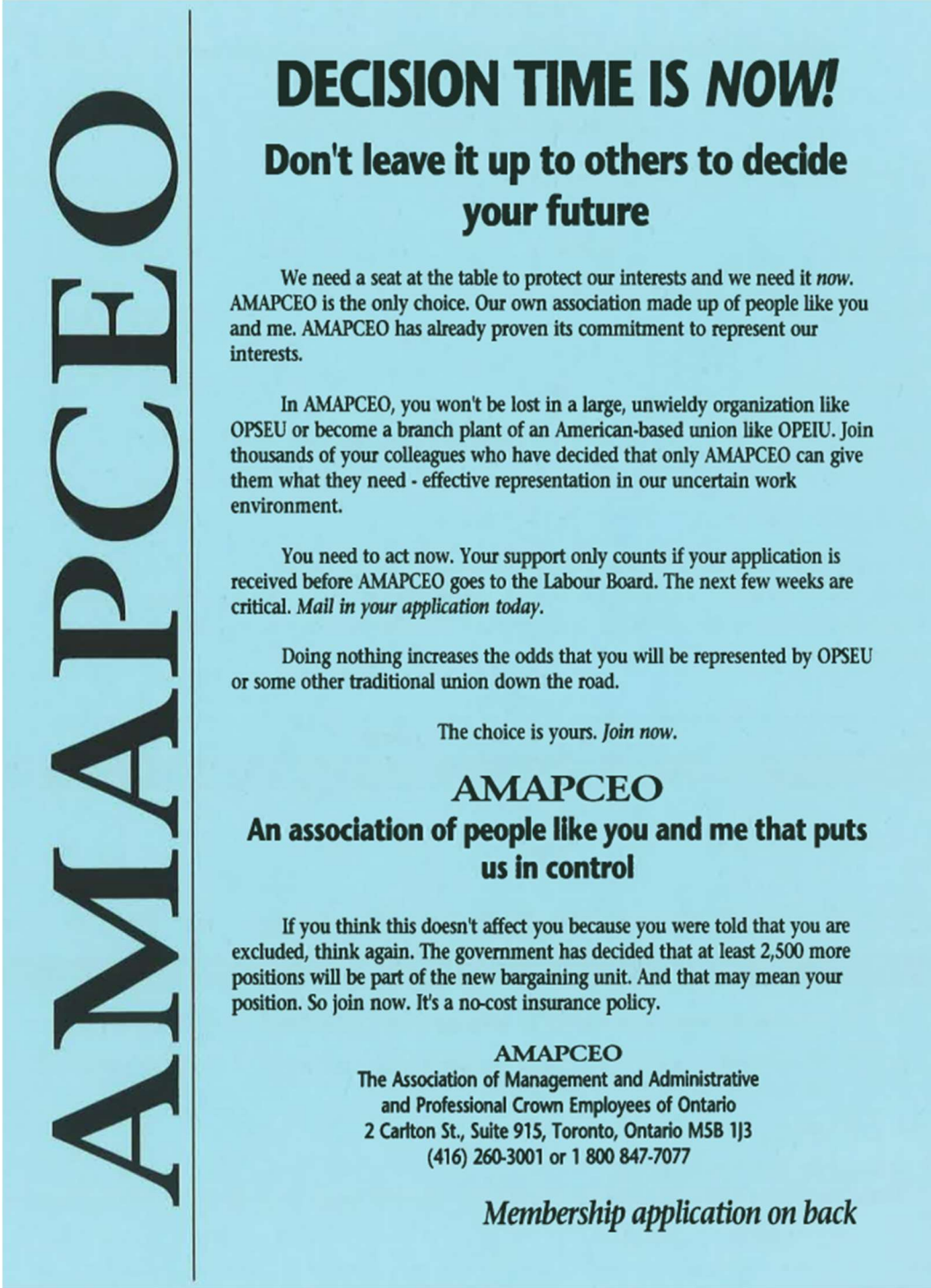
the great majority of people in the seventh unit didn't see themselves as a blue-collar unionist but as a professional. The shape of AMAPCEO was around professional lines. They saw themselves more as managers than as unionists. That's the orientation that AMAPCEO took—professional, nonconfrontational problem solving where appropriate, apolitical, and unaffiliated.¹⁰⁴

The theme of not wanting to be in OPSEU pervaded AMAPCEO's organizing campaign. A flyer for the campaign—reproduced as Figure 4—calls for an “association made up of people like you and me” and warns that inaction could lead to being “represented by OPSEU or some other traditional union down the road.” In contrast, OPSEU's flyer (reproduced as Figure 2) warned of the “amateur association called AMAPCEO” and further warned of the dangers of fragmentation to employees that “an employer has a tremendous tactical advantage when dealing with two different unions in one overall workplace. It can ‘whip-saw’ the unions, play one off against the other.”¹⁰⁵

¹⁰⁴ Rapaport, *No Justice, No Peace*, 195.

¹⁰⁵ OPSEU, *For your job security – Help organize the 7th bargaining unit*, n.d. (AMAPCEO Archive)

Figure 4: AMAPCEO organizing flyer

The flyer is for AMAPCEO, The Association of Management and Administrative and Professional Crown Employees of Ontario. It features a large, vertical 'AMAPCEO' logo on the left side. The main text is in a bold, sans-serif font. The headline is 'DECISION TIME IS NOW!' followed by 'Don't leave it up to others to decide your future'. The text is organized into several paragraphs, each starting with a bolded opening sentence. The contact information is at the bottom, including the address and phone numbers. The phrase 'Membership application on back' is written in a script font at the bottom right.

AMAPCEO

DECISION TIME IS NOW!

Don't leave it up to others to decide your future

We need a seat at the table to protect our interests and we need it *now*. AMAPCEO is the only choice. Our own association made up of people like you and me. AMAPCEO has already proven its commitment to represent our interests.

In AMAPCEO, you won't be lost in a large, unwieldy organization like OPSEU or become a branch plant of an American-based union like OPEIU. Join thousands of your colleagues who have decided that only AMAPCEO can give them what they need - effective representation in our uncertain work environment.

You need to act now. Your support only counts if your application is received before AMAPCEO goes to the Labour Board. The next few weeks are critical. *Mail in your application today.*

Doing nothing increases the odds that you will be represented by OPSEU or some other traditional union down the road.

The choice is yours. *Join now.*

AMAPCEO

An association of people like you and me that puts us in control

If you think this doesn't affect you because you were told that you are excluded, think again. The government has decided that at least 2,500 more positions will be part of the new bargaining unit. And that may mean your position. So join now. It's a no-cost insurance policy.

AMAPCEO
The Association of Management and Administrative
and Professional Crown Employees of Ontario
2 Carlton St., Suite 915, Toronto, Ontario M5B 1J3
(416) 260-3001 or 1 800 847-7077

Membership application on back

Figure 5: OPSEU organizing flyer

URGENT NOTICE

For your job security --

Help organize

the 7th Bargaining Unit



OPSEU is in a critical organizing drive to determine the future of 7,000 workers in the Ontario Public Service. This drive will have a major impact on OPSEU's bargaining power for the 65,000 OPS workers we already represent.

