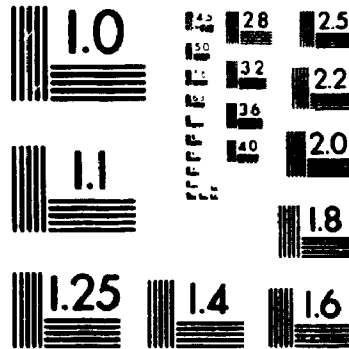


1

**PM-1 3½"x4" PHOTOGRAPHIC MICROCOPY TARGET
NBS 1010a ANSI/ISO #2 EQUIVALENT**



PRECISIONSM RESOLUTION TARGETS



National Library
of Canada

Acquisitions and
Bibliographic Services Branch

395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque nationale
du Canada

Direction des acquisitions et
des services bibliographiques

395, rue Wellington
Ottawa (Ontario)
K1A 0N4

Your file Votre référence

Our file Notre référence

NOTICE

The quality of this microform is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Reproduction in full or in part of this microform is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30, and subsequent amendments.

AVIS

La qualité de cette microforme dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

La reproduction, même partielle, de cette microforme est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30, et ses amendements subséquents.

**LAW AND LABOUR UNREST
IN ONTARIO'S TEXTILE INDUSTRY:
CORNWALL, 1936 AND PETERBOROUGH, 1937**

by

LAURA LANDRY, B.A.

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of
the requirements of the degree for
Master of Arts
Department of Law

Carleton University
Ottawa, Ontario
February 15, 1995
c. 1995, Laura Landry



National Library
of Canada

Acquisitions and
Bibliographic Services Branch

395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque nationale
du Canada

Direction des acquisitions et
des services bibliographiques

395, rue Wellington
Ottawa (Ontario)
K1A 0N4

Your file *Votre référence*

Our file *Notre référence*

THE AUTHOR HAS GRANTED AN IRREVOCABLE NON-EXCLUSIVE LICENCE ALLOWING THE NATIONAL LIBRARY OF CANADA TO REPRODUCE, LOAN, DISTRIBUTE OR SELL COPIES OF HIS/HER THESIS BY ANY MEANS AND IN ANY FORM OR FORMAT, MAKING THIS THESIS AVAILABLE TO INTERESTED PERSONS.

L'AUTEUR A ACCORDE UNE LICENCE IRREVOCABLE ET NON EXCLUSIVE PERMETTANT A LA BIBLIOTHEQUE NATIONALE DU CANADA DE REPRODUIRE, PRETER, DISTRIBUER OU VENDRE DES COPIES DE SA THESE DE QUELQUE MANIERE ET SOUS QUELQUE FORME QUE CE SOIT POUR METTRE DES EXEMPLAIRES DE CETTE THESE A LA DISPOSITION DES PERSONNE INTERESSEES.

THE AUTHOR RETAINS OWNERSHIP OF THE COPYRIGHT IN HIS/HER THESIS. NEITHER THE THESIS NOR SUBSTANTIAL EXTRACTS FROM IT MAY BE PRINTED OR OTHERWISE REPRODUCED WITHOUT HIS/HER PERMISSION.

L'AUTEUR CONSERVE LA PROPRIETE DU DROIT D'AUTEUR QUI PROTEGE SA THESE. NI LA THESE NI DES EXTRAITS SUBSTANTIELS DE CELLE-CI NE DOIVENT ETRE IMPRIMES OU AUTREMENT REPRODUITS SANS SON AUTORISATION.

ISBN 0-612-02984-0

Canada

Laura Landry

Name LAW FUND LABOR UNREST IN AMERICAN TEXTILE INDUSTRY: CRAWFILL, 1936 AND PETERBACH, 1937.
 Dissertation Abstracts International is arranged by broad, general subject categories. Please select the one subject which most nearly describes the content of your dissertation. Enter the corresponding four-digit code in the spaces provided.

LAW

SUBJECT TERM

0378

U·M·I

SUBJECT CODE

Subject Categories

THE HUMANITIES AND SOCIAL SCIENCES

COMMUNICATIONS AND THE ARTS

Architecture	0729
Art History	0377
Cinema	0900
Dance	0378
Fine Arts	0357
Information Science	0723
Journalism	0391
Library Science	0399
Mass Communications	0708
Music	0413
Speech Communication	0459
Theater	0465

EDUCATION

General	0515
Administration	0514
Adult and Continuing	0516
Agricultural	0517
Art	0273
Bilingual and Multicultural	0282
Business	0688
Community College	0275
Curriculum and Instruction	0727
Early Childhood	0518
Elementary	0524
Finance	0277
Guidance and Counseling	0519
Health	0680
Higher	0745
History of	0520
Home Economics	0278
Industrial	0521
Language and Literature	0279
Mathematics	0280
Music	0522
Philosophy of	0998
Physical	0523

Psychology	0525
Reading	0535
Religious	0527
Sciences	0714
Secondary	0533
Social Sciences	0534
Sociology of	0340
Special	0529
Teacher Training	0530
Technology	0710
Tests and Measurements	0288
Vocational	0747

LANGUAGE, LITERATURE AND LINGUISTICS

Language	
General	0679
Ancient	0289
Linguistics	0290
Modern	0291
Literature	
General	0401
Classical	0294
Comparative	0295
Medieval	0297
Modern	0298
African	0316
American	0591
Asian	0305
Canadian (English)	0352
Canadian (French)	0355
English	0593
Germanic	0311
Latin American	0312
Middle Eastern	0315
Romance	0313
Slavic and East European	0314

PHILOSOPHY, RELIGION AND THEOLOGY

Philosophy	0422
Religion	
General	0318
Biblical Studies	0321
Clergy	0319
History of	0320
Philosophy of	0322
Theology	0469

SOCIAL SCIENCES

American Studies	0323
Anthropology	
Archaeology	0324
Cultural	0326
Physical	0327
Business Administration	
General	0310
Accounting	0272
Banking	0770
Management	0454
Marketing	0338
Canadian Studies	0385
Economics	
General	0501
Agricultural	0503
Commerce-Business	0505
Finance	0508
History	0509
Labor	0510
Theory	0511
Folklore	0358
Geography	0366
Gerontology	0351
History	
General	0578

Ancient	0579
Medieval	0581
Modern	0582
Black	0328
African	0331
Asia, Australia and Oceania	0332
Canadian	0334
European	0335
Latin American	0336
Middle Eastern	0333
United States	0337
History of Science	0585
Law	0398
Political Science	
General	0615
International Law and Relations	0616
Public Administration	0617
Recreation	0814
Social Work	0452
Sociology	
General	0626
Criminology and Penology	0627
Demography	0938
Ethnic and Racial Studies	0631
Individual and Family Studies	0628
Industrial and Labor Relations	0629
Public and Social Welfare	0630
Social Structure and Development	0700
Theory and Methods	0344
Transportation	0709
Urban and Regional Planning	0999
Women's Studies	0453

THE SCIENCES AND ENGINEERING

BIOLOGICAL SCIENCES

Agriculture	
General	0473
Agronomy	0285
Animal Culture and Nutrition	0475
Animal Pathology	0476
Food Science and Technology	0359
Forestry and Wildlife	0478
Plant Culture	0479
Plant Pathology	0480
Plant Physiology	0817
Range Management	0777
Wood Technology	0746
Biology	
General	0306
Anatomy	0287
Biostatistics	0308
Botany	0309
Cell	0379
Ecology	0329
Entomology	0353
Genetics	0369
Limnology	0793
Microbiology	0410
Molecular	0307
Neuroscience	0317
Oceanography	0416
Physiology	0433
Radiation	0821
Veterinary Science	0778
Zoology	0472
Biophysics	
General	0786
Medical	0760

EARTH SCIENCES

Biogeochemistry	0425
Geochemistry	0996

Geodesy	0370
Geology	0372
Geophysics	0373
Hydrology	0388
Mineralogy	0411
Paleobotany	0345
Paleoecology	0426
Paleontology	0418
Paleozoology	0985
Palynology	0427
Physical Geography	0368
Physical Oceanography	0415

HEALTH AND ENVIRONMENTAL SCIENCES

Environmental Sciences	0768
Health Sciences	
General	0566
Audiology	0300
Chemotherapy	0992
Dentistry	0567
Education	0350
Hospital Management	0769
Human Development	0758
Immunology	0982
Medicine and Surgery	0564
Mental Health	0367
Nursing	0569
Nutrition	0570
Obstetrics and Gynecology	0380
Occupational Health and Therapy	0354
Ophthalmology	0381
Pathology	0571
Pharmacology	0419
Pharmacy	0572
Physical Therapy	0382
Public Health	0573
Radiology	0574
Recreation	0575

Speech Pathology	0460
Toxicology	0383
Home Economics	0386

PHYSICAL SCIENCES

Pure Sciences	
Chemistry	
General	0485
Agricultural	0749
Analytical	0486
Biochemistry	0487
Inorganic	0488
Nuclear	0738
Organic	0490
Pharmaceutical	0491
Physical	0494
Polymer	0495
Radiation	0754
Mathematics	0405
Physics	
General	0605
Acoustics	0986
Astronomy and Astrophysics	0606
Atmospheric Science	0608
Atomic	0748
Electronics and Electricity	0607
Elementary Particles and High Energy	0798
Fluid and Plasma	0759
Molecular	0609
Nuclear	0610
Optics	0752
Radiation	0756
Solid State	0611
Statistics	0463

Applied Sciences

Applied Mechanics	0346
Computer Science	0984

Engineering	
General	0537
Aerospace	0538
Agricultural	0539
Automotive	0540
Biomedical	0541
Chemical	0542
Civil	0543
Electronics and Electrical	0544
Heat and Thermodynamics	0548
Hydraulic	0545
Industrial	0546
Marine	0547
Materials Science	0794
Mechanical	0548
Metallurgy	0743
Mining	0551
Nuclear	0552
Packaging	0549
Petroleum	0765
Sanitary and Municipal	0554
System Science	0790
Geotechnology	0428
Operations Research	0796
Plastics Technology	0795
Textile Technology	0994

PSYCHOLOGY

General	0621
Behavioral	0384
Clinical	0622
Developmental	0620
Experimental	0623
Industrial	0624
Personality	0625
Physiological	0989
Psychobiology	0349
Psychometrics	0632
Social	0451



Thesis Acceptance Form

M.A. CANDIDATE

The undersigned recommend to the Faculty of Graduate Studies
and Research acceptance of the thesis

**Law and Labour Unrest in Ontario's Textile Industry: Cornwall, 1936 and
Peterborough, 1937**

submitted by **Laura Landry, B.A. (Hons) Carleton University**
in partial fulfilment of the requirements for
the degree of Master of Arts



Thesis Supervisor



Chair, Department of Law

Carleton University
April 26, 1995

Abstract

This thesis examines two textile industry strikes in the late 1930s and how federal and provincial labour law combined with criminal law to affect the strike outcomes. By using the 'Strikes and Lockouts' file, period newspaper microfilm and negotiation manuscripts, I reconstruct the 1936 Cornwall Courtaulds and the 1937 Peterborough Dominion Woollens and Worsteds strikes. Both strikes occurred during the course of the *Royal Commission Investigation on the Textile Industry (Turgeon Report)* which provides much statistical data to supplement newspaper reports; both involved primary textile production in southern Ontario during the Hepburn administration; and both industrial conflicts involved women workers.

I have used a political economy approach to elaborate on the development of the federal *Industrial Disputes Investigation Act (I.D.I.A.)*, the provincial *Industrial Standards Act (I.S.A.)*, and the provincial/municipal use of section 501 of the *Criminal Code*. I conclude that labour law does not progress in a linear fashion but is characterized in its administration by the co-existence of both voluntarist and repressive legal measures. While the broader historic political climate would influence the social acceptance of a strike, the regulation of industrial conflict is ultimately strategically constrained by the criminal law. Finally, women were active in both strikes, whether on the picketline or aiding the strike.

Table of Contents

Introduction	1-7
Chapter One: Theory and Context	8-35
Introduction	
Theory	
Gender Issues	
American Influences: C.I.O. and N.L.R.A.	
The Political Dimension I: The Turgeon Royal Commission	
The Political Dimension II: Hepburn and The Oshawa Strike	
Conclusion	
Chapter Two: Legal Issues	36-60
Introduction	
Legalizing Unions	
Industrial Disputes Investigation Act (I.D.I.A.)	
Ontario's Industrial Standards Act (I.S.A.)	
Picketing-Legislation	
Criminal Code Section 501	
Conclusion	
Chapter Three: Courtaulds, Cornwall 1936	61-80
Introduction	
Courtaulds, Cornwall 1936	
Strike Events	
Legal Intervention- I.D.I.A. and I.S.A.	
Picketing and Section 501	
Strike Aftermath	
Conclusion	
Chapter Four: Dominion Woollens and Worsteds, Peterborough 1937	81-98
Introduction	
Dominion Woollens and Worsteds, Peterborough 1937	
Strike Events	
Legal Intervention- I.D.I.A. and I.S.A.	
Picketing and Section 501	
Strike Aftermath	
Conclusion	
Chapter Five: Conclusions	99-107
Bibliography	108-114

INTRODUCTION

This thesis examines two textile industry strikes in the late 1930s and how federal and provincial labour law combined with criminal law to affect the strike outcomes. By using the 'Strikes and Lockouts' file¹, period newspaper microfilm² and negotiation manuscripts, I will reconstruct the 1936 Cornwall Courtaulds and the 1937 Peterborough Dominion Woollens and Worsted strikes. Both strikes occurred during the course of the *Royal Commission Investigation on the Textile Industry (Turgeon Report)* which provides much statistical data to supplement newspaper reports; both involved primary textile production in southern Ontario during the Hepburn administration; and both industrial conflicts involved women workers.

I have selected the two strikes in southern Ontario to elaborate on law's roles in labour radicalism and the struggle for a 'living wage' through historically-specific 'zones of social and legal toleration'³. The original usage of these terms by Eric Tucker applied to the social and legal toleration of trade unions. My definition of the 'legal zone of toleration' as the "formal legal rules and institutions" refers to the legal regulation of the picketline and the two strikes. The 'social zone of toleration' is "more broadly and ambiguously defined by the practices and beliefs of different social groups." The differing social groups varied from the respective local communities in Cornwall and Peterborough to the strikers and municipal authorities, and finally to

1 R.G.27 vol. 388, *Department of Labour Report on Strikes and Lockouts*.

2 Cornwall *Daily Standard-Freeholder*, *The Peterborough Examiner*, *The Ottawa Citizen*.

3 Eric Tucker, "That Indefinite Area of Toleration: Criminal Conspiracy and Trade Unions in Ontario, 1837-77" (1991) 27 *Labour/Le Travail* 17.

political elites, such as Ontario Premier Mitchell Hepburn. The 'social zone of toleration' for the strikes and the picketing could be shown through monetary and other support for the strikers.

Moreover, Tucker says that "...law is not generated in a vacuum." The particular historic context of Ontario's late 1930s and its specific socio-political climate have consequences for the enactment and administration of labour legislation. As E.P. Thompson theorized that law is "...an arena of struggle within which alternative notions of law [are] fought out,"⁴ the possibilities that law presented were not a foregone conclusion. The 'legal zone of toleration' for the picketing and two strikes was at odds with the 'social zone of toleration' and this tension presented the basis for the contestability that Thompson refers to. For example, the jailed picketers while relying on the formal claims of the rule of law, might also benefit from the interaction of the social zone upon the legal. For this reason, simple conspiracy or instrumentalist theories which would espouse a monolithic Canadian state aligned with employers are inadequate.

The first focus of this thesis is the development of the law regulating labour conflicts. Labour unrest in Ontario's textile industry during the late 1930s was prolonged by voluntarist labour legislation but also repressed by criminal law measures. Weak labour law, such as the *Industrial Standards Act (I.S.A.)*⁵, favoured the employer, both from its intended policy goal which was to stabilize labour costs in

⁴ Tucker, "That Indefinite Area of Toleration" 17.

⁵ *The Industrial Standards Act* S.O. 1935, c.28.

industry and its actual administration. The *I.S.A.* was Ontario's main legislation which provided a means of regulating wages but the federal *Industrial Disputes Investigation Act*⁶ could also be resorted to. The use of the *Criminal Code* section 501 (the intimidation clause) to temporarily imprison labour activists and to combat unionization drives will be important for the two case studies. Local officials laid criminal charges against strikers to contain strikes, especially under section 501(f)⁷, (watching and besetting).

The interaction of labour and criminal law within the context of the two labour disputes is the second focus of this research. While the federal state officials intervened in both strikes, the *I.D.I.A.* legislation was not used. The local sites of contention centred on provincial officials and the *I.S.A.* which was only used in the Dominion Woollens strike. However, in both cases, municipal police forces employed section 501 to temporarily imprison labour activists. The voluntarist labour regime co-existed with the repressive use of criminal law. Either legal measure could be used or both, depending upon the prevalent 'social zone of toleration' for the strike.

Government officials at the federal, provincial and municipal levels responded to the labour disputes in differing degrees, depending on the prevalent political or socio-economic climate. As Eric Tucker explains, legal processes have a social nature and that "...law is not a monolithic body of formal rules produced by a unified institutional

⁶ *The Industrial Disputes Investigation Act* 1907, S.C. 1907, c.20.

⁷ *Criminal Code* R.S.C. 1927, c.36, as amended by R.S.C. 1934, c.47, s.12. Section 501(f) reads "besets or watches the house or other place where such other person resides or works, or carries on business or happens to be:"

structure."⁸ Further, legislators and judges do not act in concert to produce and apply legislation and as a result, formal law "...is not necessarily fixed and certain."⁹ As well, workers at Courtaulds¹⁰ and Dominion Woollens and Worsted¹¹ attempted to secure collective bargaining rights protecting them as employees. Employers' resistance to union recognition often resulted in lengthy strikes. In the textile industry, workers' efforts to organize and bargain collectively combined with attempts to achieve the minimalist objectives of the *Factory Act*¹² and the *Minimum Wage*¹³ legislation. Ultimately, the employers at Courtaulds were forced to recognize the unions which had formed in their workplace. The events which transpired in the interim expose the inherent flaws of the *Industrial Standards Act* and the repressive use of section 501 to temporarily imprison strikers.

The issue of gender in these industrial disputes is the final focus of this thesis. Women workers comprised at least half of the work force in both Courtaulds and Dominion Woollens. They were actively involved in the picketing but their efforts were discounted or sometimes ignored. As well, media reports depicted the women strikers as being hysterical and otherwise irrational. Municipal authorities did not arrest any women in the first strike and only arrested three in the Dominion Woollens strike.

8 Tucker, "That Indefinite Area of Toleration" 17.

9 Tucker, "That Indefinite Area of Toleration" 17.

10 Courtaulds (Canada) Rayon manufacturers, Cornwall, 1936.

11 Yarn and cloth manufacturers, Peterborough, 1937.

12 *The Factory, Shop and Office Building Act*, R.S.O. 1937, c.194.

13 *The Minimum Wage Act* R.S.O. 1937, c.43.

By comparison, seventeen men were arrested in the Courtaulds strike and twelve in the Dominion Woollens labour dispute.

Law and those who administered it, played an important role in these labour disputes and the various statutes were, by no means, deterministic of the possible outcomes. Ellen Scheinberg has examined the Courtaulds and Dominion Woollens strikes within the context of her master's thesis but she fails to consider the impact of law which was crucial both to the inception and resolutions of the strikes.¹⁴ The particulars of her work will be examined in greater detail in Chapter One.