Virtually every member and every local in the OPS will be affected by the drive to unionize this huge group of former middle managers, none of whom has the power to hire, fire or discipline union members. They gained the right to unionize under changes to the Crown Employees Collective Bargaining Act (CECBA) that OPSEU fought to achieve.

The challenge

The challenge to organize the largest new bargaining unit in Canadian history is gigantic. It is compounded by the fact that an amateur association called Amapceo is also trying to organize it. If this amateur association wins, it will jeopardize OPSEU's ability to represent all its other members.

The threat

An employer has a tremendous tactical advantage when dealing with two different unions in one overall workforce. It can "whip-saw" the unions, play one off against the other.

Contract language, job security and work rules will drop to the level negotiated by the weaker union, in this case an unregistered association.

Our contract is at stake

If we don't organize the 7th Bargaining Unit, our opponents will.

OPSEU has the resources, the experience and the structure to bargain professionally for the 7th Bargaining Unit and to service its members. Amapceo does not, and its weakness will undercut our collective agreement.

What can you do?

Organizing literature has gone out to OPSEU activists, and more is available. Every aspect of OPSEU's appeal, including our well-financed pension plan, will help you convince potential members that OPSEU is the only reasonable choice.

Any past grievances with individuals in the new group must be seen in the context of the pressing need to organize the 7th Bargaining Unit.

We can overcome the problems with the list

We know the list of names supplied by the government is inaccurate, and we will challenge it at the right time in the legal process.

The 7th Bargaining Unit is being organized under the Ontario Labour Relations Act, an unfamiliar process for many members in the OPS, but one OPSEU knows well. We will use the information we get from you and other activists to challenge the list at the certification stage.

Don't let an employer tactic like an inaccurate list weaken your contract.

Your help is crucial to success

The only practical way of organizing the 7th Bargaining Unit is to use OPSEU's greatest resource -- union activists.

Talk to members of this group, and sign them up. This is critical.

The organizing department will help and provide coordination, but your involvement will be the key to our success.

Our job security and the security of the 7th Bargaining Unit will depend upon our collective will to win this campaign.

The organizing campaign ended in a voluntary recognition agreement. After AMAPCEO applied for certification the employer, OPSEU, AMAPCEO and the government signed a tripartite agreement on the structure of the bargaining units. The agreement confirmed that bargaining units would be set out by order in council, with the unions agreeing to not challenge this division.¹⁰⁶ AMAPCEO's interest in finalizing the agreement is obvious. For OPSEU, the agreement meant that they would not be organizing the seventh unit, but the union did receive several hundred positions. For the government, voluntary recognition meant that several years of potential litigation could be avoided. More vital than avoiding litigation, though, was the fact that, while such litigation was ongoing, the AMAPCEO unit would have been subject to a "statutory freeze." This means that, once a union has applied for certification of a bargaining unit, the employer cannot unilaterally alter the terms and conditions of work—for example, by imposing wage restraint. By reaching the voluntary agreement, the employer believed they would "gain substantial relief from the constraints of the statutory freeze."¹⁰⁷

¹⁰⁶ *Agreement between Crown in Right of Ontario as represented by Management Board of Cabinet (the Government) and Ontario Public Service Employees Union (OPSEU) and Association of Management and Professional Crown Employees of Ontario (AMAPCEO)*, 23 March 1995; Ontario, Order in Council 243/93, 3 February 1994. (AMAPCEO Archive)

¹⁰⁷ David Agnew, Secretary of the Cabinet, to Deputy Ministers, 27 March 1995. (AMAPCEO Archive)

1995 – The Harris era

In June 1995, the Mike Harris-led PCs came to power on the back of an extensive manifesto entitled *The Common Sense Revolution*.¹⁰⁸ In addition to their overarching commitment to lower taxes and less government spending, the PCs promised a smaller bureaucracy and labour law reform. The shrunken bureaucracy pledge was quite specific:

We are convinced that top quality public services can be provided at less cost, with fewer people. We will trim the cost of the direct provincial government workforce by 15%—the equivalent of some 13,000 employees, returning the system to the approximate size it was in 1985.¹⁰⁹

In labour law, the PCs promised to repeal the NDP government's Bill 40 labour law reforms in their entirety, introducing the legislation to effect this on the sixth day of the Legislature's new session.¹¹⁰ Not only did Bill 7 repeal (with a few exceptions) Bill 40, it also made selective amendments to *CECBA*. Importantly, the new government maintained the right to strike for workers in the OPS—despite the PCs having been volubly opposed while in opposition.¹¹¹ However, the

¹⁰⁸ Ontario Progressive Conservative Party, *The Common Sense Revolution*, N.p., n.d.

¹⁰⁹ *Ibid*, 9.

¹¹⁰ Bill 7, *Labour Relations and Employment Statute Law Amendment Act, 1995*, 1st Sess., 36th Leg., Ontario, 1995. (Graham White argued that the extent of this retrenchment was so vast that the Harris government in fact “did away with advances made by labour under Bill Davis’ conservative government in the 1970s.” White, “Revolutionary Change in the Ontario Public Service,” 318.)

¹¹¹ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Leg, 3rd Sess, No 31 (14 June 1993) at 1340. (PC leader Mike Harris when the *CECBA* amendments were introduced: “Let me just say this very clearly, so that all understand, union leaders, union employees, public sector, private sector: Just as Bill 40 can and will be scrapped, this legislation as well can and will be scrapped, so don't get too comfortable with it. If you think this sop while the social contract gutting and ripping out of agreements is being brought in by the Treasurer has a longer shelf-life than September 6, 1995, which is as long as you can hang on, you've got another thing coming. I want that to be very clear.”)

government did tinker with *CECBA*'s exclusions and, in anticipation of divesting positions from the OPS, stripped successor rights from the legislation.¹¹²

In March 1996, OPSEU's OPS unit engaged in its first legal strike. During the strike's second week, AMAPCEO (which had been negotiating its first agreement) completed negotiations on a job security article. The Association arranged for membership ratification of only that portion of the agreement and deferred bargaining on the remainder of the agreement.¹¹³ David Rapaport (a member of OPSEU's executive board during the strike) argued that AMAPCEO's settlement "affected the OPSEU strike" as the strike was primarily about job security. Rapaport quoted OPSEU's senior negotiator as complaining that "AMAPCEO sold us out. ... AMAPCEO had been negotiating since October and getting nowhere and suddenly they get this." The government's negotiator agreed: "in the middle of the OPSEU strike we had an opportunity to make a deal with AMAPCEO. At this point we saw the tactical advantage of agreeing with AMAPCEO." The government's hope was that the AMAPCEO deal would "demoralize" the strikers and force them to "put pressure on the union to make a deal."¹¹⁴ Taking a different view, Joseph Rose argued that neither did the AMAPCEO agreement

¹¹² Bill 7, *Labour Relations and Employment Statute Law Amendment Act, 1995*, 1st Sess., 36th Leg., Ontario, 1995, cl. 22.

¹¹³ AMAPCEO, *AMAPCEO News*, "Implementing AMAPCEO's new job security and redeployment agreement," April 1996, 3. (AMAPCEO Archive.)

¹¹⁴ Rapaport, *No Justice, No Peace*, 195-6.

hasten the end of the OPSEU strike, nor did it hasten AMAPCEO completing its first collective agreement.¹¹⁵

For Rapaport, this was an example of the whipsawing OPSEU had warned about during the organizing drive. A similar situation transpired in 2002 around OPSEU's second OPS strike. In this case, the government did not settle with other unions during the strike, but rather negotiated with those unions first. As David Tsubouchi (the Chair of Management Board during that strike) explained, the government's bargaining position was informed by the agreements that had been concluded with PEGO and AMAPCEO. These contracts gave the government "a general sense of what a reasonable settlement would be," and served to constrain the range of outcomes available to OPSEU.¹¹⁶ The addition of new bargaining units and the move to strike/lockout bargaining opened up new tactical avenues for the government as employer. As mentioned above, multiple units presented an opportunity to whipsaw—that is, the government-side could leverage a settlement with one unit against another. Relatedly, the move away from arbitration gave the employer side the opportunity to practice 'hard bargaining'

¹¹⁵ Joseph B. Rose, "From Softball to Hardball: The Transition in Labour-Management Relations in the Ontario Public Service," in *Public-Sector Labour Relations in an Era of Restraint and Restructuring*, ed. Gene Swimmer, (Toronto: Oxford University Press, 2001), 80. Rose observed that AMAPCEO remained without an agreement until May 1988 "despite having the option of first-contract arbitration. That said, monetary issues in the 1998 agreement were referred to arbitration. Sending monetary matters to arbitration, wrote AMAPCEO president Gary Gannage, was "one of the easier decisions to make. Quite frankly, to describe the Government's salary offer at the bargaining table as insulting is an understatement." *AMAPCEO News*, June 1998, 1 (AMAPCEO Archive.)

¹¹⁶ David Tsubouchi, *Gambatte: Generations of Perseverance and Politics. A Memoir* (Toronto: ECW Press, 2013), 230.

tactics. The rise of this tactic—set within a broader retrenchment of the state—will be explored in the next section.

Hard bargaining and retrenchment

Through the 1990s, the form of the state was changing. As Graham White put it, in the OPS “reorganization” of government had been a constant for decades and, prior to the 1990s, had “meant either expansion or simply shuffling existing pieces.” By the 1990s, however, reorganization had “come to mean consolidation, contraction, and staff reductions.”¹¹⁷ While this change occurred, the welfare state itself had “not changed fundamentally since the 1970s.”¹¹⁸ The state played much the same role as it had, though with meaningful changes in process born from a desire to constrain costs. Thus, in this vein, White argued that “all governments in Ontario have taken huge steps—culturally as well as logistically—to treat the citizenry as ‘customers.’”¹¹⁹

Those logistical steps were spelled out by Peter Barnes, a former Ontario Secretary to the Cabinet, who stated that

as in any other organization, government must define its core business. Our civil service gained its reputation as an operational delivery organization. It is now being asked to change its core business to one of strategic public policy and programme policy setting, spinning off operations to the most cost effective model.¹²⁰

¹¹⁷ White, “Revolutionary Change in the Ontario Public Service,” __.

¹¹⁸ White, “Ontario Then and Now,” 16.

¹¹⁹ Graham White, “Ontario Then and Now,” in *The Politics of Ontario*, eds. Cheryl N. Collier and Jonathan Malloy (Toronto: University of Toronto Press, 2017), 14.

¹²⁰ Peter Barnes, “Lessons of Reform in the Ontario Civil Service,” *Public Administration and Development* 17 (1997): 29-30.

Here Barnes is flagging contracting out of operations as a tactic to create cost-effective service delivery models. One impact of this change is evident in OPS staffing levels across time, set out in Table 7. Setting out the OPS headcount in 10-year intervals between 1971 and 2001, we find a significant reduction occurring over the 1990s—and this despite the province’s ever-growing population.

Table 7: OPS permanent employee headcount and Ontario population, 1971-2001

Year	Permanent employee headcount	Ontario population
1971	53,070	7,984,027
1981	67,709	8,812,286
1991	73,238	10,431,316
2001	49,728	11,896,663

The decreasing staff count indicates the Harris government’s agenda to downsize the public service and reduce regulations. In this way, the government’s ideology is a vital driver of downsizing. On this point, Anita Krajnc traced the development of Ontario’s Ministry of Environment over decades. She found that the Ministry’s staffing levels and real dollar budget increased incrementally for some twenty years beginning in 1971. Under the NDP government, the budget was decreased in 1993—that reduction “concentrated mainly in reduced external capital grants” to local governments and universities. The actual impact on the Ministry itself was minor.¹²¹ In contrast, the Harris

¹²¹ Anita Krajnc, “Wither Ontario’s Environment? Neo-Conservatism and the Decline of the Environment Ministry,” *Canadian Public Policy / Analyse de Politiques*, 26:1 (March 2000): 114.

government “targeted” the Ministry for deep cuts.¹²² Krajnc pointed out a key distinction between the Harris and Rae cuts: the former targeted the Ministry's operating budget, while the latter focused on its capital budget.¹²³ Ultimately, these cuts forced the kind of changes referred to above. The Ministry variously eliminated, privatized, or devolved (meaning downloading the role to local governments) activities. In those activities the Ministry continued, budget cuts compelled the use of alternative service delivery methods, such as cost-recovery, joint ventures, voluntary compliance, and standardized approvals.¹²⁴ Although it was particularly negatively impacted, what happened in the Ministry of the Environment is what led to the significant shrinking of OPS staff that is shown in Table 7.

While ideology played a meaningful role in the reduction of staff levels, the fundamental driver of reducing staff levels was cost-containment achieved through controlling the cost of labour. Joseph Rose argued that the shift in governments' focus to cost containment has resulted in a move from “softball” to “hardball” bargaining. Rose saw softball bargaining between the NDP government and OPSEU in the union's 1992-93 collective agreement. There, the parties agreed to a modest 1 per cent increase in exchange for job guarantees (and, as seen above, allegedly the inclusion of thousands of positions into that

¹²² Ibid. (Krajnc noted that the Ministry “lost about a third of its staff and budget in two years,” with 750 positions eliminated over that period. The 1990 staff level of 2,450 had been cut by 40 per cent by 1997.)

¹²³ Ibid., 115.

¹²⁴ Ibid., 117.

bargaining unit).¹²⁵ By contrast, the hardball era began with the Social Contract and continued into the Harris era, which saw strikes in 1996 and 2002.¹²⁶ In a testament to the mood of the era, it is significant that OPSEU's 1996 strike was defensive in nature as the union struck "not for more pay, not for job security, but for improved lay-off terms."¹²⁷

Putting this a different way, Peter Warrian argued that "the theory and practice of public sector industrial relations have, to date, been articulated in terms of a core factor of political constraint."¹²⁸ By this, Warrian referred to studies placing an emphasis on matters such as the government's dual role as employer and legislator—very much the grist of decades of developments in Ontario. However, Warrian argued that by the 1990s "fundamental economic constraint" had come to supplant the political. As such, Warrian criticized commentators who clung to explanations which "assumed a fundamental political driver of public sector industrial relations."¹²⁹ Put a different way, while governments of all partisan stripes put a premium on cost-containment, the ideological differences between governments manifest as differences in the methods used to control costs.

¹²⁵ Rose, "From Softball to Hardball," 66.

¹²⁶ *Ibid.*, 73-81.