In Chapter One, I will review historical and theoretical conceptions, the dominant industrial relations theories and strike research. Then, I will explore the prevalent political and socio-economic climate which existed in Ontario at the time of the strikes. The backdrop of the *Turgeon Report on the Textile Industry* both provides supplementary information for the strikes but also the impetus for varying degrees of co-operation from the numerous actors in the strikes. The 'demonstration effects' of American labour law, such as the *National Labor Relations Act* or *Wagner Act* which legally supported collective bargaining¹⁵ as well as the formation of the C.I.O. are particularly important to these two strikes. Ontario's premier, Mitchell Hepburn and his administration changed from a 1936 pro-labour position to their pre-election 'extreme measures against strikes' stance in 1937. The intervening Oshawa strike had

¹⁴ Ellen Carrie Scheinberg, "Women, War, and Work: Female Textile Workers in Cornwall, Ontario, 1936-1946", (M.A. Thesis, Queen's University, 1990), and Scheinberg, "The Tale of Tessie the Textile Worker: Female Textile Workers in Cornwall During World War II" (1994) 33 *Labour/Le Travail* 153.

¹⁵ Stuart Jamieson. *Times of Trouble: Labour Unrest and Industrial Conflict in Canada, 1900-66* (Ottawa: Privy Council Task Force on Labour Relations, Study no.22, 1968) 218.

resulted in the resignation of two cabinet labour supporters, the Attorney General Arthur Roebuck and Minister of Labour David Croll.¹⁶

The legal dimensions of the strikes will be dealt with in Chapter Two. First I will examine how unions were gradually legalized, and then the evolution of the *I.D.I.A.* The enactment of the *Industrial Standards Act* will be discussed along with other pre-existing labour legislation. The repressive section 501 of the *Criminal Code* which effectively allowed local authorities to temporarily imprison labour activists during crucial stages of a strike was a key legal element of both strikes. This is not to exclude the use of other *Criminal Code* sections or other local or provincial measures of controlling strikers. Section 501 is simply the most predominant legal measure which can be traced irrefutably to a striker's action of picketing. Other measures such as charges laid under the *Vagrancy Act* may have been employed but their direct connection to strike activities is difficult to establish. Workers resisted the use of the *I.S.A.* and responded to section 501 with courage and conviction. Their struggle to establish collective bargaining rights, as well as to secure the minimalist protective law 'guarantees' showed that law could be used to achieve positive social change for workers, such as improved lighting.

The focal point for Chapter Three is the 1936 Courtaulds Cornwall strike. The events of this strike will be discussed before examining how the *I.D.I.A.* and the *I.S.A.* and section 501 affected the strike outcome. The *Turgeon Royal Commission* was conducting hearings during this time and exerted strong federal pressure to settle the

¹⁶ Jamieson, *Times of Trouble* 254.

dispute. The strike lasted just over a month and was supported equally by both male and female workers. While Courtaulds workers did not achieve union recognition at this time, they did get improved wages and working conditions.

In Chapter Four, I will examine the Dominion Woollens and Worsteds strike in Peterborough, 1937. This strike occurred about a year after Courtaulds' strike ended. A similar analysis of the legal framework of the *I.D.I.A.* and the *I.S.A.* and section 501 will show that Courtaulds' strike was not anomalous in its development. Both employers resisted the formation of an union in their workplace. In both instances, municipal authorities imprisoned the main labour organizer under the provisions of section 501. However, in the Dominion Woollens and Worsteds strike, the *I.S.A.* was imposed upon the strikers by Ontario's Premier Mitchell Hepburn.

Chapter Five recaps the proceeding chapters and elaborates on the role of law in regulating the labour conflicts. The co-existence of both voluntarist and repressive legal measures to deal with the strikers shows that labour law did not progress in a linear manner. As well, the broader socio-political economy of Canada informed the 'social zone of toleration' for both strikes. Depending on the prevalent social zone, government officials resorted to either the voluntarist or the repressive route or both.

CHAPTER ONE: THEORY AND CONTEXT

Introduction

Research on Canada's labour history has revealed much in terms of the number of strikes during specific time-frames and even about the size and duration of these strikes.¹⁷ However, difficulties have arisen with inconsistent quantitative measurements, making comparisons problematic. The utility of such comparisons without qualitative analysis is also called into question. Some studies have been made on the 'ingredients' of a strike or whether various factors have contributed to the length or violent nature of the strike.¹⁸ The results point to the importance of differing geographic as well as historic time-frames.

Law can play a significant role in labour disputes by creating both the potential to maintain or challenge the workplace status quo. For both strikes, the courts provided an arena within which social drama was played out. The actual development of labour and criminal law which affected the strikes is the main focus of Chapter Two. In Chapter One, traditional accounts of labour law and strikes give way to new legal historical research.

Theory

Traditional labour and legal historians¹⁹ envisioned law as autonomous, and

17 Douglas Cruikshank and Gregory S. Kealey, "Strikes in Canada, 1891-1950" (1987) 20 *Labour/Le Travail* 85.

18 J.A. Frank, "The 'Ingredients' in Violent Labour Conflict: Patterns in Four Case Studies" (1983) 12 *Labour/Le Travailleur* 87; and Craig Heron and Bryan D. Palmer, "Through the Prism of the Strike, Industrial Conflict in Southern Ontario, 1901-1914" (1977) 58:4 *The Canadian Historical Review* 423.

19 Eugene Forsey, *Trade Unions in Canada 1812-1902* (Toronto: University of Toronto Press, 1982) and Charles Lipton, *The Trade Union Movement of Canada, 1827-1959* (Toronto: N.C. Press, 1973).

portrayed social change as a matter of progressive and consensual improvement. By contrast, new legal history and more critical social history reveal how law relates to power, uses a more expansive research base, including archival research, sees law as a range of views from instrumentalism to 'relative autonomy' and ideology and as the site of struggle which can result in positive as well as negative results.²⁰ Central to legal theories which advance law as having an active role in social change is the concept that "... legal rights... (can be) conceived of as important catalysts...to mobilize political action."²¹ Law can become a social arena wherein workers can contest inequalities through picketing and other actions during strikes. Conversely, there are those who argue that the law has little utility for workers and may actually present an impediment to any real social reform.²² They further argue that law and those who administer it, ultimately protect the 'rights of property'. In seeking to establish a connection between law and labour disputes, it is necessary to examine the concrete social practices that have characterized the enforcement or non-enforcement of labour law. By using the case studies of the Courtaulds and Dominion Woollens strikes to examine the concrete social practises, it is possible to speculate about the relationship

20 See W.Wesley Pue and Barry Wright (eds.) *Canadian Perspectives on Law & Society: Issues in Legal History* (Ottawa: Carleton University Press, 1988), especially Chapter 1 "An Introduction to Canadian Law . History" 7-19.

21 Judy Fudge, "What Do We Mean by Law and Social Transformation?" (1990) 5 *Canadian Journal of Law and Society*: 54.

22 Reference made to theorists in Leo Panitch and Donald Swartz, *The Assault on Trade Union Freedoms* 102, their footnote 8 which refers to H.Glasbeek and M.Mandel, "The Legalisation of Politics: Legal Rights in the Charter of Rights and Freedoms" in R.Martin (ed.) *Critical Perspectives on the Constitution*, a special theme issue of *Socialist Studies: A Canadian Journal*, Vol.2, 1984; and H.Glasbeek, "Workers of the World: Avoid the Charter of Rights" *Canadian Dimension*, April 1987, pp.12-14.

of law and the strike outcomes.

Minimalist protective legislation could be considered as 'bourgeois legal rights'. While the *Factory Act* and *Minimum Wage Act* were intended to help workers by providing a bare minimum of employment standards, this standard was not always attained. However, the ideological function of the legislation could be either to allay mainstream concerns over unfair labour practices or to afford workers a rallying point with which to contest poor working conditions.²³ In the Courtaulds strike, women workers were working illegal hours in order to meet production quotas and earn bonuses. This was in contravention of the *Factory Act*²⁴ which stipulated that women workers were not to start before 7:00 a.m. and that they were to be paid overtime. In the Dominion Woollens strike, the weavers walked out over low piece rates and poor lighting. Under the *Factory Act*, section 37(1) provided that buildings were to be "properly lighted...so as not to be injurious to the health, safety or comfort of persons employed..." While these measures gave some protection against abusive employers, the context within which these laws operated "...was part of a system which accepts vast disparities in power."²⁵ Industrial relations theories have not always

23 These rallying points may have been based on actual legislative protection or merely upon the belief that there was law which supported the workers' position. For example, in the Peterborough strike, there were claims made that ten minute breaks were a legal requirement although my examination of the legislation did not support this.

24 *The Factory, Shop and Office Building Act* R.S.O. 1932, c.35, 2165. Under this legislation, section 29(b) provided that "the hours of labour for any such person (youth, young girl, or woman) shall not be earlier than seven o'clock in the forenoon or later than half-past six o'clock in a factory... unless a special permit in writing is obtained from the inspector." A further section 32 provided for payment of overtime for the women.

25 Judy Fudge. "What Do We Mean by Law and Social Transformation?" 62.

acknowledged this power inequality.

In the past, Canadian industrial relations theory was largely limited to Dunlop's systems theory²⁶, a consensus-based structural-functional model. Craig's modification²⁷ of Dunlop's model expands upon the systems theory while retaining its defects. Bob Russell²⁸, Anthony Giles²⁹ and Gregor Murray reject the systems approach and adopt a more realistic 'political economy' framework. This thesis uses a 'political economy' approach but with a legal focus.

The most prevalent industrial relations theory was and is Dunlop's systems theory. It is a consensus-based theoretical framework comprised of labour, government and employers,

"...interacting with market, technological, and power contexts, bound together by an ideology to establish a web of rules of the workplace."³⁰

John Anderson and Morley Gunderson critique the systems theory as not having a unifying framework; being descriptive rather than explanatory; and being difficult to use as a basis for empirical research.³¹ Further, there is no elaboration on how labour, government and employers interact or are linked. The inherent conflict among these

26 John C. Anderson, and Morley Gunderson, *Union-Management Relations in Canada* (Don Mills: Addison-Wesley Publishers, 1982) 1.

27 Anderson and Gunderson, *Union-Management Relations in Canada* 6.

28 Bob Russell, "State Constructed Industrial Relations and the Social Reproduction of Production: the Case of the Canadian I.D.I.A." (1987) 24:2 *Canadian Review of Sociology and Anthropology* 213.

29 Anthony Giles, and Gregor Murray, "Towards an Historical Understanding of Industrial Relations Theory in Canada" (1988) 43:4 *Relations Industrielles/Industrial Relations* 782.

30 Anderson and Gunderson, *Union-Management Relations in Canada* 1.

31 Anderson and Gunderson, *Union-Management Relations in Canada* 5.

actors is not acknowledged nor developed. As well, the systems theory does not acknowledge the influences of ideology and the political economy.

Even with these defects, systems theory was not wholly rejected. A. Craig³² has refined or modified Dunlop's systems theory by creating a wider range of inputs into the industrial relations field beyond the main actors. Craig's framework includes actors such as: government, employers and their associations and employees and their associations.³³ Complex input variables include the legal environment, conversion processes like collective bargaining, and political action. Outputs include industrial conflicts and working conditions. Craig further acknowledges the interdependency of industrial relations on other factors such as the political climate. Finally, Craig envisions a dynamic framework which is in constant flux as opposed to Dunlop's static and linear model.

Unfortunately, Craig's modified systems theory suffers from many of the same defects as the original theory. As there are many more variables, it is difficult to establish any connectivity, let alone causal link among these variables. There is also an absence of directly verifiable hypotheses and researchers must elaborate on why they have chosen certain variables and to what purpose. Even more problematic is establishing a conceptual framework which can overcome the interaction effect of variables impacting at the same time. It is difficult to isolate a chain of cause and effect in a linear timeframe with this model. As Anthony Giles and Gregor Murray

32 Anderson and Gunderson, *Union-Management Relations in Canada* 6.

33 Anderson and Gunderson, *Union-Management Relations in Canada* 7.

explain it,

"...any understanding of theory must be historically grounded not in cumulative linear fashion but in discontinuities and paradoxes."³⁴

Giles and Murray have explored the historical development of industrial relations theory and are surprised at system theory's longevity, considering its obvious defects. Using non-academic and explicitly non-theoretical material, they traced the history of Canada's industrial relations field. After rejecting systems theories, they advance two possible theoretical frameworks; the 'human resource management' theory³⁵ and the 'political economy' theory.

The 'human resource management' theory is defined as an interdisciplinary science which focuses on the behaviour modifications of workers and managers, efficiency and external factors which affect a corporation. The key to this theory appears to be the focus on 'management', and the need to compete in a global economy. The 'human resource' aspect is just that, more concerned with resources than humans. As well, 'human resource management' theory appears to accept the inequalities in labour-management relations or accommodate these inequalities. Giles and Murray reject this theory as being too insular, fragmented and insufficiently critical.

The 'political economy' approach³⁶ is more fragmented and less systematic than the 'human resource management' theory.³⁷ It has an emphasis on economic change

34 Giles and Murray, "Towards an Historical Understanding of Industrial Relations Theory in Canada" 782.

35 Giles and Murray, "Towards an Historical Understanding of Industrial Relations Theory in Canada" 800.

36 Giles and Murray, "Towards an Historical Understanding of Industrial Relations Theory in Canada" 800.

37 Giles and Murray, "Toward an Historical Understanding of Industrial Relations Theory in Canada" 801.

and structural transformations. This theory is more critical than the 'human resource management' theory as the 'political economy' approach acknowledges the inherent inequalities in the employment relationship. The focus is on how these inequalities are structured and are manifested in the workplace, industry or country but 'always in relation to a broader political economy'.³⁸ The 'political economy' approach entails examining the range of variables which affect the employment relationship at the shop floor level.³⁹ In the Canadian context, this would mean integrating Canada's political economy and how the various levels of government intervene in industrial relations, either at the workplace directly or in less direct ways, such as labour legislation. 'Political economy' theory is also interdisciplinary, integrating the social sciences and includes both marxist and non-marxist theoreticians.⁴⁰ With a focus on the inherent inequalities of the employment relationship, any labour conflict that ensues is of interest. As well, the variables which impact upon the employment relationship such as a political environment which favoured or discouraged collective bargaining, would form part of the 'political economy' approach.

My research on the two textile strikes adopts a 'political economy' approach but with a legal focus. The legal dimensions of the research will be discussed in Chapter Two. Bob Russell studying the use of the *I.D.I.A.* has concluded that "...the Canadian state in its hegemonic project to both bolster accumulation and its legitimation engaged

38 Giles and Murray, "Toward an Historical Understanding of Industrial Relations Theory in Canada" 803.

39 Giles and Murray, "Toward an Historical Understanding of Industrial Relations Theory in Canada" 800.

40 Giles and Murray, "Toward an Historical Understanding of Industrial Relations Theory in Canada" 800.

in 'strategic compromises'.⁴¹ The results of his study showed a correlation with the Canadian economy although the employer did better whether or not the state intervened in the labour dispute. Russell rejects what he calls the notion of '...dominant elites using coercive state power...' While I agree with Russell that 'instrumentalism' is not a complete theoretical construct with which to analyze the Canadian state, I do not reject the notion of instances of 'instrumental intervention'. The selective exercise of force by municipal officials through charging labour radicals under section 501 achieved a particular result. The prevalent socio-political climate at the time of each strike had a profound influence on what legal measures were used and how the social and legal zone interacted. However, the 'instances of instrumenta' intervention' are insufficient to explain all government intervention in labour disputes and the main goal was that of the legitimation of industrial capitalism. As Paul Craven explained that the state's legitimation function was also challenged by employers' attempts to lower wage costs.⁴² By the state's channelling labour disputes through legal mechanisms, the inherent tension between labour and capital is not seen as being a fundamental problem but merely a difference of opinion. Ultimately, the ideological role of the Canadian government to legitimate the textile industry was more important than the occasional exercise of force.

As inequality in the workplace and the inherent tension between workers and employers often erupts into industrial disputes, the contributing political and economic

41 Russell, "State Constructed Industrial Relations And The Social Reproduction of Production" 228.

42 Paul Craven, *"An Impartial Umpire": Industrial Relations and the Canadian State, 1900-1911* (Toronto: University of Toronto Press, 1980) 357.

factors are important. As this thesis involves two strike case studies, how research on strikes has developed, is of interest.

Strike Research

Strike research in Canada has ranged from mainly statistical⁴³, using the *Strikes and Lockouts* file⁴⁴ to qualitative⁴⁵ or almost anecdotal in nature. Cruikshank and Kealey offer the most comprehensive study of Canadian strikes, looking at such factors as strike frequency and methods of strike settlement, etc. However, there have been problems with the *Strikes and Lockouts* file dealing with strike categorization which included the designation of job classes; whether the labour dispute was a strike or lockout and finally, some strikes involving part-time workers may not have been included. Conflicting information from employers, employees and government officials have added to the confusion.

On the other end of the spectrum, Jerome Frank used a qualitative approach to examine the 'ingredients' of four violent labour conflicts in the late 1960s and 1970s. He has chosen such factors as attitudes of employers and authorities towards workers; relative power and organization of unions; and policies and aims of employers,

43 Douglas Cruikshank and Gregory S.Kealey, "Strikes in Canada, 1891-1950" (1987) 20 *Labour/Le Travail* 85.

44 Cruikshank and Kealey, "Strikes in Canada, 1891-1950" 123, *The Strikes and Lockouts Files of the Department of Labour* on microfilm at the National Archives of Canada are comprised of strike inquiry forms, monthly reports of lengthy strikes, newspaper coverage of strikes, supplementary reports from R.C.M.P. informants, Labour Gazette, Fair Wage and Conciliation officers. My experience with this microfilm has been that information is missing, reports are out of order and blank strike inquiry forms are microfilmed, instead of just indicating that no report was filed.

45 J.A.Frank, "The "Ingredients" in Violent Labour Conflict: Patterns in Four Case Studies" (1983) 12 *Labour/Le Travailleur* 87.

political leaders and police.⁴⁶ These factors are difficult to quantify but they are more powerful in explaining the various outcomes of the case studies. Frank concludes that stronger unions do better but that "...labour is weaker than those they challenge".⁴⁷

Still other researchers have attempted to combine the two methods, such as the research done by Stuart Jamieson⁴⁸ and Bob Russell⁴⁹. Russell has done a study of the 'state's role in "...reproducing antagonistic production relations"⁵⁰ and concluded that the *I.D.I.A.* altered the outcome of disputes and the relationships of labour and the state. His study indicates that the "...state clearly was not an 'impartial umpire'..."⁵¹ Unfortunately, Russell's research focuses on industrial disputes during 1907-1914 which is before the *Snider* decision and the influence of both the *I.S.A.* and the amendment to section 501.⁵² While statistical research is useful in directing researchers towards a problem area, a case study is better for the elaboration of strike dynamics. I have chosen the case study to develop the relationship of the *I.D.I.A.*,

46 Frank, "The 'Ingredients' in Violent Labour Conflict" 87.

47 Frank, "The 'Ingredients' in Violent Labour Conflict" 112.

48 Jamieson, *Times of Trouble*.

49 Russell, *Back To Work?*.

50 Russell, "State Constructed Industrial Relations And The Social Reproduction of Production" 213.

51 Russell, "State Constructed Industrial Relations And The Social Reproduction of Production" 228, Russell uses quotes to indicate that the phrase 'impartial umpire' is not of his own formulation. This is a phrase used by Paul Craven, in his book, *"An Impartial Umpire": Industrial Relations and the Canadian State, 1900-1911* but Craven is not cited in this particular usage, perhaps due to Russell's belief that most readers will assign credit to Craven.