¹²⁷ Barnes, "Reform in Ontario Civil Service": 29

¹²⁸ Peter Warrian, *Hard Bargain: Transforming Public Sector Labour-Management Relations* (Toronto: McGilligan Books, 1996), 27.

¹²⁹ *Ibid.*, 28-9.

This takes us back to Blais, Blake, and Dion’s hypothesis “that parties and governments of the left tend to be more generous toward public sector employees than parties and governments of the right.”¹³⁰ The authors found evidence to back this hypothesis up, with demonstrating that, federally, while wage increases under Liberal governments tended to exceed inflation, Conservatives had only tended to match inflation.¹³¹ Warrian argued that “history may have overtaken this view” that the party in power impacted the size of wage settlements.¹³² Indeed, the experience in the OPS over the period since the onset of Rose’s “hardball” bargaining suggests that there is little difference between political parties. Helpfully, each of the three parties has been in power in Ontario over this period stretching from 1993 to 2017. Covering this time frame, Table 8 sets out wage settlements alongside the party in power at the time of bargaining. The Table shows that each party negotiated collective agreements which contained multiple years with no wage increases.

¹³⁰ Blais, Blake, and Dion, *Governments, Parties, and Public Sector Employees*, 3.

¹³¹ *Ibid.*, 59-61.

¹³² Warrian, *Hard Bargain*, 29.

Table 8: OPS wage settlements, 1993-2017¹³³

Year	OPSEU	AMAPCEO	Party	Year	OPSEU	AMAPCEO	Party
1993	0.00%	0.00%	NDP	2006	2.25%	2.75%	Liberal
1994	0.00%	0.00%	NDP	2007	2.50%	3.00%	Liberal
1995	0.00%	0.00%	NDP	2008	3.00%	3.00%	Liberal
1996	0.00%	0.00%	PC	2009	1.75%	1.75%	Liberal
1997	0.00%	0.00%	PC	2010	2.00%	2.00%	Liberal
1998	0.00%	0.00%	PC	2011	2.00%	2.00%	Liberal
1999	1.00%	1.00%	PC	2012	3.02%	0.00%	Liberal
2000	1.35%	1.35%	PC	2013	0.00%	0.00%	Liberal
2001	1.95%	4.49%	PC	2014	0.00%	0.00%	Liberal
2002	3.50%	1.95%	PC	2015	0.00%	0.00%	Liberal
2003	2.45%	1.95%	Liberal	2016	1.40%	1.40%	Liberal
2004	2.50%	2.00%	Liberal	2017	1.40%	1.40%	Liberal
2005	2.00%	2.00%	Liberal				

The negligible differences across partisan lines in bargaining outcomes demonstrates the pervasiveness of cost containment in government. With cost containment moving into the foreground, partisan considerations are no longer the key factor driving legislative change. A clear indication of this shift comes in amendments the Harris government made to labour legislation when it came into power. As discussed above, the Rae government's broader *LRA* reforms were repealed holus-bolus. With *CECBA*, though, the reforms largely stood. The Harris government removed successor rights (to facilitate downsizing) and increased the scope of bargaining unit exclusions. But, as Rose pointed out, "the government never seriously considered removing" the right to strike because "the government felt that a strike-based system was the best way of controlling labour costs in the long run."¹³⁴ Indeed, unlike a private company, from a financial

¹³³ Shaded years indicating years in which collective bargaining was concluded.

¹³⁴ Rose, "From Softball to Hardball," 77. (An early hint of this was suggested by PC MPP David Turnbull who, during debate on the *CECBA* amendments, argued that "Under *CECBA* reforms, this

perspective a public service strike is not financially punitive to the employer. As an example of this, Tsubouchi indicated that during the 2002 OPSEU strike the government estimated the union's costs to be \$8 million a week, while the government was saving between \$30 and \$40 million a week on salaries.¹³⁵ On a related note, AMAPCEO has long campaigned on, and tabled in bargaining, a "made in Ontario" plan for binding arbitration in place of a strike/lockout regime.¹³⁶ No government has ever indicated any interest in this proposal.

Addressing fragmentation and arbitration through consultation and negotiation

The most significant amendment to *CECBA* since 1993 occurred in 2016 when the bargaining units were adjusted. Prior to these changes, an unsuccessful attempt was made in 2008 to more significantly alter the OPS bargaining unit structure. The focus of both was to address fragmentation. Here we will consider first the 2008 effort, then turn briefly to the 2016 amendments.

In July 2008, the OPS employer announced that it had obtained approval to consult bargaining agents concerning amendments to *CECBA*, and a month later consultations began to "modernize" OPS labour relations.¹³⁷ The employer's

will allow the public sector to strike. It can be argued that perhaps you might get better settlements if you allow them to strike, but I can tell you, from all of our readings of the mood of the public, there is no acceptance of the right of public servants to strike. They are very lucky to have jobs today." Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 35th Leg, 3rd Sess, No 98B (14 December 1993) at 5017.)

¹³⁵ Tsubouchi, *Gambatte*, 233.

¹³⁶ AMAPCEO, *Independent Bargaining Interest Arbitration Brief*, 2 March 2004. (AMAPCEO Archive.)

¹³⁷ For an overview, see Jonathan Carson, "Two steps forward, one step back: Legislating labour relations in the Ontario Public Service," paper presented at the Annual Meeting of the Canadian Political Science Association, Carleton University, Ottawa, May 28, 2009.

stated goal was to resolve “any perceived uncertainty over who is represented by various bargaining agents” in advance of collective bargaining with OPSEU that was to begin in September.¹³⁸ The employer sought a “stable and effective delineation of jurisdiction between OPSEU/AMAPCEO,” but also indicated concerns about exclusions (“insufficient staff outside of bargaining units”) and fragmentation (“viability of small bargaining units such as PEGO.”)¹³⁹ The consultations ended without an agreement to amend *CECBA*, though the episode is notable as it represented a keen effort by the employer—and, arguably, by OPSEU—to return to its longstanding position against fragmentation in the OPS.

The then-president of OPSEU, Smokey Thomas, offered a crisp account of how the consultation transpired. Initially, the employer tabled numerous takeaways, including removing certain classifications from OPSEU’s bargaining unit, increased flexibility to contract out, and the elimination of bargaining rights for (broadly defined) “human resources staff.” In Thomas’s telling, OPSEU rejected the takeaways and instead managed to get agreement with the employer to “correct some of the longstanding problems with *CECBA*.” Here, Thomas meant moving most AMAPCEO-represented positions into OPSEU. Supervisors would have been the only positions left with AMAPCEO.¹⁴⁰ Despite the “positive

¹³⁸ Gary Gannage, President of AMAPCEO to David Logan, Assistant Deputy Minister, Minister of Government Services, 17 July 2008. See also Ontario, Ministry of Government Services, *Response by David Logan to AMAPCEO Opening Statement*, 19 August 2008. (“It is our strong preference that to the extent that they can be, these issues should be resolved by the parties in advance of the commencement of any such bargaining.”) (AMAPCEO Archive)

¹³⁹ Ontario, Ministry of Government Services, *Modernizing Labour Relations in the OPS: Consultations with Bargaining Agents*, August 2008.

¹⁴⁰ Warren (Smokey) Thomas, President of OPSEU to All Local Presidents and Stewards in the Ontario Public Service, 11 September 2008.

response of the government’s negotiators” to OPSEU’s proposals, what Thomas referred to as AMAPCEO’s “shrill negative response” caused the government to backtrack.

Thomas seems to have elided the fact that, at the consultation, two options were considered as paths forward: first, the “one bargaining unit solution” (in which one all-employee bargaining unit would replace OPSEU, AMAPCEO, and PEGO), and second, a simpler redefinition of the delineation between OPSEU and AMAPCEO, with PEGO remaining as a separate unit.¹⁴¹ AMAPCEO expressed objections to the process from the outset, questioning both whether the consultation was being conducted in good faith and the lack of advance disclosure.¹⁴² AMAPCEO raised concerns that the consultation was in reality a negotiation, the union having been “advised that the employer is seriously considering terminating the seventh unit unless AMAPCEO makes drastic concessions.” AMAPCEO argued that

the suggestion that a government employer would propose to terminate the bargaining rights of an association representing 10,000 employees, and threaten to use its power to legislate to do so, at the request of another bargaining agent in return for concessions from that other bargaining agent, is to our knowledge unprecedented in labour relations history.¹⁴³

¹⁴¹ *In the Matter of a Facilitation between Government of Ontario, Ministry of Government Services and Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO), Ontario Provincial Police Association (OPPA), Ontario Public Service Employees Union (OPSEU), Professional Engineers, Government of Ontario (PEGO)*, 6 September 2008 (Albertyn), para 19.

¹⁴² AMAPCEO, *Consultations Between MGS and OPS Bargaining Agents: AMAPCEO Opening Statement*, 18 August 2008.

¹⁴³ AMAPCEO, *AMAPCEO Response – August 22, 2008*, 22 August 2008, 2.

The employer could only emphasize that the consultation process was being undertaken in good faith and meant only to impose a “rational structure” on the OPS labour relations framework.¹⁴⁴

Throughout this period, AMAPCEO mobilized its members, with actions such as a senior management email campaign. Nevertheless, by September 4, OPSEU declared victory with, as mentioned above, Thomas arguing that “the employer came to us with a list of take-aways that would severely weaken our union and remove some key classifications from the bargaining unit.”¹⁴⁵ Instead of these losses, OPSEU had instead secured an agreement that the government would amend *CECBA*. AMAPCEO continued its actions, including an in-person rally near Queen’s Park. On September 11, OPSEU declared that this opportunity to amend *CECBA* was not going to be taken, that the government had “squandered this opportunity to rationalize labour relations in the Ontario Public Service.”¹⁴⁶

In 2016, OPSEU’s corrections unit fulfilled a longstanding goal by concluding an agreement with Treasury Board which would see the creation of a stand-alone corrections bargaining unit with arbitration used to resolve bargaining impasses. This agreement was arrived at as part of collective bargaining in a round that saw the corrections membership reject a tentative

¹⁴⁴ Ontario, Ministry of Government Services, *Employer’s Response to Document Entitled “AMAPCEO’s Response – August 22, 2008”*, 26 August 2008, 3.

¹⁴⁵ Warren (Smokey) Thomas, President of OPSEU to All Local Presidents and Stewards in the Ontario Public Service, 4 September 2008.

¹⁴⁶ Warren (Smokey) Thomas, President of OPSEU to All Local Presidents and Stewards in the Ontario Public Service, 11 September 2008.

agreement and the union pursue a no-board and potential strike action.¹⁴⁷ This agreement set out four necessary *CECBA* amendments:

- a) Amend deemed and designated bargaining units found in *CECBA* to permit a standalone OPSEU Corrections collective agreement;
- b) Maintain coordination such that 6 OPSEU units must have same bargaining agent;
- c) Amend the scope of Part IV (Essential Services) of *CECBA*; and
- d) Provide Corrections unit with interest arbitration similar to *Hospital Labour Disputes Act* or a meaningful right to strike.¹⁴⁸

Following ratification and a round of consultations, *CECBA* was amended in 2016.¹⁴⁹

The amended *CECBA* addressed some lingering issues with fragmentation as well as the right to strike. Dealing first with strikes, the new corrections unit was placed in an arbitration framework.¹⁵⁰ This would go some distance to resolving the guards' wage concerns by removing that group from the broader OPSEU wage settlements. Unfortunately, though the guards have long sought to obtain increases that match those in the police sector, arbitrator William Kaplan found that the two professions "are not the same – the jobs could not be more

¹⁴⁷ See: Roger Belgrave, "Ontario corrections staff preparing to strike," *Brampton Guardian*, 22 December 2015; Ontario, Treasury Board Secretariat, "Statement on OPSEU Corrections Request for No Board Report," 18 December 2015.

¹⁴⁸ *Memorandum of Agreement between The Crown in Right of Ontario (Management Board of Cabinet) and Ontario Public Service Employees Union*, 23 November 2015.

¹⁴⁹ Bill 70, *Building Ontario Up for Everyone Act (Budget Measures)*, 2016, Schedule 6, 2nd Sess., 41st Leg., Ontario, 2016.

¹⁵⁰ *CECBA*, Part III.1.

different – a conclusion readily arrived at by extensive experience in these matters.”¹⁵¹

Regarding bargaining units, the new version of *CECBA* named four: Corrections, Engineers, “Fourth bargaining unit,” and Unified.¹⁵² The Act then goes on to state that OPSEU is the bargaining agent for the Unified and Corrections units, AMAPCEO for the Fourth, and PEGO for the Engineers.¹⁵³ That said, these definitions only persist until the listed agents “cease,” under either *CECBA* or the *LRA*, to represent the employees in question.¹⁵⁴ This means that, for example, employees could choose to decertify. In a return to the government and union’s desire to prevent displacement, a peculiar section of *CECBA* makes clear that “the Unified Bargaining Unit and the Correctional Bargaining Unit shall be represented by the same bargaining agent.”¹⁵⁵ Primarily, this section ensures that the jail guards must remain with OPSEU as opposed to forming their own union or joining with a different body. This limitation arguably helps both the employer and the union achieve different goals that both revolve around fragmentation. The employer would not face a new (potentially unpredictable) bargaining agent, while the union maintains its membership base and does not need to fear being whipsawed. That said, the shift of jail guards to arbitration most likely diminishes

¹⁵¹ In The Matter of An Interest Arbitration Between: The Crown in Right of Ontario (Represented by Treasury Board Secretariat) and OPSEU/SEFPO (Correctional Bargaining Unit), 4 December 2023 (Kaplan), 25.

¹⁵² *CECBA*, s. 22(2).

¹⁵³ *Ibid.*, s. 24.

¹⁵⁴ *Ibid.*, s. 24(4).

¹⁵⁵ *Ibid.*, s. 24(7).

OPSEU's overall bargaining power by removing corrections as a point of leverage in a strike.

Conclusions

This chapter has covered Ontario's entry into the strike/lockout era of public service labour relations. Though long lagging comparator jurisdictions, the election of an NDP government saw Ontario move towards normalized labour relations for its public service. Following the defeat of the NDP, the PC government kept the bulk of *CECBA* amendments including, crucially, the right to strike. That government then went on to take two strikes from OPSEU. The enthusiastic maintenance of the right to strike by the PCs (despite years of opposition to this right) points us toward the dawn of the third era of labour relations in the OPS. In this era, cost-containment and economic imperatives trump other concerns. Thus, we have seen each party engage in hard bargaining and seen each party preside over a shrinking public service.