52 Russell's research is from 1907-14, while the *Snider* case was in 1925; the section 501 amendment was in 1934 and the *I.S.A.* was in 1935. The *Snider* decision narrowed the *I.D.I.A.*'s application to solely federal areas of jurisdiction or when provincial consent was obtained.

I.S.A. and section 501 with the two textile strikes.

That workers must resort to strikes and picketing reveals that unions are not very powerful and that public support of the workers's position in an industrial dispute may sway the employer to change her/his mind. In Canada's industrial past, federal, provincial and municipal officials intervened into strikes to preserve the employer's position. Rationalized justification for this, as Michael MacNeil points out, is that strikes are feared for their potential to create a powerful position for the trade union. The status quo of 'structural inequalities' is reinforced through the implicit assumption of a power equilibrium when there is no strike.⁵³ Both the case studies of the Courtaulds and Dominion Woollens strikes involved legal intervention by the various levels of Canadian government. The municipal official who intervenes to assist the employer in strike-breaking assumes that the employer's equity interests are paramount. The workers' equity through labour is not acknowledged. As well, as James Naylor concludes, the connections between economic and political power are obscured because of the legal fiction of workers as free agents in the labour market.⁵⁴ However, workers do not 'choose' to work any more than they 'choose' to eat.

While strike research methodology has varied over time, the perception of women's participation within a strike has not. Whether as a direct participant or in a supporting role, women's involvement in labour disputes has either been ignored or

53 Michael MacNeil, "Courts and Liberal Ideology: An Analysis Of The Application Of The Charter To Some Labour Law Issues" (1989) 34:1 *McGill Law Journal* 103.

54 James Naylor, *The New Democracy: Challenging the Social Order in Industrial Ontario, 1914-1925* (Toronto: University of Toronto Press, 1991) 7.

discounted. Both strikes involved women workers on the picketline. How gender issues were manifested within the context of the labour disputes shows that women were active participants in Canada's labour past.

Gender Issues

Labour historian Bettina Bradbury,⁵⁵ has argued that "(w)omen have been militantly involved in strikes and in unions of textile workers..."⁵⁶ The prevailing ideologies about what constitutes struggle- an active physical role as opposed to passive resistance has informed what has been traditionally viewed as labour radicalism. Even women's active roles through the feeding of strikers, marching, as the partners of strikers and other family members are discounted. Historical accounts of strikes tend to downplay women's participation because of the perceived secondary nature as compared to accounts of violent conflict with authorities. The Courtaulds and Dominion Woollens strikes bear witness to women's involvement in labour disputes. How women's involvement is conceptualized is of key interest. By organizing tag sales, feeding and housing strikers and their families, marching in parades, walking the picketlines and attending rallies, women were actively involved in the strikes. If women's involvement is conceptualized as merely a bystander role, then women workers are portrayed as victims making little effort in their own struggle to be organized. The difference that gender makes is of historical consequence. A more textured account of Canada's labour past depends upon the inclusion of women, either

55 Bettina Bradbury, "Women's History and Working-Class History" (1987) 19 *Labour/Le Travail* 23.

56 Bradbury, "Women's History and Working-Class History" 29.

as strikers or as a family member.

In Canada's transition from pre-industrial familial patriarchy to industrial capitalism and social patriarchy, Jane Ursel⁵⁷ has argued that wages formed the economic basis of the family. Ursel wishes to argue that the Canadian state is a 'critical mediator in the co-ordination of reproductive and productive relations' in the modern industrial society through an ideological structure that she calls 'social patriarchy'.⁵⁸ Ursel expands on Marxist theories of 'surplus labour exploitation' which would only extend to paid women workers and which fails to include domestic labour.⁵⁹ By this, Ursel means that by restricting women's ability to be self-sufficient or by making women's subsistence dependent upon family relations, women's reproductive and productive labour is controlled.

Social patriarchy is defined as the 'societal organization of sex-gender relations through rules and laws concerning marriage, property, inheritance and child custody'.⁶⁰ Through regulatory laws affecting Canadian women's lives, the state was able to secure social patriarchy to mediate its own and industrial capitalist interests. Class societies are distinguished by two characteristics which Ursel defines as the 'short-term extraction of surplus in the interests of the dominant class' and the 'long-term reproduction of the labour supply which is in the interest of the system as a

57 Jane Ursel, "The State and the Maintenance of Patriarchy: A Case Study of Family, Labour and Welfare Legislation in Canada" in James Dickinson and Bob Russell (eds.) *Family, Economy and State: The Social Reproduction Process Under Capitalism* (Toronto: Garamond Press, 1986) 150.

58 Ursel, "The State and the Maintenance of Patriarchy" 150.

59 Ursel, "The State and the Maintenance of Patriarchy" 152.

60 Ursel, "The State and the Maintenance of Patriarchy" 154.

whole.⁶¹ The role of the Canadian state would be to balance the interests of the short-term extraction of surplus value and the long-term interests of reproducing the labour force. Ursel theorizes that the ensuing labour, family and welfare legislation was necessary to realign the patriarchal order with the new economic system.⁶² However, Ursel's analysis is too deterministic and ignores the possibilities of struggle through the ideological symbolism of the protective legislative framework. While Ursel refers to 'legal structures' which performed the instrumental function of preserving patriarchy, this assumes a conspiratorial alliance of all men. All women are reduced to inactive victims of legal structure through family and other law. This formulation ignores the possibilities of ideological struggle within the courts to combat negative legal bias against women and the potential for social outcry when legal battles are lost. Further, by reducing the multi-layers of Canadian government to a single state, the complex interplay of the various legislation with its originators is lost. For example, federal concerns with repopulation might clash with provincial concerns over welfare relief for the same individuals.

Linda Bohnen argues that assumptions about the inherent nature of women and the family have affected how protective employment laws in the 1880's and 1890's were enacted.⁶³ The 'interplay between law and public opinion' is important as Bohnen theorizes that popular conceptions of women's marginality as paid workers informed

61 Ursel, "The State and the Maintenance of Patriarchy" 155.

62 Urse' "The State and the Maintenance of Patriarchy" 159.

63 Linda S.Bohnen,"Women Workers in Ontario: A Socio-Legal History" (1973) 31 *University of Toronto Faculty Law Journal* 45.

legislators's actions. Bohnen concludes that the non-enforcement of early protective legislation and equal employment law can be explained by suggesting that they were cosmetic changes designed to 'soothe sore spots in the economy without upsetting the underlying structures.' Both Ursel and Bohnen deal with the issues of how the traditional view of women as wives, homemakers, and marginal workers affected the manner in which protective legislation was enacted. However, both theorists downplay the possibility that women could be active participants in challenging both the stereotyping and the legislation.

Ellen Scheinberg has applied dual structuralist theory to Cornwall's Courtaulds textile industry during and post-World War II and has concluded that patriarchy and capitalism are mutually reinforcing but that the "...commitment and motives of the two varied over time."⁶⁴ She argues that Courtaulds women workers did not enjoy increased job mobility and opportunity but instead were segregated in traditional textile work for women. In Scheinberg's thesis entitled *Women, War, and Work*,⁶⁵ she looks at a ten year span of Cornwall's textile industry from 1936-46. Scheinberg saw women's position in the Cornwall workplace as unchanged during the war years, and that women were being segregated into the traditional women's jobs. Her argument

64 Ellen Scheinberg, "The Tale of Tessie the Textile Worker: Female Textile Workers in Cornwall During World War II" (1994) 33 *Labour/Le Travail* 179.

65 Ellen Carrie Scheinberg, "Women, War and Work: Female Textile Workers in Cornwall, Ontario 1936-1946" (M.A. Thesis, Queen's University, 1990).

remains the same, namely that the conflict between patriarchy and capitalism,

"...while companies' interest rose and fell according to the state of the economy, the union men were consistently engaged in the struggle to maintain their dominance both at the mills and in the home."⁶⁶

Joy Parr⁶⁷ compares the effects of gender on two industrial towns. She parallels the lives of predominantly female textile workers in Paris, Ontario to the predominantly male furniture makers in Berlin. What she determines is that the gender of the 'breadwinner' is socially constructed and that depending upon industrialists' strategies, the primary wage earner can be of either gender. Mercedes Steedman has also written on the Canadian textile industry, exposing some of the ways in which employers undermined the legislative protection afforded workers, such as under-reporting working hours.⁶⁸

Even so, male and female workers were treated differently. Gender creates important divisions not only within the workplace but within unions. Courtaulds and Dominion Woollens and Worsteds employed both male and female workers, albeit in gender-segmented positions. While male-dominated trade unions might explicitly exclude women from their membership and even prohibit their members from working beside women, they also sought to prevent the extension of the area of female employment. The erosion of wage rates as well as job-segmentation which consigned men to rough physical work and night shifts were cited as justification for male

66 Scheinberg, "Women, War and Work" 21.

67 Joy Parr, *The Gender of Breadwinners: Women, Men and Change in Two Industrial Towns 1880-1950* (Toronto:University of Toronto Press, 1990).

68 Mercedes Steedman, "Skill and Gender in the Canadian Clothing Industry, 1890-1940" in *On the Job* 152.

workers' hostility to women working in paid labour.⁶⁹ While gender issues figured prominently in both strikes, the broader implications of the rise of the industrial unions as well as the enactment of beneficial U.S. labour legislation are of importance.

American Influences: C.I.O. and N.L.R.A.

My research deals with two Ontario textile strikes during the 1930s and some of the effects of law on their outcome. While it is important to theorize about law's role in these strikes and then to examine what actually transpired, other factors also assume importance. The political, social and economic context within which these two labour disputes took place is naturally crucial to an appreciation of the events that ensued. First, the *National Labor Relations Act (N.L.R.A.)* had a 'demonstration effect' on Canadian industrial relations and the formation of the Committee for Industrial Organization (C.I.O.)⁷⁰ was also important. Further considerations were the particular Canadian context of the two strikes, including the *Turgeon Royal Commission on the Textile Industry*. Finally, the political climate as the Hepburn administration went from a left-Liberal position to a right-wing conservatism within the time-frame of the two disputes.

Canadian workers attempted to organize to secure collective bargaining rights, influenced by American unionization efforts and legislation. The U.S. *National Labor Relations Act* or *Wagner Act* had a profound effect on Canada, as did the formation of the Committee for Industrial Organization (C.I.O.) which unionized industrial workers

69 Barbara Drake, *Women in Trade Unions* (London: Virago Press, 1984) 129.

70 This later became the Congress of Industrial Organizations.

rather than craft or trade workers. This would include unskilled and semi-skilled workers such as were employed in the textile industry.

In the U.S., unions received a boost from the *National Labor Relations Act* (*N.L.R.A.*) or *Wagner Act* (1935) which forced employers to accept collective bargaining. This legislation provided a legal guarantee of labour's right to organize; prohibited employers from anti-union tactics; and required good faith bargaining with employee representatives. It had what has been called a 'demonstration effect'⁷¹ on Canadian workers. The U.S. locals would be interested in Canadians securing similar legal rights to guard against employers trying to avoid dealing with established unions. As Arthurs and others have reported, between 1935 and 1937, Canadian union membership went from 280,000 to 383,000 workers. This was without the legal protection that the Americans enjoyed. It was not until 1939 that the *Criminal Code* was amended to prohibit discrimination or the discharge of workers for union membership.⁷² As well, the rise of the industrial union in 1936, pitted craft or trade unionists against the previously unorganized and less skilled industrialists.⁷³ Workers were unable to secure workplace change through the traditional political routes, and were forced to resort to collective action through increased unionization.

Although the *Wagner Act* had an ideological impact on Canadian workers by

71 Stuart Jamieson, *Times of Trouble: Labour Unrest and Industrial Conflict in Canada, 1900-66* (Ottawa: Privy Council Task Force on Labour Relations, Study no.22, 1968) 218.

72 H.W.Arthurs, D.D.Carter, J.Fudge, H.J.Glasbeek, *Labour Law and Industrial Relations in Canada* (Toronto: Butterworths, 1988) 45.

73 Morton with Copp, *Working People* 27.

encouraging unionization, other factors had more immediate and material consequences.⁷⁴ The breakup of the Workers' Unity League (W.U.L.), the Communist-led labour unions, meant that other labour organizations received W.U.L.'s membership and likewise their organizing expertise.⁷⁵ The disbanding of W.U.L. in 1935 to form 'popular fronts' against fascism⁷⁶ meant a reversion to the old means of 'boring from within'.⁷⁷ This had implications for Canadian unions as

"...Canadian governments were still most likely to respond with an iron heel to any efforts by workers to organize, especially if acknowledged Communists were in their midst."⁷⁸

The problem of international unions and dual unionism was also at the forefront during the Depression years. The C.I.O. represented a change in that it wanted to organize workers on an industry basis.⁷⁹ Traditionally, craft or trade unions were organized along 'trades or craft' lines with predominantly skilled workers. Semi-skilled and unskilled industrial workers had been left out of unionization efforts with few exceptions. The C.I.O. created a threat to the existing labour union framework, through dual unions and 'divided loyalty'. Employers feared the C.I.O.'s organizing the

74 These points were brought to my attention by Donald Swartz.

75 Morton with Copp, *Working People* 158.

76 Craig Heron, *The Canadian Labour Movement: A Short History* (Toronto: James Lorimer & Company, 1989) 71.

77 Jamieson, *Times of Trouble* 218.

78 Heron, *The Canadian Labour Movement: A Short History* 74. The Bennett government had outlawed the Communist Party in 1931.

79 Morton with Copp, *Working People* 160; Craig Heron, *The Canadian Labour Movement: A Short History* (Toronto: James Lorimer & Company, 1989) 65-83.

unskilled and semi-skilled workers. Ironically, the American-based C.I.O. was 'dragged' into Canada and ultimately meant the failure of a strong nationalist labour movement.⁸⁰ This failure was further due to infighting by Canadian unions trying to eliminate their Communist members and the fragmentation of Canadian union solidarity through some unions' affiliation with American unions. As well, the Canadian government and employers were concerned about the international unions controlling Canadian labour. Finally, there was some resistance to the C.I.O. by the various Canadian governments because of its association with Communist members.⁸¹

In both case studies, Alex Welch, a Communist organizer previously active in W.U.L., was involved in the organization of collective bargaining and workers.⁸² Employers and the government demanded the disassociation of Alex Welch from the process to stave off any perception of Communist ties being endorsed. As a C.I.O. organizer, Welch represented a threat to Canadian industrialists beyond the stigma of being Communist-linked. The rise of the industrial union would erode the large pools of low-paid, semi-skilled or unskilled worker that industrialists relied upon to make their 'living profit'.⁸³

80 Irving Abella, *Nationalism, Communism, and Canadian Labour: The C.I.O., the Communist Party, and the Canadian Congress of Labour 1935-1956* (Toronto: University of Toronto Press, 1973) 216-218.

81 *The Peterborough Examiner* (23 July 1937) 1. A provincial conciliator refused to deal with what he deemed to be a C.I.O. envoy.

82 Elinor Kyte Senior, *From Royal Township to Industrial City: Cornwall 1784-1984* (Belleville: Mika Publishing Company, 1983) 393. Other Communists involved in the Cornwall strike were Arthur Laverty, Frank Love, Alex Welch, Ellis Blair and Percy Laurin.

83 Michael Bliss, "Another Anti-Trust Tradition: Canadian Anti-Combines Policy, 1889-1910" (1973) 47:2 *Business History Review* 181.

Ontario's textile industry enjoyed an upsurge in economic growth⁸⁴ during the late 1930's, due to generous protective tariffs and low-paid unorganized labour. As well, Ontario was subject to eight of the 14 violent strikes in 1934 and 11 of the 17 in 1937.⁸⁵ While the most significant strike of 1937 was the Oshawa General Motors strike of 4200 workers, an important strike occurred in Sherbrooke's Dominion Textiles before either the Courtaulds or Dominion Woollens and Worsteds strikes, sparking a royal commission inquiry. As the *Turgeon Royal Commission* was conducting hearings during the time of the Courtaulds strike, there was strong federal political pressure to resolve the dispute. By the time of the Dominion Woollens strike, the *Turgeon Commission* was wrapping up, so there was little federal impetus to settle. However, provincial political pressure was brought to bear upon the Dominion Woollens strike because of a provincial election year combined with an anti-labour Premier Mitchell.

The Political Dimension I: The Turgeon Royal Commission

When Sherbrooke's Dominion Textiles firm decided to shut down in 1936, nearly 400 workers would have been put on the 'relief' or welfare rolls.⁸⁶ Since there was no unemployment insurance but rather a system of work relief, the municipality would

84 Jamieson, *Times of Trouble* 249. Both the U.S. and Canada's gross national product(G.N.P.) reached 1929 levels in 1937.

85 Douglas Cruikshank and Gregory S.Kealey "Strikes in Canada, 1891-1950" (1987) 20 *Labour/Le Travail* 115.

86 It was earlier believed that nearly 1000 people would be thrown out of work and thus would have to rely on the municipality for social welfare. Preface to *Report of the Royal Commission on The Textile Industry* (Ottawa: J.O. Patenaude, I.S.O., Printer to the King's Most Excellent Majesty,1938).

have had to support these unemployed people through local taxation. Naturally, Sherbrooke's municipal authorities appealed to the federal government. While financial assistance for Sherbrooke's unemployed textile workers may have been the objective, the result was the *Turgeon Royal Commission*. Its stated purpose was to investigate the textile industries to determine the responsibility of tariff-protected industries and their duty to maintain their workforces. Within the text of the final *Commission* report, the explicit directive of the investigation could be summed up as follows:

"...The question of the responsibilities of industry, and especially of a protected industry, particularly in times of national difficulty, runs through the whole of the subject matter of the investigation."⁸⁷

Submissions were made by the various cotton, woollen, rayon and other textile manufacturers and those affected by these industries. The total cost of the *Turgeon Royal Commission Report on the Textile Industry* was \$180,000.⁸⁸ The report concluded that Commissioner Turgeon did "...not think it is possible to fix, in advance, a general measure of responsibility which would be applicable to all employers at all times."⁸⁹

Early industrialist ventures were given federal state support through protective tariffs which were to aid the development of a fledgling or new industry. This benefit was in exchange for providing jobs for Canadians, so that the respective municipalities did not have to deal with the social costs. This was done in a number of ways- federal,

⁸⁷ *Turgeon Royal Commission Report* 29.

⁸⁸ *Official Report of Debates House of Commons Third Session-Eighteenth Parliament, 2 George VI, 1938* vol.IV 4135 Carleton M.P. A.B. Hyndman on June 22, 1938.

⁸⁹ *Turgeon Report* 206 errata. The first printing of the report said that 'he did think that it was possible'.

provincial and municipal governments might make land grants available, offer tax-free status for a number of years, or neglect to enforce environmental and other regulations. As well, for the textile industry -in particular- the rayon industry, protective tariffs were to protect the business from alleged competition from foreign interests.