Chapter 10: Conclusion

Through this dissertation, three distinct eras of OPS labour relations were identified.

The First Era: Parliamentary Sovereignty

The first era, which lasted for almost the first century of Ontario's history, was the era of parliamentary sovereignty. During this period, it was taken as almost an article of faith by government and employee alike that, as former Quebec Premier Jean Lesage put it: "The Queen does not negotiate with her subjects."¹ On this view, the state could not negotiate with its employees, as the state was "the repository of sovereignty and the guardian of the public interest."² Not only could the sovereign state not be bound to spend by a negotiated settlement, but the public interest demanded the delivery of services—ergo, labour disruptions in the public service could not be contemplated.

And thus, through the first decades of Canada's history, there was no meaningful labour relations in public services, nor was there any meaningful variance in approaches across jurisdictions. The terms of employment were established by the paternalistic employer, the high-water mark found in

¹ Though oft-cited, it is difficult to pin down precisely where and when Lesage made this utterance. It is sourced to both sometime in 1962 (Jean Boivin, "La négociation collective dans le secteur public québécois: une évaluation des trois premières rondes (1964-1972)" *Relations industrielles / Industrial Relations* 17, no. 4 (1972): 705) as well as being more precisely—though not necessarily more accurately—pinpointed to a 1963 Federal-Provincial Conference held in Ottawa (<< [<< https://labourrights.ca/history>>](https://labourrights.ca/history))

² Frankel, "Staff Relations in the Public Service," 66.

legislation such as Alberta's first *Public Service Act* which stated that "any application for increase of salary made by any employee ... shall be considered as a tendering of the resignation of such employee."³ Though employees were commonly organized into staff organizations, these were "more in the nature of mutual benefit associations or advisory councils" than they were unions.⁴

The primary causal factor in bargaining rights not developing earlier in Canadian public services was a belief, shared by management and staff associations, that "normal" labour relations were inappropriate—or even impossible—in the public service. Informing this view was the concept of parliamentary sovereignty. On this view, being sovereign, the state "cannot be compelled by lesser bodies to do anything that it chooses not to do, and it cannot enter into contractual arrangements that bind its freedom to exercise its sovereign power in the future."⁵ Thus "any system whereby a government and its employees might jointly determine the terms and conditions of employment ... was held to be incompatible" with the notion of a sovereign state.⁶ This concept, per Frankel, was "the central theoretical or constitutional problem" that stood in the way of the public service adopting anything approaching a labour relations

³ *An Act respecting the Public Service*, S.A. 1906, c. 4, s.27. Manitoba had a similar provision, see Morton, *Working People*, 255.

⁴ H. A. Logan, *Trade Unions in Canada: Their Development and Functioning* (Toronto: MacMillan, 1948), 293.

⁵ W. B. Cunningham, "Public Employment, Collective Bargaining and the Conventional Wisdom: Canada and U.S.A." . *Relations industrielles / Industrial Relations*, 21(no. 3 (1966), 409.

⁶ Jacob Finkelman and Shirley B. Goldenberg, *Collective Bargaining in the Public Service: The Federal Experience in Canada*, vol. 1, (Montréal: Institute for Research on Public Policy, 1983), 5.

scheme like that in the private sector.⁷ A closely related sentiment held that government workers should not be able to strike because the work of the public service “was too vital to be left to the vagaries of the free market.”⁸ The provision of government services was a bond that could not be broken. This attitude was manifested in a conception of public employment in which

public employees are servants of the people. They are not employees of some impersonal abstraction called ‘government,’ but part of a social system under which we entrust representatives of the people to carry out the wishes of the majority. ... (T)he people alone may decide what rights or privileges may or may not be granted to public employees by the people's representatives. Individuals have the privilege of serving the people or declining to do so. There is no compulsion. When they assume the task of serving the people, they must accept the responsibilities that go with it, both the advantages and the disadvantages of public employment.⁹

Though parliamentary sovereignty was the primary impediment to normalized labour relations, several other factors were also obstacles. J. E. Hodgetts argued that the structure of the public service itself impeded the development of collective bargaining in several ways. First, the pyramidal hierarchy of the public service was “almost by definition authoritarian, with commands emanating from the top being relayed to the bottom and obedience rising to the top.” Second, the effort to eliminate patronage delivered “a politically neutralized bureaucracy.” As public service was to depoliticize, management began “to frown on individual efforts of civil servants to lobby for

⁷ Frankel, “Staff Relations in The Public Service”: 66.

⁸ Allen Ponak, “Public-Sector Collective Bargaining,” in *Union-Management Relations in Canada*, eds. John C. Anderson and Morley Gunderson, (Don Mills: Addison-Wesley Publishers, 1982), 346.

⁹ H. Eliot Kaplan, “Concepts of Public Employee Relations,” *Industrial and Labor Relations Review* 1, no. 2 (January 1948): 210-11.

preferential treatment or to seek remedies for both individual or collective grievances.” Controls on political activity were understood to be necessary, as public servants who “made no open avowal of political allegiance” could serve all parties in government. According to Hodgetts, the authoritarian ethos of the sovereign state and its hierarchical structure, together with the distinction between politically neutralized permanent staff and the political ministry, “placed additional obstacles in the path of civil servants seeking access to management.”¹⁰

The complex classification system that had been created to circumvent patronage thus created new difficulties. Importantly, after its implementation, public servants “found difficulty in organizing in sufficiently comprehensive groupings to prevent their forces from being scattered and dissipated.” Hodgetts was suggesting here that it was challenging for employees to find a meaningful community of interest in the workplace. Instead, at the federal level in particular, public servants “were often obliged to organize around the department.” This, in turn, highlighted another difficulty unique to public service labour relations: “confusion over the locus of managerial authority.” Unlike in a typical private enterprise,

the identity of the employer, the state, was diffused among several layers of the administrative hierarchy which included many employees, thereby creating difficulties in making the necessary distinction between management and workers.¹¹

¹⁰ Hodgetts, *physiology* 311-12.

¹¹ J. E. Hodgetts and O. P. Dwivedi, *Provincial Governments as Employers: A Survey of Public Personnel Administration in Canada's Provinces* (Montreal and London: McGill-Queen's University Press, 1974), 60.

One consequence of this diffusion was to make it unclear if the department (or ministry) was the employer, with the Deputy Minister as the ultimate authority. Or, was it the Civil Service Commission? The Treasury? The Premier's Office? The fact that it was unclear "whom (public servants) should be attempting to solicit or convince" on matters of employment was an obvious difficulty for employees.¹²

As a final factor, attitudes in the public service toward labour unions were generally negative. As Ponak argued, "a major component of the public sector have traditionally viewed unionism with a great deal of suspicion."¹³ Also a factor here was an attitude that public service unionism was widely viewed as

unnecessary because governments have already granted their employees wages, working conditions, pensions, sick leave, insurance plans, holidays, vacations, and so on — in short, all the benefits that employees in the private sector have gained through collective bargaining.¹⁴

As such, there seemed little to be gained from collective bargaining. Thus, in its place, various consultative bodies, such as the JAC and OJC in Ontario, were developed and what Allen Ponak termed the "association-consultation" approach to labour relations thrived.¹⁵

The Second Era: Collective Bargaining

Despite Lesage's firm message, within two years of him making it, his government had implemented collective bargaining with public servants. This,

¹² Hodgetts, *The Canadian Public Service*, 311-13.