Newspapers reported the profitability, production and wages, factory conditions of various factories. As well, industry representatives made appeals to the federal Canadian state to extend and increase protective tariffs to stave off competition from lower priced Japanese goods. Courtauld's representatives made presentations to the *Turgeon Royal Commission* to this effect but there is not similar evidence of a Dominion Woollens and Worsted appeal. On the federal level, political pressure was focused on the Canadian textile industries through gathering information and taking submissions. As this testimony and information regarding textile wages and working conditions were in turn publicized widely in the print media, the public was attuned to the textile industry situation. The *Turgeon Royal Commission* provided a safety valve for industrial unrest in textiles but it also fulfilled a 'legitimation' role. It appeared to be dealing with the problems associated with the textile tariffs and the sweating of labour. The federal government was in the position to reduce or withdraw tariff protection. This put them in a powerful position in relation to the textile producers. When industrial disputes erupted in the textile industry, the federal government had to intervene and settle the strikes, giving the appearance that all was well. Industrial peace was necessary to legitimate the federal government and its commission. The Courtauld's strike benefitted from this intervention, however, the Dominion Woollens

and Worsteds strike did not. The provincial agenda was a little different.

The Political Dimension II: Hepburn and the Oshawa Strike

The provincial political climate of the two strikes differed substantially, although the federal commission investigation cast a shadow on both. Ontario's Mitchell Hepburn led a minority Liberal government which was pro-labour during the Courtaulds strike. Two of its cabinet members were prominent labour supporters.⁹⁰ However, by the time of the Dominion Woollens and Worsteds strike, these cabinet members had resigned⁹¹ because of a falling out with Hepburn during the Oshawa strike.

Irving Abella, writing on the Oshawa strike⁹² said that Hepburn's attitude changed from a pro-labour position where he opposed the former Conservative premier's 1933 decision to send in the troops in the Stratford strike. Hepburn's administration had also introduced as beneficial labour legislation, the *I.S.A.* and a minimum wage law. Hepburn's change in political stance meant that he became obsessed with preventing the C.I.O. from organizing in Ontario. Hepburn assumed a decidedly anti-labour position. Abella attributed part of Hepburn's political change-over to his holding of mining stocks. The Communist paper, *Daily Clarion* published that Hepburn feared the industrial union because of the unorganized mines and his friendship with some

90 James Naylor, *The New Democracy: Challenging the Social Order in Industrial Ontario, 1914-1925* 101.

91 David Croll and Arthur Roebuck were asked to tender their resignations.

92 Irving Abella, "Oshawa 1937", *On Strike: Six Key Labour Struggles in Canada 1919-1949* (Toronto:James Lorimer & Company,1975) 97.

prominent mining officials.⁹³ Other papers reported that the northern lumber camps were his concern.⁹⁴

Hepburn took a public position during the Sarnia Holmes Foundry sit-down strike of March 1937. His attitude change was apparent:

"My sympathies are with those who fought the strikers...Those who participate in sit-down strikes are trespassers and trespassing is illegal in this province...There will be no sit-down strikes in Ontario! This government is going to maintain law and order at all costs."⁹⁵

When the Oshawa strike began, an U.A.W. organizer⁹⁶ arrived in Canada to assist in the unionization process. Hepburn tried to get the federal government to deport Hugh Thompson and Ontario's attorney-general, Arthur Roebuck was also unable to do so. This strategy was not without precedent. In 1931, R.B. Bennett had declared that "...communism was to be stamped out by 'the iron heel of ruthlessness'."⁹⁷ The provinces responded by deporting labour radicals through immigration procedures. When the *Immigration Act* was revised in 1936, it was no

93 Abella, "Oshawa 1937" 105.

94 *The Peterborough Examiner* (11 May 1937) 2. Hepburn is quoted as saying that if "...the (J.L.)Lewis forces had been successful at Oshawa, they would next have turned to the lumber camps of the north."

95 Abella, "Oshawa 1937" 99; Jamieson, *Times of Trouble* 252-259 describes Hepburn and the Oshawa strike.

96 United Auto Workers.

97 Jamieson, *Times of Trouble* 217. Morton with Copp, *Working People* 145, "In August, 1931, at the behest of the Ontario Attorney General, the Toronto headquarters of the Communist party was raided and eight leaders were arrested. By the end of the year, seven of them faced long prison sentences. Sir William Mulock as Chief Justice of Ontario, confirmed most of the verdicts. Other Communists were seized, rushed to Halifax, and ordered deported."

longer possible to deport as speedily without documentation.

There remained other legal measures at the premier's disposal. Hepburn made an appeal for R.C.M.P. reinforcements to aid in strike-breaking. Mackenzie King agreed to send 100 officers but the province would have to pay for them. Hepburn was thwarted in his efforts to break the strike using federal force. It was necessary to have municipal approval to let the R.C.M.P. in to assist. Oshawa Mayor Hall would not let the R.C.M.P. off the train and they went on to Toronto. Finally, as a last ditch effort, Hepburn ordered the O.P.P. to enrol 200 to 400 special forces. These men came to be known as 'Hepburn Hussars' or 'Sons of Mitches'. Fortunately, the Oshawa strike ended successfully for the workers but their success impacted upon and strengthened the public image of the C.I.O. The C.I.O. was a 'magic force' which magnetized Canadian workers and which enjoyed their trust.⁹⁸ Abella attributes this to Hepburn's public declaration of the C.I.O. as the enemy although they had done little to assist the Oshawa strikers.⁹⁹ Further, Hepburn expressed a concern over foreign control by the C.I.O., of industrial unions in Canada.¹⁰⁰

Hepburn's relationship with the federal Liberal government suffered when his

⁹⁸ Abella, *Nationalism, Communism and Canadian Labour* 216; Heron, *The Canadian Labour Movement* 72; Robert Zeiger, *John L. Lewis, Labor Leader* (Boston: Twayne Publishers, 1988) 98.

⁹⁹ Abella, "Oshawa 1937" 122; *Nationalism, Communism, and Canadian Labour* 217, The personnel, treasury and the experience was provided by Canadians.

¹⁰⁰ *The Peterborough Examiner* (11 May 1937) 2. Hepburn speaking to the Brotherhood of Railway Trainmen said, "I will not tolerate the invasion of lawlessness. I will not have a dictator sitting in Washington and having complete control over Canadian organizations." Hepburn's reference to a dictator is an allusion to J.L.Lewis and the C.I.O. as opposed to any political control from the White House.

administration was billed for the use of the R.C.M.P. during this strike.¹⁰¹ He complained because the R.C.M.P. were instructed to act only as a last resort if provincial police could not handle the situation. Hepburn had apparently wanted more control over the R.C.M.P. forces during the Oshawa strike. By June, the newspapers announced Hepburn's estrangement from the federal Liberal party.¹⁰² Ultimately, his swing to the right gained Hepburn a win in the fall of 1937.

Conclusion

Canadian industrial relations theory has changed with the decline of Dunlop's systems theory. The new 'political economy' approach advanced by Giles and Murray and others has assumed dominance. As well, the positive aspects of qualitative research has held sway over statistical research. My research assumes a 'political economy' approach with a legal focus, using two textile strikes as case-studies. The political, economic and social climate is important for understanding what transpired in each case. The American influences of the *N.L.R.A.* and the C.I.O. meant that Canadian workers felt better able to organize to win collective bargaining rights. In Canada, the *Turgeon Royal Commission* cast a heavy shadow over the textile industry and any of its labour disputes. As the *Commission* was attempting to 'legitimate' its process, it was necessary that the public saw that the textile labour disputes were dealt with quickly and effectively. While not a textile strike, the Oshawa strike was important for being seen as a championed cause of the C.I.O. Finally, the change in the political

101 "Hepburn to Pay \$2800 Mountie Bill but Under Protest" *The Peterborough Examiner*, (31 May 1937) 1

102 "Hepburn No Longer a Mackenzie King Liberal" *The Peterborough Examiner* (4 June 1937) 1.

climate through Hepburn's switch from pro to anti-labour meant different things to the two strikes in Cornwall and Peterborough. The next chapter will elaborate on the use of the labour relations legislation on both the federal and provincial levels as well as section 501(f)(watching and besetting) of the *Criminal Code*.

CHAPTER TWO: LEGAL ISSUES

Introduction

Canada's labour past is marked by various legal measures which both created the conditions which sparked unrest but which also enabled workers to contest adverse working conditions. While traditional whiggish accounts portray changes in labour relations history as an evolutionary and inevitable phenomenon, Judy Fudge challenges this by pointing to other legislative changes which could negatively affect workers.¹⁰³ By this, Fudge means that while Canadian labour relations may have developed from labour repression to the toleration of labour unions and finally, more active state support, other repressive laws operated to retard or counteract the progress.¹⁰⁴ An evolutionary conception of the labour relations framework fails to consider the *Criminal Code* provisions and civil or common law remedies which were applied to protect the property interests of employers and to resist workers' efforts to unionize. There existed an array of powers ranging from regulatory to coercive which could be exercised according to the various government's perception of what Tucker describes as the 'social zone of toleration'.¹⁰⁵ Tucker's conception of the development of

103 Judy Fudge, "Voluntarism, Compulsion and the "Transformation" of Canadian Labour Law during World War II", *Canadian and Australian Labour History: Towards a Comparative Perspective*, edited by Gregory S. Kealey and Greg Patmore, (Nathan, Australia: Central Reprographics, Australian Society for the Study of Labour History and the Committee on Canadian Labour History, 1990) 83.

104 Eric Tucker also rejects a linear evolution of labour law from repressive to toleration, see generally Tucker, "That Indefinite Zone of Toleration".

105 Tucker, "That Indefinite Area of Toleration" 17; Barry Wright, "An Introduction to Canadian Law in History" in W. Wesley Pue and Barry Wright, (eds.) *Canadian Perspectives on Law and Society. Issues in Legal History* (Ottawa: Carleton University Press, 1988).

industrial legality exposes a "...far more complex pattern of repression and toleration."¹⁰⁶ Inaction¹⁰⁷ as well as action by the various governments could help to shape the climate in which labour either prospered or suffered. The advent of collective bargaining legislation which actively supported the formation of unions heralded in a new era in which workers could build upon established gains. This was supplemented by statutes, such as the *Minimum Wage Act*, dictating employment conditions for workers who may not have been strong enough to sustain a collective bargaining environment, such as textile factories.

In this chapter, I will examine Canadian labour legislation relating to trade unions, and industrial disputes, especially the relevant Ontario legislation, the *Industrial Standards Act*. As well, criminal law measures could be resorted to during strikes, and this research focuses on section 501 which was said to outlaw picketing. Peaceful picketing was protected by an explicit change to this section in 1934. Other criminal law measures could be used by municipal authorities to contain strikers' actions but connecting the charge with the intent to regulate strikers becomes more tenuous. For example, vagrancy charges laid against labour activists stops them from picketing but this may not figure prominently in newspaper accounts. Governmental response could differ depending on the level of the state, for example, federal versus provincial responses. Common law responses of the tort of 'intimidation' resulted from an

¹⁰⁶ Tucker, "That Indefinite Area of Toleration" 18.

¹⁰⁷ J.L.Cohen,K.C., *Collective Bargaining in Canada: An Examination of the Legislative Record and Policy of the Government of the Dominion of Canada* (Toronto: Steel Workers Organizing Committee, 1941) 64 "...a neutral position...is impossible in the dynamics of affairs-implies an attitude, and so constitutes an influence..."

individualist conception of the strikebreakers or scabs' right to 'freely' choose to return to work and offered protection from the striking workers. This conception is in keeping with the original formulation of common law responses to 'intimidation' being related to the rights of property owners to 'freely enjoy their property'. Any infringement of the free enjoyment of property constituted a nuisance. This merely shifts the focus, pitting the strikebreaker against the striker, and masking the involvement of the property owner or industrialist. The historical context of unions in Canada, as well as the more specific labour law conditions in Ontario after 1935 had particular effects on the two case studies.

Legal Zone of Toleration for Unions

Unions were originally outlawed in Canada for being in restraint of trade. The rights of employers to conduct their businesses freely was considered paramount to the rights of workers to organize. When workers combined to force employers to improve wages or working conditions, they were charged with 'criminal conspiracy'. Labour historian Eric Tucker broadly defines the law of 'criminal conspiracy' as legislation which restrained collective activities because their purpose was unlawful or the means used to accomplish an otherwise lawful purpose were unlawful.¹⁰⁸ This situation changed as the result of a printing industry strike in 1872 when the owner¹⁰⁹ had his employees jailed for striking and the resulting public outcry resulted in legislative

¹⁰⁸ Tucker, "That Indefinite Area of Toleration" 16; see also Paul Craven, *"An Impartial Umpire": Industrial Relations and the Canadian State, 1900-1911* (Toronto: University of Toronto Press, 1980) 167-169.

¹⁰⁹ In 1872, George Brown had the whole organizing committee of the Typographic Union in Toronto arrested. I.M. Christie, *The Liability of Strikers in The Law of Torts: A Comparative Study of The Law in England and Canada* (Queen's University, Kingston: Industrial Relations Centre, 1967) 35.

changes.¹¹⁰

The dual legislation which passed in 1872 transferred the power to control unions through imprisoning labour radicals for "...vague offenses as "molesting, obstructing, watching and besetting," to the *Criminal Code Amendments. The Criminal Law Amendment*¹¹¹ Act, stipulated that a combination to do a legal act by illegal means would constitute 'criminal conspiracy'. Unlawful purpose or intent was no longer a sufficient reason to invoke a 'criminal conspiracy' charge. *The Trade Unions*¹¹² Act 1872,

"declared the purposes of a trade union, merely because they were in restraint of trade, not to be unlawful so as to render any member of a trade union liable to criminal prosecution for conspiracy or otherwise."¹¹³

The *Trade Unions Act* exempted (freed from being charged with criminal conspiracy) only those unions that took the trouble to register.¹¹⁴ With the 1892 consolidation of Canada's *Criminal Code*, the *Trade Unions Act* had general application, and not just to unions which registered.¹¹⁵ However, breaching one's contract of employment could still be punishable by imprisonment.¹¹⁶ As well, until its repeal in 1936, workers

¹¹⁰ Desmond Morton with Terry Copp, *Working People* (Ottawa: Deneau Publishers, 1984) 27.

¹¹¹ S.C. 1872, c.31.

¹¹² S.C.1872, c.30.

¹¹³ *Department of Labour of Canada, Labour Legislation in Canada* (Ottawa: Legislative Branch, 1945) 6.

¹¹⁴ Morton with Copp, *Working People* 27.

¹¹⁵ *Labour Legislation in Canada* 6.

¹¹⁶ *Labour Legislation in Canada* 6.

could be imprisoned for being members of an 'unlawful association' under section 98 of the *Criminal Code*.

While it has been generally accepted that the history of legal regulation of trade unions shifted from repression to toleration, Tucker, Fudge and other scholars have rejected this model. For Tucker, the repressive regime co-existed with a regulatory framework which improved conditions for labour. There was no linear progression of acceptance for unions, either social or legal. Only with 'restraint', were trade unions and their activities tolerated.¹¹⁷ Early forms of worker associations were not generally considered radical and thus were not subjected to legal prosecution.¹¹⁸ However when labour disputes arose, the need for legislation to regulate the negotiation process came into play.

The earliest Canadian labour arbitration statute was enacted in Ontario in 1873, entitled *The Trades Arbitration Act*.¹¹⁹ It provided for the "voluntary submission of disputes to a standing Board of Arbitration".¹²⁰ While its decisions were binding and enforceable, the Board of Arbitration had no authority to establish wage rates. Upon the breach of an agreement, either party could apply to a County Court judge for enforcement. There was no review or appeal by any outside court of the Board of

117 Tucker, "That Indefinite Area of Toleration" 53.

118 Morton with *Case*, *Working People* 27. Their purpose was mainly to defend the status of skilled workers. Tucker, "That Indefinite Zone of Toleration" 17. Up until the second half of the nineteenth century, unions were not generally insurrectionary and "...used normal political channels, which did not expose them to legal liability, etc."

119 S.O. 1873, c.25, Margaret E. McCallum, "Labour and Arbitration in the Mowat Era" (1991) 6 *Canadian Journal of Law and Society* 67.

120 McCallum, "Labour and Arbitration in the Mowat Era" 67.

Arbitration's decisions.

The initial dispute process entailed the appointment of a two person Committee of Reconciliation with equal representation for the workers and the employer. If the dispute was not settled at this level, the full Board of Arbitration reviewed the dispute.¹²¹ Margaret McCallum determined that there was no evidence that the legislation was ever used to settle a strike. Provincial Treasurer, Adam Crooks, who introduced the bill, declared the primary object of the legislation was to "...settle disputes simply by discussion." Apparently, this is what resulted, as both workers and employers avoided using the legislation. This situation did not change even when *The Trades Arbitration Act* was amended to allow the Boards of Arbitration authority to determine future wage rates.¹²²

As *The Trades Arbitration Act* went unused because of its legally binding nature, Oliver Mowat's Liberal government decided to try again. In 1894, *The Ontario Trade Disputes Conciliation and Arbitration Act*,¹²³ was enacted as a voluntaristic piece of legislation.¹²⁴ As the legal enforceability of the 1873 statute was considered to be its chief defect, the 1894 legislation was only enforceable if both parties agreed in writing beforehand that the decision would be legally binding. The labour dispute would be heard before a four person Council of Conciliation appointed by the parties either by

121 McCallum, "Labour and Arbitration in the Mowat Era" 71.

122 R.S.O. 1890, c.40; R.S.O. 1877, c.134; R.S.O. 1887, c.140; McCallum, "Labour and Arbitration in the Mowat Era" 71.

123 S.O. 1894, c.42.

124 McCallum, "Labour and Arbitration in the Mowat Era" 83.

single or joint request. If the matter remained a problem, then a three person Council of Arbitration would examine the issue. Both *The Trades Arbitration Act* and *The Ontario Trade Disputes Conciliation and Arbitration Act* remained in force until 1911 when *The Statute Law Amendment Act*¹²⁵ revoked the 1873 legislation. When Ontario brought itself in line with the federal *Industrial Disputes Investigation Act*¹²⁶, the 1894 law was also revoked.

There were a number of reasons that the 1873 legislation was not used even after the 1890 amendments which allowed for the adjudication of wage rates. One reason for the non-use of the 1873 legislation was ignorance of its existence.¹²⁷ Labour had not been consulted in the formulation of the law and those who were informed, were duly suspicious of it. However, not all labour advocates rejected the possibilities that the arbitration law offered and saw it as a means of getting employers to the bargaining table but some were concerned that arbitration would sideline the more important issue of union recognition. In 1886, the Ontario legislature was informed that most employers and employees did not know of the legislation. Although the 1873 legislation was amended to address labour's concern over wage rate determination, suspicion about the process continued. The 1890 amendment had originally included eliminating 'yellow dog' contracts and payments in kind but the Mowat government

125 S.O. 1911, c.17, s.43.

126 S.O. 1932, c.20.

127 McCallum, "Labour and Arbitration in the Mowat Era" 68.

'guttled' these provisions before passing the legislation.¹²⁸ Even with the 1890 changes, by 1894 several legislators were ignorant that wage rates were part of the legislation's mandate. Overall, workers rejected the arbitration legislation in the absence of any government support of collective bargaining.

While Canadian legislation allowed for the existence of a trade union, employers were slow to accept the notion of collective bargaining in the workplace. To earn their 'living profit', merchants and manufacturers had long since accepted the need to organize themselves and to pressure governments, suppliers, and consumers, much as workers had formed unions to earn their 'living wage'.¹²⁹ Early labour relations legislation did little to address the power imbalance which existed between unorganized workers and employers resisting unionization. So while unions began to enjoy a precarious recognition by both the state and the employers, the existing labour relations framework did not actively support collective bargaining until 1944. How the various levels of Canadian government responded to industrial disputes and collective bargaining is illustrated through the further enactment of both federal and provincial labour legislation.

Industrial Disputes Investigation Act (I.D.I.A.)

With the federal *Conciliation Act* (1900), Canada continued its voluntaristic approach to mediating labour relations between workers and capital.¹³⁰ This

128 McCallum, "Labour and Arbitration in the Mowat Era" 89.

129 Morton with Copp, *Working People* 78.

130 Arthurs *et al*, *Labour Law and Industrial Relations in Canada* 42, *Conciliation Act*, S.C. 1900, c.24.

legislation provided for voluntary third party conciliation of industrial disputes. The *Railway Labour Disputes Act* (1903) followed shortly after.¹³¹ This improved upon the *Conciliation Act* as only one party was needed to initiate conciliation and investigation of the labour dispute. However, an *ad hoc* tri-partite board while required to issue a report of findings, had no power to bind either party to any agreement. A particularly bitter winter coal strike in Lethbridge in 1906-7 gave rise to the federal *Industrial Disputes Investigation Act*.¹³² It allowed for federal government intervention into industrial disputes as requested by either party, set out a tri-partite board to hold hearings and recommend settlement terms, and effectively cut off any strikes, picketing or boycotting until all *I.D.I.A.* measures were exhausted.¹³³ Until the report had been made by the board of conciliation and investigation, no strike or lock-out action was considered legal. The *I.D.I.A.* was intended for industries considered essential for the Canadian economy. Once the *I.D.I.A.* report was issued, the conflict could resume, but the recommendations were considered to have an influence.¹³⁴ The Canadian federal state had effectively taken away labour's greatest weapons of striking, picketing and boycotting while creating a voluntaristic framework

131 Arthurs *et al*, *Labour Law and Industrial Relations in Canada, Railway Labour Disputes Act*, S.C. 1903, c.55, 43.

132 Ben M. Selekman, *Postponing Strikes: A Study of The Industrial Disputes Investigation Act of Canada* (New York:Russell Sage Foundation,1927) 60, *Industrial Disputes Investigation Act*, 1907, S.C. 1907, c.20, *An Act to Aid in the Prevention and Settlement of Strikes and Lockouts in Mines and Industries Connected with Public Utilities* became law March 22,1907. 6-7 Edward VII, c.20 amendments 1910, 1918, 1920, 1925 amendment.

133 Selekman, *Postponing Strikes* 48.

134 Morton with Copp, *Working People* 88.

which gave employers the advantage.¹³⁵ Companies could stockpile, blacklist and discriminate among employees, use yellow-dog contracts, and hire scabs (strike-breakers) and private police to protect their private property interests.¹³⁶ Stuart Jamieson points out that not only were retaliatory or offensive manouvers by employers possible while labour had been immobilized, but that the Canadian state did not place any obligation on employers to recognize or bargain with unions.¹³⁷ A.W.R.Carrothers refers to these tactics as "...actions calculated to discourage employees from organizing."¹³⁸ Not only was there an uneven 'labour relations' playing field, but as well, employers used lawsuits against labour leaders, and injunctions to prevent picketing in other instances.¹³⁹

Ben Selekman, an American scholar studying the *I.D.I.A.* for its suitability as a model for U.S. labour legislation, traced out the decline of the law. In 1925, the Judicial Committee of the Privy Council (J.C.P.C.), then the highest court, ruled the

135 See also Jeremy Webber, "Compelling Compromise: Canada chooses Conciliation over Arbitration 1900-1907" (1991) 28 *Labour/Le Travail* 15, but especially 39-40; Paul Craven, *"An Impartial Umpire": Industrial Relations and the Canadian State, 1900-1911* (Toronto: University of Toronto Press, 1980); and Bob Russell, "State Constructed Industrial Relations and the Social Reproduction of Production: the Case of the Canadian I.D.I.A." (1987) 24:2 *Canadian Review of Sociology and Anthropology* 213. Also Russell, *Back To Work? Labour, State and Industrial Relations in Canada* (Scarborough: Nelson, Canada, 1990).

136 Morton with Copp, *Working People* 89.

137 Stuart Marshall Jamieson, *Times of Trouble: Labour Unrest and Industrial Conflict in Canada, 1900-66* (Ottawa: Information Canada, 1971) 70.

138 A.W.R.Carrothers, *Collective Bargaining in Canada* (Toronto: Butterworths, 1965) 38.

139 Morton with Copp, *Working People* 114.

*I.D.I.A. ultra vires*¹⁴⁰ because it

"...infringed on the powers exclusively conferred upon provincial parliaments by Section 92 of the British North America Act, to deal with municipal institutions and matters pertaining to property and civil rights."¹⁴¹

Although the J.C.P.C. overturned the *I.D.I.A.* in January, by June, the legislation was amended¹⁴² to re-establish the act by delineating its application to the industries in which the federal government had jurisdiction.¹⁴³ Although the legislation was intended to have compulsory provisions, the administration of the act has been conciliatory.¹⁴⁴ The legislation was further amended to authorize any province to declare an industrial dispute to be subject to the *I.D.I.A.*, notwithstanding that the industry in question might fall into the purview of a provincial jurisdiction.¹⁴⁵ Provinces followed suit by enacting their own legislation to agree with the amended *I.D.I.A.* Ontario¹⁴⁶ did not enact such legislation until 1932. But the defects of the *I.D.I.A.* were such that it failed to stop or end strikes in industries that depended

140 Selekman, *Postponing Strikes* 273. The case was *Toronto Electric Commissioners v. Snider et al.*

141 Selekman, *Postponing Strikes* 27.

142 Selekman, *Postponing Strikes* 56-7. This became law June 12, 1925- "...the act includes any dispute not within the exclusive jurisdiction of any provincial parliament; and disputes which the Governor-General may because of a real or apprehended emergency, declare to be subject to the act."

143 Selekman, *Postponing Strikes* 44.

144 Selekman, *Postponing Strikes* 315.

145 Selekman, *Postponing Strikes* 57; Carrothers, *Collective Bargaining Law in Canada* 41.

146 Carrothers, *Collective Bargaining Law in Canada* 41 "... To this, exceptions were made; the Act was to have application in national emergency and where a province should make the Act applicable to provincial jurisdiction. Ontario, 1932, c.20 (repealing the *Trade Disputes Act* of 1894).

heavily on favourable economic conditions.¹⁴⁷

Ontario's Labour Relations Regime

By the 1930s, Ontario was heavily industrialized and its government was subjected to lobbying from both labour and capital. The ideology of liberal capitalism and individualism pervaded this exchange and the provincial government adopted a position that by maintaining a voluntaristic approach to industrial disputes that the state was occupying a neutral position. In 1927, the Ontario government set up a department to administer various pieces of legislation relating to industry and to act as an investigative body to report on industrial conditions.¹⁴⁸ While it appears to be mainly an advisory body set up to collect data on industry, its recommendations may have been given some consideration.

"In Ontario, the provincial government tried to help industries establish codes of wages and conditions so that generous or humanitarian employers would not be victimized by ruthless competitors."¹⁴⁹

Unfortunately, provincial compassion for employers did not extend equally to Ontario's workers.

In 1935, Mitchell Hepburn's Liberal government in attempting to control labour disputes in the logging industry, created the *Industrial Standards Act*.¹⁵⁰ Under this

147 Selekman, *Postponing Strikes* 330.

148 *The Department of Labour Act* S.O. 1927, c.27, s.4 set out the administration of various acts such as *The Stationary and Hoisting Engineers Act*; *The Building Trades Protection Act*; *The Factory, Shop and Office Building Act*; *The Steam Boilers Act*; and *The Employment Agencies Act*.

149 Morton with Copp, *Working People* 158.

150 Ian Radforth, "Logging Pulpwood in Northern Ontario," in *On the Job* 256. The Hepburn government introduced the *Industrial Standards Act (I.S.A.)* S.O. 1935, c.28 on April 18, 1935.

legislation, the Minister of Labour brought employer and employee representatives together to negotiate wage schedules for the industry in their region. If the Minister thought that these petitioners were representative of the industry and if agreement on wage rates resulted, then these minimum rates could be declared binding for all the industry's workers for a one-year period. As Desmond Morton and Terry Copp have noted, however, the codes, decrees, and standards were virtually meaningless without powerful worker representation. Employers were not known to be overly generous and legal enforcement was almost impossible. The *I.S.A.* was concerned with creating some stability in the industrial wage and was legislated primarily with the benefit of the employer in mind.¹⁵¹ Workers could have benefitted from the uniform wage schedules. However, employers could use any increase in wage rates as a reason to lay off workers. As a result, unorganized workers might not have demanded that they receive the industry wage.

Ontario Deputy Minister of Labour James F. Marsh testified before the *Turgeon Commission* about the *I.S.A.* He stated the *I.S.A.*'s purpose to be for

"...stabilizing labour costs in industry. .. In other words, it is a voluntary piece of legislation. The industry may have it if they want it and if they don't desire it they don't need to take advantage of it."¹⁵²

Under the legislation, either employers or employees or both petitioned the Minister for a conference to enquire into the conditions of the industry and to negotiate a wage schedule covering wages and hours of labour. Unofficial preliminary conferences were

151 R.G.33/20 *Royal Commission on the Textile Industry*, vol.XIV 8859-93.

152 R.G.33/20, vol.XIV 8862.

held to determine if the parties are representative. If the department believed that the disputing parties were representative of the industry, it advertised (in Ontario newspapers) that a forthcoming conference covering the industry would be held and sent copies of this advertisement to both disputing parties.

Once the official conference was convened, the employers and employees can agree upon a schedule of wages and hours which may then be published in the *Ontario Gazette*. Voluntary compliance with the schedules was not supervised by the government. If there was no agreement, then the matter dropped. The Minister of Labour retained the ability to determine what constituted a zone for the purpose of determining where an industry wage schedule will apply. The provincial boundaries would constitute a zone for the textile industry and if one factory did not want to participate- the conference would be dropped.

An advisory committee of three employers and two employees, would work along with the *Minimum Wage* board officials to administer and enforce the terms of the schedule. Under the *I.S.A.*, the *Minimum Wage* board is the administrative body and if the employer violates a schedule, employees can lay a complaint in police court. Under section 15(1) of the *I.S.A.*, if the employer violated an established schedule, the first offence resulted in a fine of not less than \$25 but not more than \$100. If this fine was not paid, the employer could be imprisoned for a period not to exceed two months. A second offence meant increased fines and unpaid fines carried lengthier prison

terms.¹⁵³ Marsh admitted to the *Turgeon Commission* that cases under the Act had already been lost. Employers had challenged the wage rate schedules that had been established for their respective industry, arguing that the province had no right to intervene in their business. The courts apparently sided with the disgruntled employers. The first schedules were good for one year and then required renewal by petition. Of 85 industries covered, only 43 were operating under the Act, (as of October 1936), as the department had not had time to get to them.

In 1937, *The Department of Labour Act*,¹⁵⁴ amended the 1927 legislation to include responsibility for the administration of various statutes, including the *Industrial Standards Act*. The department's main function remained the collection of data on various industries, examining changes in law and helping to establish wage schedules on an industry basis. It continued to play an advisory role in a voluntarist and conciliatory labour relations framework. Thus, in major provincial industrial disputes, conciliation officers were sent out under the *I.S.A.* as administered by the department.

It was not until 1943 that Ontario legislation was enacted which compelled employers to accept collective bargaining became legitimate. However, its enforcement was through the Ontario Labour Court, rather than an administrative board.¹⁵⁵ In 1944, the federal government enacted an Order-in-Council P.C.1003, which essentially guaranteed labour's right to organize making collective bargaining compulsory,

¹⁵³ The second offence meant a fine of \$50-\$500 and a prison term not to exceed six months if this fine went unpaid.

¹⁵⁴ 1937, c.69.

¹⁵⁵ Arthurs *et al.* *Labour Law and Industrial Relations in Canada* 46.

once an union was able to establish that it enjoyed the majority support of the workers.¹⁵⁶ As Judy Fudge concluded, P.C.1003 incorporated the basic features of the U.S. *Wagner Act*.¹⁵⁷ However, unlike the *Wagner Act*, P.C.1003 prohibited strikes during a collective agreement.¹⁵⁸ Employers were compelled to bargain with certified representatives and to abstain from interfering in organizing attempts. While it took a while, collective bargaining was grudgingly accepted by most employers. However, the progressive changes in the labour relations legislation do not tell the full story. Other legislation had an impact on labour's ability to negotiate the conditions of the workplace and more directly affected the outcome of strikes. The legislation which relates to picketing is of particular interest for the two case studies.

Legislation Relating to Picketing

Picketing encompasses a wide range of behaviour that has resulted in a variety of legal responses. While picketing itself has not been legally defined, the ambiguous term 'watching and besetting' has been employed in the *Criminal Code*.¹⁵⁹ Various forms of picketing exist but the function of picketing is consistently uniform in its goal to publicly pressure an employer; to advertise an industrial dispute to other workers

156 Morden Lazarus, *Years of Hard Labour* (Don Mills: Co-operative Press Associates, 1974) 55.

157 Fudge, "Voluntarism, Compulsion and the "Transformation" of Canadian Labour Law during World War II" 81.

158 Leo Panitch and Donald Swartz, *The Assault on Trade Union Freedoms: From Consent to Coercion Revisited* (Toronto: Garamond Press, 1988) 21.

159 I.M. Christie, *The Liability of Strikers in the Law of Tort: A Comparative Study of the Law in England and Canada* (Kingston: Industrial Relations Centre, Queen's University, 1967) 18.

and customers; and to invoke union solidarity.¹⁶⁰ In 1870, the definition of the permissible limits of picketing excluded 'watching and besetting' and outlawed violent and coercive conduct. Peaceful communication for the purpose of merely informing was permitted. However, when Canada consolidated¹⁶¹ its *Criminal Code* in 1892, the 'peaceful picketing' clause was overlooked and was not restored¹⁶² until 1934. Until the restoration of this clause, Arthurs and others report that the courts "...tended to deal severely with all forms of picketing, no matter how innocuous."¹⁶³

When 'peaceful picketing' was explicitly permitted after 1934, the common-law response was to creatively apply civil law through torts such as conspiracy, breach of contract, defamation, and trespass. A.W.R. Carrothers categorizes these torts by three areas: the form, the object and the result of the picketing. The form of picketing torts include "assault, battery, trespass, defamation, intimidation, and nuisance." The object of picketing includes:"the conspiracy to injure and to do acts in breach of a statute which may or may not, apart from conspiracy, and finally give rise to a civil action." The result of the picketing could give rise to the tort of inducing breach of contract.¹⁶⁴ The complexities of tort litigation involving picketing are too lengthy to discuss here.

160 Arthurs *et al*, *Labour Law and Industrial Relations in Canada* 37.

161 Finkelman, "The Law of Picketing in Canada" 84, S.C. 1892, c.29, s.523 which became s.501.

162 Arthurs *et al*, *Labour Law and Industrial Relations in Canada* 41; Laskin, "Labour Law, 1923-1947" 289; Finkelman, "The Law of Picketing in Canada" 84.

163 Arthurs *et al*, *Labour Law and Industrial Relations in Canada* 41.

164 A.W.R.Carrothers, *A Study of The Operation of the Injunction in Labour-Management Disputes in British Columbia, 1946-1955* (Don Mills: C.C.H. Canadian Limited, 1956) 26-27.

There were a number of other criminal code provisions besides the 'spreading false news' section which could affect the labour movement and strikers. Despite the repeal of the criminal conspiracy charge, the authorities could use section 98 of the *Criminal Code* to imprison labour radicals for being members of an "unlawful association".¹⁶⁵ This legislation was in effect until 1936 when the King government repealed it.¹⁶⁶ As well, sections of the *Immigration Act* drafted during the Winnipeg General Strike¹⁶⁷, allowed the authorities to speedily deport foreign labour radicals, "...with very little background information."¹⁶⁸ Ontario Premier Mitchell Hepburn had attempted to use provisions of the *Immigration Act* to remove U.A.W. organizer Hugh Thompson from the Oshawa strike in 1937 but was unable to do so. These deportation measures were amended in 1936 but there remained formidable *Criminal Code* provisions to regulate the labour movement, of particular interest to the Courtaulds and Dominion Woollens strikes, is section 501.

165 Donald Avery, *"Dangerous Foreigners": European Immigrant Workers and Labour Radicalism in Canada 1896-1932* (Toronto: McClelland and Stewart Limited, 1988) 138.

166 Avery, *"Dangerous Foreigners"* 141. The Mackenzie King government got in, in 1935 and repealed both sections 98 of the *Criminal Code* and section 41 of the *Immigration Act*, 1936 c.29, s.1.

167 David Jay Bercuson, *Confrontation at Winnipeg: Labour, Industrial Relations and the General Strike* (Montreal: McGill-Queen's University Press, 1980) 163. On June 6, 1919, section 41 "An Act to Amend the *Immigration Act*" was given three readings in the House, three readings in the Senate and the approval of the governor-general in just 45 minutes. This gave the government the "...power to deport any person who "by word or act" sought the violent overthrow of constituted authority in Canada... any person deemed a revolutionary who was born outside of Canada, whether a British subject or naturalized Canadian, could now be summarily shipped back to the land of his birth." See also, Martin Robin, *Radical Politics and Canadian Labour* (Kingston: Industrial Relations Centre, Queen's University, 1968) 181.

168 Avery, *"Dangerous Foreigners"* 136. Sections 40 and 41 of *The Immigration Act* permitted the deportation of foreigners (A.L. Jolliffe, superintendent of Immigration).

Criminal Code Section 501

Criminal charges laid during the two strikes involved sec. 501(f), the 'watching and besetting' clause. This section which included 'intimidation' was commonly understood to be applicable to picketing. The original legislation¹⁶⁹ in 1876 permitted the communication of information during a strike, but this clause disappeared when Canada consolidated its *Criminal Code* in 1892. Some theorists argue that the absence of the clause made no difference.¹⁷⁰ 'Intimidation' is and was an ambiguous term. However I.M.Christie directed his criticism towards the 'watching and besetting' clause saying that an expression without "...a clear meaning ought not to be invoked as expressing an injunctive restraint."¹⁷¹ If the meaning of the sections eluded the judges, it was difficult to ascertain the logic of enjoining strikers from picketing peacefully. The pertinent clauses of the legislation read as follows:

Section 501:

(f) besets or watches the house or other place where such other person resides or works, or carries on business or happens to be; or

169 Bora Laskin, "Labour Law: 1923-1947"(1948) 26 *The Canadian Bar Review* 289. Section 501 originated in 1876 (Can) c.37, s.1.

170 Jonathan Eaton, "Is Picketing A Crime?" (1992) 47:1 *Relations Industrielles/Industrial Relations* 104. "However, in *R.v. Burns* (1903), 2 O.W.R. 1115 (Co.Ct.) it was held that the absence of the clause did not make the Canadian law different from that of England."

171 I.M.Christie, *The Liability of Strikers in the Law of Tort: A Comparative Study of the Law in England and Canada* (Kingston: Industrial Relations Centre, Queen's University, 1967) 204.

The saving clause sec.501(g) was added or made explicit in 1934.

(g) attending at or near or approaching to such house or other place as aforesaid, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.¹⁷²

Judicial confusion over the meaning and applicability of section 501(g) caused M.P. MacNeil¹⁷³ (Vancouver North) in 1939, to suggest that it be repealed and added as a subsection 2. This, he said would make it "...more clearly a proviso in proper relation to the whole section." As well, MacNeil proposed reworking the sub-section to explicitly include the term 'peaceful picketing' and the phrase 'to direct attention of others to grievances.' as expressing the right in clearer language.