¹³ Ponak, "Public-Sector Collective Bargaining," 346-7.

¹⁴ W. B. Cunningham, "Public Employment, Collective Bargaining and the Conventional Wisdom: U.S.A. and Canada," *Industrial Relations* 21, no. 3: 407.

¹⁵ Ponak, "Public-Sector Collective Bargaining," 345.

and other events, indicate the coming of the second era. In Ontario, the second era entailed considerable debate and discord about the form of OPS labour relations. Occasionally, this debate led to full systemic breakdowns, as when corrections guards engaged in wildcat strikes in 1967, 1979, and 1989. Hebdon argued that these illegal strikes represented “the ultimate breakdown of the system ... in effect in the Ontario Public Service. The system could not regulate such conflict because the strikes occurred outside of it.”¹⁶ This is a crucial observation, as it reminds us that there is much beyond the system in question, for example: partisan politics, economic conditions, worker militancy, and the broader cultural milieu. As described in Chapter 2, in their amendment to Dunlop’s system theory, Craig and Solomon tried to build in a capacity for dynamic change, but this was rendered only as a feedback mechanism to the system. The jail guard strikes, though, were not mere feedback—they were a challenge to the system itself, they were meant to effect change.

And so, by the early 1970s, the association-consultation approach had collapsed and collective bargaining—in various forms—was widespread across the country’s public services. In terms of change, Ontario was a laggard in the second era, with the right to strike coming to the province decades after its adoption by the federal government and many other provinces. Chapter 6, set out a narrative of the developments in various jurisdictions; comparing this to Ontario allowed an illustration of the second era’s key factor: partisan politics.

¹⁶ Hebdon, “Industrial Conflict”, 126.

Ontario was a laggard due to its specific political history of long-term governance (from 1943 to 1985) by the PC party, which remained wedded to a particular vision of public sector labour relations. Other laggard jurisdictions (for example, Alberta) shared a similar experience. A distinct commonality among numerous jurisdictions (for example, Saskatchewan, Manitoba, and British Columbia) was that public sector labour relations “normalized” with the election of an NDP government.

The same was true in Ontario, where the normalization of *CECBA* vis-à-vis the *LRA* was embarked upon soon after the province’s first-ever NDP government took office. These changes brought in the right to strike and drastically reduced the number of exclusions from collective bargaining. The prominent role of the NDP broadly confirms Blais, Blake, and Dion’s hypothesis that “that parties and governments of the left tend to be more generous toward public sector employees than parties and governments of the right.”¹⁷ More directly, though, the study has confirmed Miller and Canak’s view that “*parties matter* in both the United States and other capitalist nations.”¹⁸ Further specifying their view, Miller and Canak argued that the understanding of the role of parties was best situated within a Marxist theoretical framework.

This is the great distinction with systems theories. For Miller and Canak, Marxist theory has a stronger explanatory power than other theoretical

¹⁷ Blais, Blake, and Dion, *Governments, Parties, and Public Sector Employees*, 3.

¹⁸ Miller and Canak, “The Passage of Public Sector Collective Bargaining Laws.” 284.

constructions because it “locates the interconnections.”¹⁹ Hyman put this another way, extolling the view “that no area of social life can ... be satisfactorily analysed in isolation.”²⁰ This has been the approach in this dissertation. This dissertation has worked to locate the interconnections between various factors (most prominently partisan politics, economic conditions, and worker militancy) by using a CI framework to understand historical institutional development. This has meant, as Hyman insisted, being attuned to the agency of workers, but also being aware of the broader social reality, including the prevailing economic conditions and the cultural milieu.

Each of these factors came together to drive institutional change in OPS labour relations. This study has meant to disentangle these factors in order to point to the primary determinant of the scale of change. What defined the second era was the importance of partisan politics. In Ontario, the ruling PCs had no interest in normalizing labour relations in the province’s public service. This recalcitrant view owed much to a holdover of parliamentary sovereignty, particularly the strong sense that strikes were antithetical to a public service because public services must be delivered. But the 1975 election campaign demonstrated that, more than an ideological conceit—though this was how it was portrayed in the campaign—the PCs took a strong anti-strike position primarily because they perceived it to be electorally advantageous.

¹⁹ Ibid., 285.

²⁰ Hyman, *Industrial Relations*, 4.

The Third Era: Neoliberalism

When the NDP amended *CECBA*, it was on the heels of significant amendments to the *LRA*. The government's controversial Bill 40 made a number of significant changes to Ontario's *Labour Relations Act*, such as a ban on replacement workers.²¹ These changes to both laws were "a direct response to longstanding claims" from Ontario's unions.²² Placing a former OPSEU activist and employee as the government's negotiator for *CECBA* reforms stands as a potent symbol of how direct the NDP government's response was to union demands for change.

Importantly, when they returned to power, the PCs maintained the right to strike for the OPS. The change in view by the PC party—a party that repealed the entirety of the NDP government's amendments to the *LRA*—takes us to the third era. In this era, the primary factor has been cost containment. As labour costs are the largest expenditure for government, cost containment has meant throttling wages and reducing the size of the public sector. Put simply, a strike/lockout labour relations system was seen as one that more reliably would meet the government's expenditure goals better than an arbitration format.

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²¹ See Harish C. Jain and S. Muthuchidambaram, "Bill 40 Amendments to Ontario Labour Relations Act: An Overview and Evaluation," McMaster University, Michael G. DeGroote School of Business, Working Paper #385, September 1993, 13-19.

²² Jane Jenson and Rianne Mahon, "From 'Premier Bob' to 'Rae Days': The Impasse of the Ontario New Democrats," in *La social-démocratie en cette fin de siècle / Late twentieth-century social democracy*, eds. Jean-Guy Prévost and Jean-Pierre Beaud (Quebec City: Presses de l'Université du Québec, 1995), 163.

Over the time covered in this dissertation, we have seen public service labour relations move from being defined by ideology of parliamentary sovereignty “toward ‘normalization’”—meaning that labour relations in the sector have tended towards a system that “in all essential respects resembles that in the private sector.”²³ This movement has proved fruitful to study because, as Hebdon noted,

particularly where the employer is the Crown, the power distribution between management and labour can be unequal. The government is both an actor (employer) and lawmaker, and as such determines the collective bargaining rules which bind the parties. In the “game” of collective bargaining the government can be both player and referee.²⁴

Given that participating as both player and referee is a reasonable route to obtaining “victory,” it would appear that the government, while playing this dual role for decades, ceded control—largely willingly—of the system.

A final question to consider here is the extent to which the government has actually ceded control. In the first era, the government maintained full control of its labour system by the doctrine of parliamentary sovereignty. In the second era, the right to strike was granted to public servants. This marked the very essence of normalized labour relations. Yet, there was a significant distinction. Panitch and Swartz argued that the gains of the 1960s must, therefore, be viewed “in terms of (the) continuing narrow limits” of public service labour relations.²⁵ These narrow limits they termed permanent exceptionalism. This was a

²³ Arthurs, *Collective Bargaining by Public Employees in Canada*, 10.

²⁴ Hebdon, “Industrial Conflict,” 11.

²⁵ Panitch and Swartz, “From Free Collective Bargaining to Permanent Exceptionalism, 418.

shift from the generalized rule-of-law form of coercion (whereby an overall legal framework both establishes and constrains the right and powers of all unions), toward a form of selective, ad hoc, discretionary state coercion (whereby the state removes for a specific purpose and period the rights contained in labour legislation).²⁶

In this regard, the rights the state has granted with one hand are removed with another.

Moving into our third, economics-focused era, we find the rise of hard bargaining. In Ontario, governments of every stripe have presided over a shrinking OPS. Decades of results from collective bargaining demonstrate that governments formed by each of the parties have bargained wage freezes. Not only this, but OPSEU has undertaken two lengthy OPS strikes, neither of which ended in success for the union. Recall David Tsubouchi's account of the financial realities of the OPSEU strike. While a strike costs the union money, the employer saves. While any strike comes at a cost the union, in the private sector the employer also feels economic pain. Moreover, in other public sector strikes (for example, in a university) there is a primary service not being offered. In terms of the OPS, though, for a strike to be legal an essential services agreement must be in place. This neuters any strike by mandating that the vital functions of the state must be maintained. Besides, as discussed above, the state has become more oriented to policy than service delivery.

Despite the long movement towards "normalized" labour rights, it appears that the government has managed to largely retain control of the system.

²⁶ Panitch and Swartz, *From Consent to Coercion*, 27-8.

Ultimately, the government retains the ability to legislate. Although jurisprudence over the past 20 years has imposed limits on the state's ability to dictate labour relations outcomes, the state retains wide power to do so.

Future and past

This dissertation has charted the development of labour relations in the OPS over a 150-year period. From the outset, this process has been guided by the maxim that “you have to know the past to understand the present.” Thus, to fully understand why the right to strike was delayed in coming to Ontario's public service, it is necessary to understand the development of labour relations in the OPS across time. This analysis of institutional development was informed by path dependence, informed by what James Mahoney and Kathleen Thelen termed reactive sequences (discussed in Chapter 2).

Often, change in path dependency is understood as occurring through critical junctures—such as “big, exogenous shocks.”²⁷ This was seen, for instance, in developments in labour relations which stemmed from the Depression and the Second World War. We have also seen the importance of exogenous shocks of a smaller scale, such as the CCF's 1944 Saskatchewan election victory. On an even smaller scale, we have seen the impact of exogenous events like the Don Jail hair dye incident, which served as a catalyst for the change of the OPS's Joint Advisory Council into the Ontario Joint Council. Importantly, these changes have also been

²⁷ Pierson, *Politics in Time*, 135.

fueled by endogenous events. For example, with respect to the rise of the OJC, an important element was the experience of the JAC process being insufficient.

Beyond explaining the reasons for the changes of the past, the history detailed here can help to establish a framework with which to consider the future. A guiding principle here was well-enunciated by Niccolò Machiavelli:

Any one comparing the present with the past will soon perceive that in all cities and in all nations there prevail the same desires and passions as always have prevailed; for which reason it should be an easy matter for him who carefully examines past events, to foresee those which are about to happen in any republic, and to apply such remedies as the ancients have used in like cases; or finding none which have been used by them, to strike out new ones, such as they might have used in similar circumstances. But these lessons being neglected or not understood by readers, or, if understood by them, being unknown to rulers, it follows that the same disorders are common to all times.²⁸

Though futurology might not be as easy a matter as Machiavelli suggested, the theme to take from that passage is the Biblical notion that “there is nothing new under the sun.” This examination of OPS labour relations’ historical development will help illuminate potential paths forward. Here, due to an enduring similarity, past events may serve as a prologue for future occurrences.

Our story began at Confederation and the first era of public service labour relations, which was governed by the doctrine of parliamentary supremacy. Across all jurisdictions, all political parties ascribed to this doctrine which saw public service collective bargaining as an impossibility. As we saw, this view was even shared by the employee associations. As extensively detailed above, this doctrine was displaced and, today, public services are governed by a modified

²⁸ Niccolò Machiavelli, *Discourses on the First Decade of Titus Livius*, trans. Ninian Hill Thomson (London: Kegan Paul, Trench & Co., 1883), 125.

strike/lockout regime. In this third era of public service labour relations, neoliberalism has informed a hard bargaining approach by governments of all political stripes.

In essence, we have circled back to a status quo reminiscent of the first era, where a doctrine transcends all jurisdictions and political parties. While unions might not unite with government in sharing philosophy, they nevertheless face a system of hard bargaining from employers. What do the experiences of the past suggest as way forward from this third era, in which we have seen the re-emergence of a pan-party, pan-jurisdictional consensus? First, experience suggests that the strike weapon is likely to be ineffective in the public service. Consider OPSEU's two strikes. These demonstrated the strike's futility due to the continued provision of essential services, an employer unfazed by any strike-caused service delays, and—crucially—an employer who suffers no economic harm from the withdrawal of labour. Indeed, as detailed above, the Ontario government gained a dividend from unpaid wages during these strikes.

Second, the experience of the past suggests that, while gradual change might occur, the current era will continue until a critical juncture emerges as the result of a large shock. This shock could be exogenous or endogenous. Brian Barry was quoted above, arguing that “in politics, as in geology, seismic events resist prophecy,” and thus any attempt to predict an exogenous shock to the OPS labour relations system would be folly.²⁹ However, the past can serve as a guide

²⁹ Barry, “UBI and the Work Ethic,” 62.

for considering what sort of endogenous developments might emerge to displace the present status quo. Focusing on the role of unions, this study has shown that the CSAO/OPSEU made significant gains through either threatening to, or actually undertaking, illegal strikes. This was detailed in chapter 9 and seen in the creation of the corrections unit as well as in obtaining wage increases. Perhaps a return to this tactic—by way, for instance, of ignoring essential services agreements—would mark a way forward?

On the other side of the coin, perhaps unions could find themselves appealing for a return to the days of arbitration, or at least the re-emergence of the model of union choice between arbitration and strike. As discussed above, when *CECBA* was reformed in 1993, OPSEU favoured a choice between arbitration and strike/lockout. The NDP government did not give this choice, and the PCs—once hostile to public service strike rights—kept the strike/lockout model because this model allowed for greater employer control of monetary outcomes. However, given that union choice is the federal model, perhaps a way forward in Ontario would be for unions to lobby for this sort of amendment to *CECBA*.³⁰ Perhaps a glimpse of this future was seen in the last round of *CECBA* amendments, when (as detailed in chapter 9) OPSEU's long-militant corrections unit pushed for—and received—a legislative change which implemented interest arbitration to resolve bargaining.

³⁰ *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 103.

These are examples of how the tactics seen in the past may be brought to bear in the future. Ultimately, a significant change is likely to require the emergence of a mass of forces—exogenous and endogenous—to displace the existing model. This will in turn make the necessity of change clear to all parties. Until this occurs, the third era is likely to continue.

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