Jonathan Eaton, while debating the legality of picketing, commented that the *Criminal Code* was a 'powerful tool' with which to discipline excessive behaviour on

172 The *Criminal Code* R.S.C. 1927, c.36, as amended by 1934, c.47, s.12.; the full legislation reads: Every one is guilty of an offence punishable, at the option of the accused, on indictment or on summary conviction before two justices and liable on conviction to a fine not exceeding one hundred dollars, or up to three months' imprisonment with or without hard labour, who, wrongfully and without legal authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain,

(a) uses violence to such other person, or his wife or children, or injures his property; or
(b) intimidates such other person, or his wife or children, by threats of using violence to him, her or any of them, or of injuring his property; or (c) persistently follows such other person about from place to place; or

(d) hides any tools, clothes or other property owned or used by such other person, or deprives him of , or hinders him in, the use thereof; or

(e) with one or more other persons, follows such other person, in a disorderly manner, in or through any street or road; or

(f) besets or watches the house or other place where such other person resides or works, or carries on business or happens to be; or

(g) attending at or near or approaching to such house or other place as aforesaid, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

173 *Dominion of Canada, Official Report of Debates House of Commons Fourth Session-Eighteenth Parliament, 3 George VI, 1939, Vol.IV 1939 (Ottawa:J.O.Patenaude, 1939) 3789; Mr.C.G. Mac Neil (Vancouver North).*

the picket line.¹⁷⁴ While Eaton concludes the picketing should not be a crime, he provides the four conditions that the Crown must prove beyond a reasonable doubt. The actions taken by the picketer must be proved to be done: "a) wrongfully and without lawful authority; b) for the purpose of compelling...;c) beset or watched; and d) not for the purpose only of obtaining or communicating information."¹⁷⁵ But as Susan Tacon concluded, 'peaceful picketing' presented the courts with a problem. If the enjoyment of private property was 'substantially and unreasonably interfered with', picketing constituted a legal nuisance.¹⁷⁶ Jacob Finkelman was critical of this 'legal nuisance' argument because harsher standards were applied to picketing cases because of the economic interests involved.¹⁷⁷ Furthermore, Finkelman deplored the idea that the state of mind of the wrongdoer could convert an otherwise lawful act into a nuisance. For example, the intent to persuade someone is not generally illegal; a 'legal nuisance' argument would make intending to persuade illegal in picketing cases.

The leading criminal case on section 501 of the *Criminal Code* is generally considered to be *Reners v. The King*¹⁷⁸. This was a labour dispute by the United Mineworkers at Drumheller over a rates roll-back.¹⁷⁹ This case was decided in 1926,

174 Jonathan B.Eaton, "Is Picketing A Crime?" (1992) 47:1 *Relations Industrielles/Industrial Relations* 101.

175 Eaton, "Is Picketing A Crime?" 103.

176 Susan A.Tacon, *Tort Liability in a Collective Bargaining Regime* (Toronto: Butterworths, 1980) 16.

177 Jacob Finkelman, "The Law of Picketing in Canada: I & II" (1937-8) 67 *The University of Toronto Law Journal* 98.

178 [1926] S.C.R. 499.

179 Carrothers, *Collective Bargaining in Canada* 425.

before the re-enactment of the 'peaceful picketing' clause. Two British tort cases have been used as precedent for the treatment of 'peaceful picketing' cases. The first case *Lyons & Sons v. Wilkins*¹⁸⁰ holds that "...wrongfully and without legal authority adds nothing to the section." Picketing is illegal if persuasion (however peaceful) was the object and only communication of information was permitted. However, in *Ward, Lock & Co. v. Operative Printers' Assistants' Society*¹⁸¹, peaceful persuasion is not unlawful unless accompanied by another tortious or criminal act. Judicial interpretation of these two cases has had varied impact on Canadian picketing cases but some scholars wonder why two civil cases would be considered authoritative for a criminal matter.¹⁸² Some explanation may come from the origin of the wording of the section 501 legislation. The phrase, 'wrongfully and without legal authority' comes from the *Conspiracy and Protection of Property Act*.¹⁸³ Because of the similar wording, judges may have decided that civil cases under this legislation might inform criminal proceedings under section 501. A less charitable explanation might be that Canadian judges have 'a habit of adherence to English authorities.'¹⁸⁴

Bora Laskin, commenting on the Canadian picketing cases, referred to them as a

180 [1896] 1 Ch. 811 (C.A.); and [1899] 1 Ch.255 (C.A.).

181 (1906) 22 *T.L.R.* 327 (C.A.)

182 Finkelman commenting on the decision of C.J.A. Harvey of the supreme court of Alberta, (appellate level) in *Reners*.

183 1875 (U.K.) 38-39 *Victoria*, c.86, section 7.

184 Bora Laskin, "Labour Law: 1923-1947"(1948) 26 *The Canadian Bar Review* 297. As the original wording was derived from a piece of British imperial legislation.

'veritable wonderland of confusion on picketing'.¹⁸⁵ This confusion is not lessened by the fact that in both strikes, charges were laid under section 501. The problem for both case studies is that the 1934 clause which permitted 'peaceful picketing', was present. A.W.R. Carrothers¹⁸⁶ claims that the absence of the 1934 clause "...supported the decision in *Reners v. The King*." Others are less certain of the necessity of the explicit addition of the so-called 'peaceful picketing' clause, sec.501(g). I.M. Christie suggests that since 1934 "... coincidentally perhaps, there have been no significant criminal cases on the picketing section."¹⁸⁷ Laskin concurs that there have been "...none reported since 1934."¹⁸⁸ This apparent change can be understood by looking at other legal tactics available. Susan A. Tacon explains that while criminal prosecutions virtually disappeared; tort actions rapidly increased.¹⁸⁹

Another possibility is suggested by Marc Zwelling:

"Most of the charges laid during strikes are dismissed, usually for lack of evidence and as often because the strikebreakers or the police who lay them do not show up when the striker appears in court. The defendant loses a day's pay."¹⁹⁰

This was to be the case for many defendants in the Cornwall and Peterborough strikes. Charges were withdrawn and as well, suspended sentences were given out when

185 Laskin, "Labour Law: 1923-1947" 294.

186 Carrothers, *Collective Bargaining Law in Canada* 426.

187 Christie, *The Liability of Strikers in The Law of Tort* 41.

188 Laskin, "Labour Law 1923-1947" 289. Finkelman, "The Law of Picketing" 290.

189 Susan Tacon, *Tort Liability in a Collective Bargaining Regime* (Toronto: Butterworths, 1980) 17.

190 Marc Zwelling, *The Strikebreakers, The Report of the Strikebreaking Committee of the Ontario Federation of Labour and the Labour Council of Metropolitan Toronto* (Toronto: New Press, 1972) 104.

strikers were convicted. While both strikes involved the laying of charges under section 501, these charges were either proceeded upon summarily with suspended sentences and court costs imposed or the charges were withdrawn. Either way, the full force of the section was not invoked and thus no significant cases were reported since 1934. These cases were neither significant in a formal legal sense nor were they likely to have been reported in formal legal materials.

Conclusion

Once the *I.D.I.A.* was overturned by the J.C.P.C. in 1925, Ontario waited until 1932 to enact legislation which would allow the province to make it applicable to provincial jurisdictions. Even so, the *I.D.I.A.* was a piece of voluntary legislation which did not compel employers to deal with unions and did not protect the formative stage of unionization. In 1935, Mitchell Hepburn introduced the *Industrial Standards Act* which set up a voluntarist framework to negotiate wages and working conditions on an industry basis. This legislation did not apply to all workplaces but only to certain specific sizes of employers, and to various specified employers with the combined agreement of both employers and employees. When the *Department of Labour Act* was amended in 1937, the *Industrial Standards Act* became part of its mandate. The *I.S.A.* suffered from similar defects as the *I.D.I.A.*; it was voluntaristic; had no effective enforcement mechanism¹⁹¹; and was designed primarily to "...stabilize labour costs in industry."

191 While workers could file a complaint in court, there were insufficient provincial resources to follow up on it.

While the *I.S.A.* and the *I.D.I.A.* both provided voluntarist dispute resolution mechanisms, workers resisted their use. They preferred to take their chances on the picket line. Where the federal and provincial authorities failed to ensnare the striker, the municipal official acted directly using sec.501 as a means of temporarily imprisoning labour radicals. Though 'peaceful picketing' had been legalized in 1934, local magistrates were 'liberal' in their interpretation of sec.501(f). A 'watching and besetting' charge was an useful means of removing active picketers during a strike. This was evident in both case studies which follow in Chapters Three and Four. Workers resisted their employers and the authorities through their struggles to unionize and to obtain the statutory minimums available through wage and other legislation.

CHAPTER THREE: COURTAULDS, CORNWALL (1936)

Introduction

The Courtaulds (Canada) Ltd. strike in Cornwall, lasted from August 11 to September 10, 1936 and involved 1753 workers, almost one-half of whom were female. Union recognition was a key issue, along with demands for pay raises and improved working conditions. Due to Courtaulds' sheltered tariff position, questions were raised during the Turgeon Commission investigation as to Courtaulds' responsibility to Canadian workers. The strike events demonstrate the failure of the *Industrial Standards Act* and involve the repressive use of sec.501 of the *Criminal Code*. However, the strike also created hope for the securing of workers' rights through the potential of collective bargaining. The emergent union used minimalist legal protection, such as minimum wage regulation and factory legislation and sought to further extend its legal protection.

Courtaulds, Cornwall (1936)

The Courtaulds plant in Canada was initially a British-owned viscose rayon company. It was first established in Cornwall in 1924 because of its ideal location close to a water supply, and on a major route to Montreal. Cornwall met all of the major determinants of a rayon location-"...availability of water, and of labour; suitable effluent disposal facilities; and adequate transport services."¹⁹² But these were not enough to ensure the profit margin that Courtaulds expected and consequently received. Even before Courtaulds had settled upon a site in Canada in 1924, company

192 D.C.Coleman, *Courtaulds: An Economic and Social History* (Oxford:Clarendon Press,1969) 196-8.

officials sought tariff protection to shelter the viscose rayon industry and essentially to ensure economic profitability.¹⁹³ The tariff protection initially was 17.5% but increased¹⁹⁴ to 20%. For artificial silk yarn, the general tariff as of May, 1936 was 35% or not less than 28 cents per pound.¹⁹⁵ These tariffs were allegedly supposed to protect Courtaulds against the 'cheap manufacturer'.¹⁹⁶ What they did was to ensure a guaranteed profit margin as Courtaulds priced their product to be slightly less than their competitors. In 1928, Courtaulds incorporated as a Canadian firm but the British company retained everything except five shares or \$1 worth which were held by Henry Johnson, president of the new company.¹⁹⁷

Courtaulds held the patent on the viscose rayon process in Canada and technically constituted an industry in and of itself.¹⁹⁸ As a chemically-produced fibre, viscose rayon is an artificial textile. Wood cellulose pulp is dissolved, steeped, undergoes a process known as 'xanthation' which involves the addition of chemicals such as sulphates, filtrated and spun out of spinning jets into cakes which are reeled and then further processed.¹⁹⁹ Problems with frequent breaking of filaments resulted from

193 R.G.33/20, vol.XIX, exhibit 729(9 Sept.1936) 4, Interview with Henry Johnson, President of Courtaulds (Canada) Limited, Ottawa.

194 R.G.33/20, vol.XIX, exhibit 729, 7.

195 *Turgeon Report* 257. This tariff remained unchanged as of February, 1937.

196 R.G.33/20, vol.XIX, exhibit 729, 5.

197 R.G.33/20, vol.XIX, exhibit 729, 7-8.

198 This has implications for any legislation which restricts its application on an *industry-wide* basis, as with the wage schedules set out under the *I.S.A.*

199 Coleman, *Courtaulds: An Economic and Social History* 45.

extensive handling of the cake which had to be washed, bleached, reeled and dried. Streamlined processing minimized the handling of the yarn and eliminated the intermediate step of reeling yarn into hanks before placing it onto cones. This reduced the predominantly female workforce but led to improved yarn quality.²⁰⁰

Rayon's success was due to its potential to replace silk -hence its 'artificial silk' designation. Viscose rayon yarn was mixed with cotton to form linings, furnishing fabrics and other materials but it had prospects to replace silk in the manufacture of 'women's stocking and women's underwear.'²⁰¹ Unfortunately, the artificial silk did not hold up well when wet and while a cheap substitute for silk, it was not a durable product. Present day substitutes show that nylon superseded rayon in both the production of women's stockings and underwear.

Women workers comprised at least half of Courtaulds workforce but were ghettoized in the three main areas of reeling, sorting and processing. The viscose rayon company was subject to the prevailing *Factory* and *Minimum Wage Act* legislation which applied to women workers. Violations of these minimal standards became a rallying point²⁰² for the workers and a reason for provincial investigations. In order to meet production quotas and to earn bonuses, women workers regularly violated statutory limitations²⁰³ restricting work before seven a.m. This was done with the full

200 Coleman, *Courtaulds: An Economic and Social History* 187.

201 Coleman, *Courtaulds: An Economic and Social History* 202.

202 *Daily Standard-Freeholder*(3 Aug.1936) 1. The slogans were "We Demand Enforcement of the Minimum Wage Act For Girls" and "Trade Union Conditions For Our Girls".

203 Under section 29(b), women workers were not to start work before seven a.m. unless a special permit is obtained in writing from the inspector.

knowledge of their employers.

Demands for wage increases as well as improved working conditions, prompted the strike. The average male worker at Courtaulds worked 55 hours with a wage of 45 cents an hour.²⁰⁴ This resulted in a weekly pay of \$24.99. The female Courtaulds workers only worked 45 hours in a week with an average hourly wage of 24.9 cents.²⁰⁵ Their weekly take-home pay was only \$11.23. The strike did not change this wage disparity as male workers negotiated an increase that was twice that of the women's increase. Job-segmentation accounted for some of the disparity but gender was the key factor for the wage discrimination.

Strike Events

The Courtaulds strike was sparked by a wildcat walkout which occurred a week beforehand. When Mamie Lavigne was given more reels than she was able to handle, she complained to her forelady. With no results from these complaints, she shut down the two extra reels. The forelady told her that she had to turn the two reels back on or she was fired. The problem was that Mamie was losing production because of the inferior quality 'thin cakes' of rayon.²⁰⁶ The extra reels meant that Mamie was losing speed and efficiency and therefore, bonus pay opportunity. She refused to turn the reels back on and was informed that she was no longer employed. Consequently, she

204 *Turgeon Report* 304. Table 34, 'Average Hours of Work and Earnings of Textile Workers, Ontario, Feb., 1936'.

205 *Turgeon Report* 304. Table 34, 'Average Hours of Work and Earnings of Textile Workers, Ontario, Feb., 1936'.

206 R.G.33/20, vol.XV 9936. Interview with Arthur Laverty. Thin cakes last 2 hours before the thread breaks, while full cakes would last about 5 and 1/2 hours.

and three other sympathetic women workers sought out Arthur Lavery, the principal organizer of the emergent textile union. They met with company officials on the matter but got nowhere.

Failure to secure the women's reinstatement resulted in a noon-hour walkout by the women workers in the processing section. Through promises to negotiate the suspension of the four women, the company was able to persuade the women to return to work. Although the union had initially intended to openly declare itself within the week when it had secured sufficient membership, this incident forced the unionization drive into the open.²⁰⁷ The company went on the offensive and workers were warned not to speak to each other except on work-related issues.²⁰⁸ The factory workers walked out on August 11, 1936.

Union president, Arthur Lavery issued this statement to the press,

" We decided to go the 'whole hog'.The strike will continue until our union is given full recognition and until the full list of demands presented last Thursday is dealt with. These demands include increases in wages in some departments, a 40-hour week minimum,an increased number of employees in some departments and better working conditions generally."²⁰⁹

Courtaulds refused to recognize the union, preferring to deal with what they called a works council. Company manager, W.J.Kenyon proposed that an union could be formed within the mill without any affiliation with an outside organization. This was

207 R.G.33/20, vol.XV 9937. Arthur Lavery, The union was organized but only had 50 or 60 percent of the employees.

208 R.G.33/20, vol.XV 9945 Arthur Lavery.

209 "Courtaulds Plant Closed by Strike Ordered By Union" *Daily Standard-Freeholder* (12 August 1936) 1.

rejected by the workers who applied for affiliation with the American Federation of Labor.²¹⁰

As viscose rayon processing must be monitored to prevent the hardening of the viscose in the pipes leading to the spinning jets, the company was anxious. Indeed, some supervisors remained in the factory during the strike, probably to help prevent equipment damage. Maintaining control of the plant itself kept the picketers from holding a sit-down strike on the shop floor. Another important consideration were the stockpiles of rayon which the company wanted to ship out. Stockpiles were mentioned in the *Daily Standard-Freeholder*.²¹¹

Legal Intervention- I.D.I.A. and I.S.A.

When the strike first began, two provincial conciliation officers became involved under the provisions of the *Industrial Standards Act*. Louis Fine and O.C. Jennette were sent by the Hepburn administration to negotiate with the workers.²¹²

Unfortunately, the *I.S.A.* was administered by the same officials who were responsible for the *Minimum Wage Act*. Little time and resources were available to settle labour disputes or to ensure that arrangements were carried out as agreed upon. Two days were all that Fine and Jennette could spare. With liquid viscose rayon still in process, the company wanted to move quickly so that it would not harden in the pipes. As part

210 *Daily Standard-Freeholder* (3 Aug. 1936) 1.

211 After the strike ended, work-sharing was in effect and 100 less workers were on the job. This indicates that production was not a main concern.

212 "Labor Department Officials Confer With Union Heads" *Daily Standard-Freeholder* (14 Aug. 1936) 1.

of worker concessions to the employer, one safety man was to be permitted to cross the picketline to work on the pipes. The employer sent three men. This misunderstanding created bad feelings between the conciliation officers and the workers. These bad feelings may have been deliberately orchestrated by the company. After the strike, the company manager, W.J. Kenyon testified before the *Turgeon Commission*, that agreement to one safety man became three safety men or one per shift (no shifts during strike).²¹³ As well, allowing two trucks of rayon to be shipped was changed to two trucks and trailers. This breakdown in trust between the conciliation officers and the workers led to further interventions from the Ontario Department of Labour, but from a higher level-the deputy minister.

Following a clash between picketers and the police on August 18, J.F. Marsh arrived the next day to negotiate terms.²¹⁴ However, as Kenyon described to the Turgeon commission, the company persisted in attempting to ship rayon using police escorts.²¹⁵ This police protection was made available because of customer complaints about the non-delivery of their rayon orders. As well, the important issues such as union recognition and wage increases could not be discussed, (according to company officials), until the British president of the company was present.²¹⁶ This allowed the

213 R.G.33/20, vol.XV (20 Oct.1936) 9923-48, 'Interview with William Johnson Kenyon', "Mr Fine had told us, or we had interpreted it we were allowed one pump man per shift which amounted to three, and to this the union objected and it broke down the relations which Mr.Fine had established overnight."

214 *Daily Standard-Freeholder* (19 Aug. 1936) 1.

215 R.G.33/20, vol.XV 9927.

216 "Negotiations Definitely Off Until Arrival Of President; Peaceful Picketing Continues" *Daily Standard-Freeholder* (21 Aug. 1936) 1.

company to stall until the situation worsened for the economically disadvantaged workers. Strangely enough, Courtaulds did issue a week's pay to workers and did not employ strike-breakers. However, there is a reference to stockpiles of rayon which meant that strike-breakers would have been unnecessary and that re-opening was not a priority. Ultimately, Deputy Labour Minister Marsh was unable to resolve the situation using the provisions under the *I.S.A.*

With the provincial measures exhausted, the Dominion government decided to take its turn in attempting to settle the Courtaulds strike. A federal conciliation officer, M.S.Campbell entered the picture on August 26th. Campbell attempted to convince the strikers and the company to agree to submit their grievances to a tri-partite board consisting of a federally appointed judge, a worker representative and a company representative. This, Campbell claimed, would allow workers to return to work immediately upon the conciliation board's being established. This type of settlement would be available under the *I.D.I.A.* which does not allow a labour dispute to continue until after the conciliation board has rendered its judgement.²¹⁷ Campbell's recommendation that the strikers ask for a conciliation board was turned down in a vote by the workers but not ruled out.²¹⁸ Campbell returned to Ottawa. However, the *Turgeon Commission* cast a heavy shadow and the public eye remained on the

217 M.G.28, I219, vol.96, 'Negotiations', (6 Sept. 1936) 8. Ironically, the company president, Henry Johnson, attempted to argue that the *I.D.I.A.* automatically applied to Courtaulds and that the strike was illegal without thirty days notice. Union organizer Alex Welch corrected him.

218 "Strikers Shelve Proposed Board of Conciliation- Prefer to Proceed with Own Negotiating Committee for Present" *Daily Standard-Freeholder* (26 Aug. 1936) 15.

Courtaulds strike.²¹⁹ With daily reports of the Commission's findings appearing in Ontario newspapers, people were concerned with the 'plight of the sweated textile worker'. Further, the need to legitimate industrial capitalism and the *Turgeon Commission* meant that federal officials would be anxious to maintain industrial peace in the textile industry, including Courtaulds.

Campbell did not give up on his attempts to resolve the strike, even though the legislative frameworks of both the *I.S.A.* and the *I.D.I.A.* had been rejected. Once again, Campbell returned to Cornwall to negotiate, albeit in an informal fashion.²²⁰ Campbell's presence was felt during the discussions held between the workers and Courtaulds officials, prior to the final agreement being made. It is revealing to discover that the company president called upon Campbell to intervene, although the *Daily Standard-Freeholder* did not report this.²²¹ Further in the transcripts, company president Henry Johnson comments that Courtaulds' capital investment in Cornwall was sufficient to ensure that "... there is no question of our flitting."²²² To which Campbell responded, that "There is never anything to be gained by bluffing." This exchange suggests that Johnson was playing upon the concern that Courtaulds would

219 Public hearings were held in Sherbrooke, Three Rivers, Montreal, Quebec City, Montmagny, Louiseville, Valleyfield, Toronto, Dunnville, St.Catharines, Paris, Cornwall and Ottawa. The Turgeon Commission reached Toronto on September 30, 1936. *Turgeon Report* 11; and *Daily Standard-Freeholder*.

220 "Conciliation Officer Trying to Re-Open Negotiations; Strike Situation Unaltered-Campbell." *Daily Standard-Freeholder* (2 Sept. 1936) 1.

221 M.G.28, I219, Amalgamated Clothing and Textile Workers Union, vol.96 'Transcripts of Union Negotiations', (3 Sept. 1936) 27, "You called me in, Mr.President, to break a deadlock, and I have done my best to do it..." M.S.Campbell.

222 M.G.28, I219, vol.96 (2 Sept. 1936) 30.

close up and put hundreds of people out of work in Cornwall. This strategy was initially used by Dominion Textiles in Sherbrooke which had prompted the *Turgeon Royal Commission* in the first place.

Public sentiment was with the strikers on the Courtaulds picketline. Although census figures are not tallied for the precise population in Cornwall in 1936, the ten year span between 1931 and 1941 shows a population growth from eleven to almost fourteen thousand people.²²³ If we estimate the 1936 population to be just over twelve thousand, more than a third of Cornwall's entire population was in attendance at the Courtaulds mill on August 2 after the parade.²²⁴ The parade consisted of 350 girls(sic) and 150 men on foot, and 45 automobiles with close to five thousand of Cornwall's general population watching.

The social zone of toleration for the Courtaulds strike was high as Ontario's premier Mitchell Hepburn was still pro-labour in his outlook at this time. The *Turgeon Commission* was in its heyday, giving federal support to the peaceful settlement of the strike. As well, C.I.O. organizer Alex Welch lent his expertise to the cause. The general political economy was favorable for the Courtaulds picketers.

While federal and provincial officials responded to the strike by attempting to use the *I.S.A.* and the *I.D.I.A.*, municipal authorities had other means at their disposal. The measures that they employed were direct and had an impact on the strike and the workers's attempts to unionize. Although, 'peaceful picketing' had been 'explicitly'

223 Dominion Bureau of Statistics, *The Canada Year Book 1942*, (Ottawa: Edmond Cloutier, 1942).

224 *Daily Standard-Freeholder* (3 August 1936).

made legal since 1934, Cornwall officials had other ideas about picketing.

Picketing and Section 501

On August 12, the second day of the strike, local and provincial authorities began to intervene to protect non-striking workers who tried to enter the plant. Six provincial police were on duty as well as the local police force. Albert Depratto who attempted to prevent a man from entering the factory by pushing and shoving him down, was arrested. He was fined court costs, given a suspended sentence of two months and barred from participating further in the strike. Magistrate Percy C. Bergeron had this to say to Depratto,

"This is the way riots start, and we don't want to have any riots here. It is not necessary that anyone be killed, and if such events as these are left unpunished we will have trouble."²²⁵

This event foreshadowed the main strike confrontation on August 18 which was sparked by a company decision to move a rayon shipment out. An unusually large group of local and provincial police forces was in attendance to assist in the attempt. Strikers organized what they called the 'big push' which essentially immobilized the police forces, pinning them up against the fence. Both male and female strikers were involved in the conflict, even though at one point, a strike organizer advised the women to leave the area. Six people were injured. Sixteen men were arrested under section 501 of the *Criminal Code* at the Courtaulds picketline.²²⁶ Union organizer, Frank Love was also arrested later that day (August 18) for making a comment on

²²⁵ *Daily Standard-Freeholder* (12 Aug. 1936) 8.

²²⁶ "Sixteen Arrested in Brief Scuffle At Gate of Mill" *Daily Standard-Freeholder* (19 Aug. 1936) 1.

August 14 that promoted 'airtight picketing'. Throughout the strike, there had been scuffles on the picketline over attempts to ship out rayon and arrests were made haphazardly. None of the other arrests were made on such flimsy grounds as Love's and the particular timing of his arrest drew public attention.

Municipal officials treated the arrest of Frank Love differently than the other strikers, although the charge was the same.²²⁷ This was probably due to the fact that Love was not a Courtaulds employee and had Communist connections.²²⁸ Love was arrested by the Chief of Police, Fred Seymour, and Magistrate Percy C. Bergeron charged him on August 18 under section 501(f) that:

"on or about Aug.14, (he) unlawfully beset or watch the premises or factory known as Courtaulds"²²⁹

Love chose a trial by judge and jury. Crown J.G. Harkness opposed bail because he said that the accused had made a statement to the press that he would continue his activities. Love was held in jail for a week before bail was posted.²³⁰

All of the seventeen men arrested were charged under section 501(f), which Cornwall officials had interpreted to cover illegal picketing and intimidation. With the repeal of section 98, the picketers could not be charged with being members of 'an unlawful association'. The judge pointed out that strikers had no right to obstruct

227 "Arrest Union Organizer; Is Held Without Bail" *Daily Standard-Freeholder* (19 Aug. 1936) 1.

228 Elinor Kyte Senior, *From Royal Township to Industrial City: Cornwall 1784-1984* (Belleville: Mika Publishing Company, 1983) 394. Love was employed at Gallinger's Electric Shop on Pitt Street but was fired, possibly because of his unionization efforts at Courtaulds.

229 *Daily Standard-Freeholder* (19 Aug. 1936) 1.

230 "Bail fixed at \$4000 and Love is released." *Daily Standard-Freeholder* (28 Aug. 1936) 2. Love is held from Aug.19-26.

passage and gave those pleading guilty, a suspended sentence of two months and charged them court costs. Magistrate Bergeron said that he hoped that the court appearance would serve as a warning to others. Those pleading guilty were: Morris Leger, Romeo Hamel, William Larin, Fred Eamer, Herman J. Kirkey and Felix Leroux. Elgin Seguin elected summary trial, and his case was adjourned for one week. The charge against Bruce Lefevre was withdrawn. Those men selecting trial by judge and jury were: Arthur Thibault, Hugh Wylie, Ernest Smy, John S. Logan, Aldege Cleroux, William Berry, Mose Beauchemin and Armand Bard. The bail was set at \$50 or a \$300 property bond, considerably less than Love's bail. A further incident on the Courtauld's picket line resulted in two charges being laid against Clifford Josephson.²³¹

Cornwall residents supported the strike and were very interested in the picketing cases. The day that the cases went to trial, the courtroom was packed inside and out. When an outside spectator (a woman) was forced through a window, the blinds had to be pulled down and the lights turned on.²³² Crown J.G. Harkness suggested that the trials be changed to summary trials and be tried together. As well, Harkness asked for an amendment to the informations sworn. Counsel for the accused, J.L. Cohen, objected to this but the magistrate proceeded anyway. Nine men were found guilty of illegal picketing and given 2 months suspended sentence and court costs of \$3.25 or 5 days in

231 "Suspended Jail Term Imposed in Strike Case" *Daily Standard-Freeholder* (26 Aug. 1936) 2. Clifford Josephson was charged with resisting arrest and illegal picketing. He was given a 2 month suspended sentence and fined court costs of \$9.70.

232 *Daily Standard-Freeholder* (28 Aug. 1936) 1. Turning on the electric lights in the courtroom was apparently unheard of, unless it was in winter.

jail.²³³

No decision was made in the Love case and it was deferred until the following Monday.²³⁴ Twelve more charges were laid against Courtaulds workers when the company and 65 provincial police officers attempted to move rayon shipments out of the plant.²³⁵ The charges were for obstructing police and for 'watching and besetting' under section 501(f). Love was found guilty on Monday and given court costs of \$4.25 and a 2 month suspended sentence.²³⁶ Inspector E.T. Doyle and Sergeant R.P. Labelle of the provincial police, were the only witnesses in the case, and testified that they heard Love tell pickets at the gate of Courtaulds(Canada) Ltd. plant on Aug.14 to "allow no one to enter and let nothing out."²³⁷

The Cornwall justice was explicit in his sentencing:

"I don't know what it is that makes me sympathize with the working classes," the magistrate commented, "but I have no respect for those who break the law. You (addressing Love) have been one of the organizers of this strike and appear to have a great deal of influence. It appears to me that the strike is to be settled. Far be it from me to make things more serious."²³⁸

By September 9, the Courtaulds strike had been resolved and production had

233 *Daily Standard-Freeholder* (28 Aug. 1936) 2.

234 "Decision In Love Case To Be Given Out On Monday" *Daily Standard-Freeholder* (28 Aug. 1936) 1.

235 *Daily Standard-Freeholder* (28 Aug.1936) 1. These picketers were unnamed.

236 "Love Convicted of Intimidation in Court Monday" *Daily Standard-Freeholder* (31 Aug. 1936) 8.

237 *Daily Standard-Freeholder* (31 Aug. 1936) 8.

238 *Daily Standard-Freeholder* (28 Aug. 1936) 2.

begun.²³⁹ Not guilty pleas were entered in the final picketing cases.²⁴⁰ On September 18, all 'illegal picketing' charges were withdrawn.²⁴¹

Even though 'peaceful picketing' was legal in Canada during this timeframe, municipal officials used section 501(f) to temporarily imprison labour activists. As it was no longer possible to summarily deport British-born labour radicals, a 'watching and besetting' charge was laid. This was direct intervention into the strike and had implications for the regulation of picketers. A broad interpretation of section 501 by municipal authorities meant that workers just being on the picketline would be a sufficient cause for arrest. When the main labour organizers are imprisoned, this creates an atmosphere of fear and confusion. Even when the organizer is given a suspended sentence and court costs, the effective result is the removal of a crucial figure during a key time of the strike. However, public support was behind the strike and authorities had to act cautiously. Suspended sentences and court costs were given to those declared guilty. Possible fear of 'jury nullification' meant that none of the cases went before a panel of jurors.

Strike Aftermath

The strike was initially settled on Friday, September 4, 1936.²⁴² An agreement

239 "Three Committed to Higher Court Assault Charges-Production Begins" *Daily Standard-Freeholder* (9 Sept. 1936) 8.

240 "Not Guilty Pleas Will Be Entered in Strike Cases" *Daily Standard-Freeholder* (11 Sept. 1936) 1.

241 "Charges Withdrawn in Eleven Strike Cases" *Daily Standard-Freeholder* (18 Sept. 1936) 1. The Crown withdraws all charges of intimidation but 3 are still held for assaulting provincial police officers.

242 "Courtaulds' Strike Settled Today-Understanding Reached Yesterday on Wages and Working Conditions-Mill Re-opens Tomorrow Morning" *Daily Standard-Freeholder* (4 Sept. 1936) 1.

was signed between a committee representing the workers and Courtaulds management on September 5, stipulating that there be no union.²⁴³ One of the provincial police officers was a witness to the agreement.²⁴⁴ The strike officially ended on September 10, 1936.²⁴⁵ The workers went from being members of the Rayon Workers Industrial Union to a local of the United Textile Workers of America to no union.²⁴⁶ As the first union was a Communist-linked local of what was potentially a general industrial organizing of all Cornwall, there were official concerns. The Courtaulds workers would wait a year before they were to get their union²⁴⁷, the United Textiles Workers (Rayon Section) Federal Local No.3.

The aftermath of the strike brought many changes. Company manager, W.J.Kenyon estimated the cost²⁴⁸ of the strike to the company to be close to \$45,000. There is no account of the toll that the strike had on Courtaulds' workers. However, wage increases were put in place. Adult male workers received an increase of 2 cents an hour while female workers and juvenile male workers received an increase of 1 cent.²⁴⁹ There was an internal investigation of the bonus pay/production

243 "Production Begins in Courtaulds Mill; Agreement Signed" *Daily Standard-Freeholder* (9 Sept. 1936) 1.

244 R.G.33/20, vol.XIX, exhibit 729, 18.

245 M.G.28,I.219, vol.96 (11 Sept. 1936) "Final Agreement Between Workers and Courtaulds".

246 R.G.33/20, vol.XV 9925-28, W.J.Kenyon.

247 M.G.28, I.219, vol.96 'Negotiations-Minutes of Meeting' (9 Sept. 1937).

248 R.G.33/20, vol.XV 9933.

249 M.G.28, I.219 (5 Sept.1936) 'Agreement made with Courtaulds (Canada) Limited of the township of Cornwall-and the employees of Courtaulds (Canada) Limited, acting through their Workers' Committee.'

quota system. This resulted in the hours of work being amended so that women workers were not working illegally before 7:00 a.m.²⁵⁰ Also, the women had been working eight and a half hours and being paid for seven and a half hours, production being based upon the shorter time.

An interview with Courtaulds company president Henry Johnson was read into the *Turgeon Commission* reports without the necessity of Johnson being present or being sworn under oath.²⁵¹ Other Courtaulds officials were not as fortunate and were called to testify. Company manager W.J. Kenyon reported that 880 males and 761 females were re-employed after the strike, a net loss of over one hundred jobs. As well, some job-sharing was in effect. About 60 people, all of whom were union members were still out.²⁵² Only one female Courtaulds worker, a reeling room ex-forelady, was to testify before the *Turgeon Commission*. Alice Racine told the commissioners that she had joined the union but had taken no part in the strike activities and so could not understand why she had not been taken back.²⁵³ Frank Love also testified that the girls(sic) involved in the wildcat strike had yet to be reinstated. Working conditions had changed for the processing girls who now had to operate more than one machine for the 1 cent wage increase.²⁵⁴ Kenyon was called to account for this and explained

250 M.G.28, 1.219, vol.96 'Negotiations', (7 Sept. 1936) 4.

251 R.G.33/20, vol.XV 9812.

252 R.G.33/20, vol.XV 9913, William Johnson Kenyon.

253 R.G.33/20, vol.XV 9984, Alice Racine.

254 R.G.33/20, vol.XVI 10004-8, Frank Love.

that there had been a re-organization of the work.²⁵⁵

While initial strike concerns had been over securing minimum standards for 'the girls'(sic), these concerns appeared to have been abandoned. As well, women's efforts in the strike were discounted. While six women had been injured in the main scuffle on August 18, these were downplayed as with Florence Andrew whose condition becomes attributed to 'hysteria and shock'. Women workers were not represented at the *Turgeon Commission* and the main issue became safety concerns for men working with chemicals.

Claims of violations of protective legislation brought Courtaulds under scrutiny during the *Turgeon Commission* investigation. The substantial 35% tariff protection that the rayon industry enjoyed brought with it the responsibility to employ and pay Canadian workers sufficient wages to live on. One of the points of contention was the misrepresentation of the company's economic position which led to changes in the tariffs. In 1930, then general manager, Mr.Linnett had written to the Minister of National Revenue asking for an increase in the tariff on imported rayon yarn. Linnett claimed that Courtaulds was losing money and that "...their effort being only to get a fair return on the capital invested."²⁵⁶ When director and sales manager, Brinley Taylor was questioned about Linnett's letter, he responded that the information had been hastily prepared and that false representations had been made that Courtaulds was

255 R.G.33/20, vol.XVI 10026. Women workers no longer had to fetch their own yarn or bobbins or remove finished work; but there was a speeding up of the machines.

256 R.G.33/20, vol.XIX, exhibit 729, 13, Mr.Linnett, G.M., Sept.10,1930 to E.B.Ryckman(Min.of National Revenue).

losing money.²⁵⁷ Courtaulds was not losing money but instead, was not making the projected profit that they had anticipated. This, they contended, was a net loss-the difference between the amount of profit that they had made and the amount that they had projected that they would make.²⁵⁸ Commission counsel, J.C. McRuer questioned Courtaulds's secretary and treasurer W.Jones as to whether he thought that the tariff "...ought to be sufficient to assure you a profit at all times?"²⁵⁹ Jones affirmed this.

Courtaulds' total sales from 1929-35 were close to \$35 million with a net profit of 17%. Total profits were over \$10 million with good will and depreciation deducted. Courtaulds' gross profit²⁶⁰ was 30.27%. Over a nine year period, over \$1.3 million was written off for good will; and over one and a half million paid out in dividends.²⁶¹ Commission counsel McRuer, upon determining this, vowed that Courtaulds' "...wage increases (were)to come out of profit, not 'price increases'".²⁶²

Conclusion

Courtaulds workers did not fight in vain, they achieved a union one year after the 1936 strike was settled. Violations of minimum wage and factory legislation put Courtaulds under scrutiny by the *Turgeon Commission* which was investigating the

257 R.G.33/20, vol.XVI 10046.

258 R.G.33/20, vol.XVI 10046. In 1928, the problem was the loss was based on projected amount of profit- i.e. Courtaulds made \$190,000 profit instead of \$211,000.

259 R.G.33/20, vol. XVI 10046.

260 R.G.33/20, vol.XIX, exhibit 729, 9.

261 R.G.33/20, vol.XIX, exhibit 729, 52.

262 R.G.33/20, vol.XIX, exhibit 729, 74.

textile industry. The strike events, however, demonstrate the failure of the *I.S.A.* and *I.D.I.A.* to provide a legislative framework within which to negotiate a labour dispute. As well, section 501(f) which the municipal officials used to temporarily imprison strike activists called the *Criminal Code* into disrepute. Even with the 'peaceful picketing' clause, section 501(g) in effect, the Cornwall magistrate used 'suspended' sentences and court costs to regulate what he deemed to be 'illegal picketing'. Labour activists were removed from the picketline and temporarily imprisoned. This had a dampening effect on the other workers and may have ended the strike prematurely. The social zone of toleration for the Courtaulds strike was favourably influenced by the *Turgeon Commission*, a pro-labour Premier Mitchell Hepburn, and the rise of the C.I.O. and industrial unions. Although, the events of the Dominion Woollens and Worsteds strike in Peterborough, 1937 were different than the Courtaulds strike, the following chapter shows that there were also some remarkable similarities.

CHAPTER FOUR: DOMINION WOOLLENS, PETERBOROUGH (1937)

Introduction

Dominion Woollens and Worsteds textile workers went on strike less than a year after the Courtaulds strike had ended. The strike lasted from June 29 to August 19 and 20, 1937. What started as a walk-out by 75 weavers resulted in a lockout of 225 employees at the Auburn plant. As the Bonner Worth plant supplied the Auburn branch of Dominion Woollens and Worsteds, a further 350 employees went on strike before they could be locked out. The weavers struck over low piecework rates and an unfair distribution of work. Other workers went on strike for pay increases and better working conditions. As the two plants had no general industrial union in place, workers decided to unionize at the time of the strike. While the strike eventually ended in provincial conciliation under the *I.S.A.*, the inherent flaws of this voluntarist legislation prolonged the strike. As well, municipal officials used section 501 to temporarily imprison picketline activists.

The *Turgeon Commission* was still completing its investigation of the textile industry. As the research on the *Strikes and Lockouts* file indicates, 1937 was a big year for strikes.²⁶³ With the repeal of section 98, (members of an unlawful association) and changes to *The Immigration Act* in 1936, labour activists were freed from these legal constraints and this may account for the increase in strikes. The textile industry accounted for the majority of industrial disputes during 1937. While

263 There were 337 strikes started in 1937; by comparison, only 185 strikes started in 1936 and 166 strikes in 1938. Table A: Number of Strikes Commencing 1891-1950, 1937 had the most, except 1919 with 420 strikes and 1920 with 445 strikes. Douglas Cruikshank and Gregory S.Kealey, "Strikes in Canada, 1891-1950" (1987) 20 *Labour/Le Travail* 134.

the Courtaulds strike occurred during the peak period of the textile industry and benefitted through the publicized accounts of the *Royal Commission* findings, the Dominion Woollens strike erupted during an election year in Ontario. The Dominion Woollens and Worsted strike differs from the Courtaulds strike in essentially four ways; the company was Canadian, not British or foreign owned; woollens and worsteds was not a monopoly industry; lower protective tariffs; and finally, it was really a lock-out for some employees.

Dominion Woollens and Worsteds, Peterborough 1937

A brief history of the Dominion Woollens and Worsteds company reveals that in 1919, the two companies, Bonner-Worth Company and Auburn Woollen Company, (both of Peterborough) joined with the Standard Woollens Mills (of Toronto) to become the Canadian Woollens Company. Once they accomplished this, the Toronto plant was shut down and the Peterborough plants became the main interest. In 1928, the Canadian Woollens Company merged with R. Forbes Company (of Hespeler) and formed the company of Dominion Woollens and Worsteds. They became the largest producer in Canada in 1935 with 14.4% of sales.²⁶⁴ The Peterborough location consisted of two plants, aptly named Bonner Worth and Auburn after the founding companies.

The woollens and worsteds industry differs from the artificial silk or rayon industry in various ways. Woollens and worsteds companies did not enjoy the same high tariff protection as the rayon industry did. As a result, Dominion Woollens was

264 A.B.McCullough, *The Primary Textile Industry in Canada: History and Heritage* (Ottawa: Parks Canada, 1992) 84. Also, see the *Turgeon Report* 44.

not investigated as closely by the *Turgeon Commission* and less information is available. Unionization was an issue for the semi and unskilled workers at Dominion. However, as weavers are 'skilled' employees with a tradition of collective bargaining, there was some understanding of the process. By contrast, the Courtaulds rayon workers had no tradition of collective bargaining. What effectively started as a strike of 75 weavers led to the other workers being locked out.

Strike Events

The Peterborough strike began when weavers at the Auburn plant became upset over the low piecework rates. While these rates were not readily available, the weavers' wages ranged from 15 to 50 cents an hour, depending upon age and experience. They wanted a general increase of 25 per cent in the piecework rates as well as a minimum hourly wage for weavers.²⁶⁵ Auburn weavers were also seeking a shift differential for night work, a more equal distribution of piecework and improved lighting.²⁶⁶

When the 75 Auburn weavers walked out, the other 225 employees were told to clean their machines and leave, effectively a lock-out. These employees decided that they would also like to negotiate for improved working conditions and higher wages. A further 350 Bonner Worth employees of whom the majority were women, joined the strike before they also could be locked out. As they supplied the woollen yarn to the

265 R.G.27, vol.388, strike 176, "Textile Workers Strike in Peterboro" *The New Commonwealth* (3 July 1937).

266 Under the *Factory Act*, section 37(1), Lighting buildings-"properly lighted...so as not to be injurious to the health, safety or comfort of persons employed."

Auburn plant, it would only have been a matter of time before they would have been locked out. While the Dominion Woollens employees had no industrial union in a formative stage, (unlike the Courtaulds workers), they decided to unionize into a local of the United Textile Workers of America.²⁶⁷ Public sentiment was behind the strikers, with farmers donating vegetables and others, money. One local businessman commented that "...(I)t certainly is a sweatshop."²⁶⁸

Dominion Woollens and Worsteds attempted to conduct business as usual on July 2 by using police escorts to ship woollen goods out of the Auburn plant. Strikers appealed to the truck drivers to respect the picket line but two drivers drove right through. When the strikers did not disperse as quickly as the police wanted, tear gas bombs were used for crowd control. As well, billies or short wooden police sticks were used on strikers, irrespective of gender or age. There were many injured, including a 70 year old woman and a man who received head injuries. The police alleged that stones were thrown but no arrests were made on this account.²⁶⁹ While strikers complained that the excessive police violence was unnecessary, the official response was that due warning had been given.²⁷⁰ If the strikers had not heard the

267 *Report of the Royal Commission on The Textile Industry* (Ottawa: J.O.Patenaude, 1938) 187.

268 *The Peterborough Examiner* (10 July 1937) 1.

269 R.G.27, vol.388, strike 176 "Peterboro Police Break Picket Line" *The New Commonwealth* (10 July 1937).

270 *The Peterborough Examiner* (3 July 3 1937) 1-2. Alex Welch, one of the main organizers posed this question, "It is understood that the police are to preserve law and order and avoid violence...If this is the case, why did the police not club one another?"

tear gas alert, this did not concern the police.²⁷¹ Chief Newhall made the remark

"...that the strikers were a lot of cowards who had pushed women in front of them so that the police could not get at them."²⁷²

Newhall was evidently ignorant of the fact that the women were the strikers.

Newspaper accounts of the women strikers reported them as fighting the police by 'clawing, screaming and throwing tomatoes'; implying that the women's actions were 'irrational'.²⁷³ However, when Oshawa Steward Nora Adams addressed the picketers, she congratulated them on "the way you girls(sic) resisted the big burly policemen you have here with the big sticks."²⁷⁴ The July 2 event foreshadowed how the strike would progress.

Legal Intervention- I.D.I.A. and I.S.A.

The strike continued for two weeks with neither side giving way. Attempts to form a representative bargaining committee were repeatedly rejected by the company. A 25 member committee was deemed unsatisfactory but a smaller committee of six was also spurned. The presence of three United Textile Union officials on the smaller committee was one company concern. Alex Welch, a prominent U.T.W.A. organizer was on the committee and the company pointed out that he was not employed by

271 "Strikers Protest Violence Used By Police" *The Peterborough Examiner* (3 July 1937) 1-2.

272 "Strikers Protest Violence Used By Police" *The Peterborough Examiner* (3 July 1937) 1-2.

273 Joan Sangster, *Dreams of Equality: Women on The Canadian Left, 1920-1950* (Toronto: McClelland & Stewart Inc., 1989) 136.

274 *The Peterborough Examiner* (5 July 1937) 1 & 6. U.A.W.A. Steward.

Dominion Woollens and Worsteds.²⁷⁵ The company broke off negotiations, saying that the union committee did not represent all the employees, as some employees were not union members. The managing director, H.Barrett, was adamant that the company would only deal with a fully representative committee.²⁷⁶ Welch decided to step down to facilitate continued negotiations.²⁷⁷ Finally, the company settled on having six employees from each plant negotiate with them.²⁷⁸

The first meeting resulted in little change, with no wage concessions being given.²⁷⁹ Dominion Woollens further threatened to close the Auburn mill.²⁸⁰ The workers resolved to stay out as long as was necessary to secure what they deemed to be a 'living wage'. Wages that were paid out for the two weeks before the strike were published in an attempt to embarrass the company into settling. A male weaver employed 12 years received \$12.07 for 90 hours work whereas a female weaver, employed 3 years received \$7.41 for 98 hours work.²⁸¹ The company refused to call a special meeting of Dominion's board of directors, in order to discuss and approve

275 "Bargaining Body is Not Representative Of All Employees" *The Peterborough Examiner* (13 July 1937) 1.

276 R.G.27, vol.388, strike 176 *The New Commonwealth* (17 July 1937).

277 *The Peterborough Examiner* (14 July 1937) 1.

278 *The Peterborough Examiner* (15 July 1937) 1.

279 *The Peterborough Examiner* (15 July 1937) 1.

280 "Management Threatens to Close Auburn Mill, Refuses Pay Increase" *The Peterborough Examiner* (17 July 1937) 1.

281 R.G.27, vol.388, strike 176 *The New Commonwealth* (17 July 1937).

wage demands by strikers.²⁸² The strike committee decided to send a telegram to the Ontario Department of Labour, requesting assistance. Deputy Labour Minister, J.F. Marsh responded that the Ministry would take some action.²⁸³ Meanwhile, other textile strikes erupted in Cornwall and Brockville.²⁸⁴ Ontario's political economy had changed for the worse for labour.

Premier Mitchell Hepburn had adopted an anti-labour stance, which became more evident after the Oshawa strike. He issued a mixed message to the public that the province was ready to respond to any request from either the municipal authorities, the employers or employees. This provincial response could vary:

"...Our labor and industry board is prepared to lend assistance in effecting a settlement. If there is any lawlessness with which the municipalities cannot cope, we will send in police for the protection of employers or strikers. But we are not settling strikes that way."²⁸⁵

Hepburn's mixed message appears to have been that he would not hesitate to send in provincial force at the slightest invitation, though he claimed it was not a route that he preferred.

Needless to say, the Peterborough strikers were pleased to hear from Marsh that a provincial conciliation officer, Louis Fine, was on the way.²⁸⁶ However, Fine refused

282 "All Quiet Today on Strike Front" *The Peterborough Examiner* (20 July 1937) 1.

283 "Deputy Minister Replies to Wire Promises Action" *The Peterborough Examiner* (21 July 1937) 1.

284 "1700 Walk Out in Canada Cotton Mills in Cornwall" *The Peterborough Examiner* (21 July 1937) 1. Canada, Stormont and Dundas mills of Canadian Cottons are on strike with Arthur Lavery as one of the union organizers. Federal conciliation officer M.S. Campbell is mentioned in the reports.

285 "Ontario Avoiding Share in Strikes Minus Invitation" *The Peterborough Examiner* (22 July 1937) 1.

286 "Strikers Cheer As They Hear News Louis Fine Coming" *The Peterborough Examiner* (22 July 1937) 1.

to deal with the strike committee as long as Alex Welch was on it, claiming that he was a C.I.O. organizer.²⁸⁷ The strike committee then contacted labour lawyer J.L. Cohen as Fine did not object to a lawyer being part of the negotiation process. In the meanwhile, the T.L.C. reached an agreement to organize all textile workers in Canada, instead of them having to join the U.T.W.A.²⁸⁸ Fine's endeavours were fruitless as the company refused to budge on the wage increase. The strikers decided to appeal to the Ontario Industry and Labour Board for strike arbitration.²⁸⁹

Dominion Woollens and Worsteds promised police protection to workers who wished to return under improved conditions but without a pay raise. About fifty strikebreakers or scabs attempted to cross the picketline on July 29. Their efforts were blocked by a hundred singing women workers who "...joined hands and marched in an endless chain up and down the sidewalk outside the administration building."²⁹⁰ The women also blockaded against cars that drivers attempted to cross over the sidewalk. In Ontario, more textile firms went on strike as Dominion Textiles workers walked on August 3. Finally, the Industry and Labour Board decided to hear J.L. Cohen present the Dominion Woollens strikers's case.²⁹¹

287 "Louis Fine Flatly Refuses to Deal with C.I.O. Envoy" *The Peterborough Examiner* (23 July 1937) 1.

288 *The Peterborough Examiner* (26 July 1937) 1. Trades and Labor Congress of Canada to organize all 80,000 textile workers-A.F.L. and C.I.O. agree.

289 "Company's Proposals are Booed by Strikers" *The Peterborough Examiner* (29 July 1937) 1.

290 "Near Riot Follows Attempts to Stop Workers Entering" *The Peterborough Examiner* (30 July 1937) 1.

291 "Board to Hear Cohen Present Strikers' Case" *The Peterborough Examiner* (3 Aug. 1937) 1.

Within three days, the chairman of the Industry and Labour board, E.J. Young, announced that it was up to the employers to state their position before any action could be taken.²⁹² As long as the employer was 'indefinite', the board could not act. Young recommended that the strikers return to work and that the problem be submitted to the board. On August 7, union organizer Alex Welch publicly blamed Dominion Woollens and Worsteds for the strike continuing.²⁹³ J.L. Cohen had informed him that the Industry and Labour Board had been unable to get Dominion Woollens to agree to arbitrate the wage issue. Welch succinctly stated the situation as:

"...a company dependent through tariff upon public subsidy for years mistreats its employees by starvation wages and excessive working hours, arrogantly refused to bargain collectively with its employees or to redress their just grievances and refuses now with impunity to permit any public authority to review its wage policy."²⁹⁴

While Dominion Woollens received less tariff protection than Courtaulds did, the effective result was a publicly funded subsidy of Dominion's profit margin. The average Dominion male worker was making from 30-39 cents an hour and the average female worker made 22-26 cents an hour.²⁹⁵ By comparison, the average male textile worker²⁹⁶ working in Ontario's woollens industry, earned 35.6 cents hourly with a

292 "Up To Employers To State Position Before Any Action" *The Peterborough Examiner* (6 Aug. 1937) 1.

293 "Blame Company For Continuance Textile Strike" *The Peterborough Examiner* (7 Aug. 1937) 1.

294 "Blame Company For Continuance Textile Strike" *The Peterborough Examiner* (7 Aug. 1937) 1.

295 *The Peterborough Examiner* (30 July 1937) 1. These figures were supplied by Dominion Woollens and Worsteds.

296 *Turgeon Report* 304, table 34, wages dated Feb., 1936.

weekly average of \$17.91. The average female worker²⁹⁷ made 25.8 cents hourly with a weekly wage of \$12.02. Unfortunately for the Dominion Woollens workers, the *Turgeon Commission* was finishing up its work, and so there was less federal political pressure on the employer to settle than in the Courtaulds strike.

With a number of textile producers on strike, Premier Hepburn decided to call an inquiry to settle the disputes and with plans to further investigate Dominion Woollens and Canadian Cottons.²⁹⁸ However, Peterborough strikers rejected Hepburn's idea and refused to return to work unless a wage increase was guaranteed.²⁹⁹ Under the *I.S.A.*, while wage schedules might be established, there was no guarantee of an increase or that Dominion Woollens would pay the industry wage. While the strike eventually culminated in settlement under the *I.S.A.* through Hepburn's intervention, the voluntarist legislation allowed the employer to prolong the strike by refusing to submit the wage rates to arbitration.³⁰⁰ The extent of Hepburn's direct intervention was apparently a phone call to Peterborough Mayor George Macdonald.³⁰¹ Soon after, Hepburn publicly confirmed that there would be a forthcoming election and that

297 *Turgeon Report* 304, table 34, wages dated Feb., 1936.

298 "Peterboro' Plants Three, Cornwall Are First in Line" *The Peterborough Examiner* (10 Aug. 1937) 2.

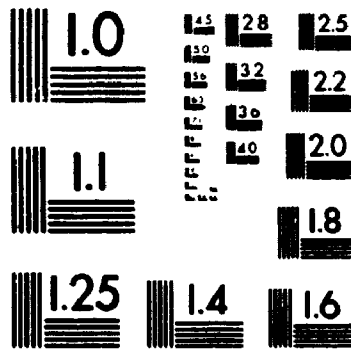
299 "Strikers Turn Down Hepburn's Proposal-Be No Returning Until Guarantee of Wage Increase" *The Peterborough Examiner* (12 Aug. 1937) 1.

300 *Turgeon Report* 187. There is a reference in *The Peterborough Examiner* (10 Aug. 1937) that Hepburn had telephoned Peterborough Mayor George Macdonald. There is little other detail of Hepburn's direct intervention. The other strikes at Canadian Cottons, etc. ended at the same time, a result of the *I.S.A.*

301 *The Peterborough Examiner* (10 Aug. 1937) 2.

2 of /de 2

PM-1 3½"x4" PHOTOGRAPHIC MICROCOPY TARGET
NBS 1010a ANSI/ISO #2 EQUIVALENT



PRECISIONSM RESOLUTION TARGETS

his stand against the C.I.O. would be the principal election plank.³⁰²

The political climate had changed in Ontario with Premier Hepburn assuming a decidedly anti-labour position. The *Turgeon Commission* was wrapping up and so did not exert much federal pressure in this strike. As well, strike-breakers were employed which shifted the focus of the conflict from the employer to 'striker and scab'. This affected the social zone of toleration for the strike and although Peterborough was supportive of the picketers, this support waned. The subsequent imposition of the *I.S.A.* by Hepburn shows the legal toleration of the strike waned as well.

Picketing and Section 501

On August 9, Dominion Woollens announced its intention to open the two Peterborough plants, although the strike had not been settled.³⁰³ When police escorts³⁰⁴ and about fifty strikebreakers attempted to cross the picketline the next day, violence erupted.³⁰⁵ The 'riot' was apparently orchestrated by the company in an attempt to break the strike. Union organizers and many others were arrested without any apparent provocation. A bystander was clubbed by a provincial police officer because he joined in yelling 'scab' at the strikebreakers.³⁰⁶ Peterborough Mayor

302 "Election in Short Time Hepburn Announces Oct.19 Hinted Stand Against C.I.O. to Be Main Plank" *The Peterborough Examiner* (13 Aug.1937) 1.

303 "Company Plans to Open Two Textile Mills-Adequate Protection is Promised Workers Who Return To Jobs" *The Peterborough Examiner* (9 Aug. 1937) 1.

304 R.G.27, vol.388, strike 176 *The New Commonwealth* (21 Aug. 1937). There were 23 provincial police which cost taxpayers \$400 a day.

305 *The Peterborough Examiner* reported that twenty men returned to work and that the 'rest' were women.

306 R.G.27, vol.388, strike 176 *The New Commonwealth* (21 Aug. 1937).

George Macdonald attempted to address the crowd at the Bonner Worth mill but was unsuccessful. He blamed it on the women workers

"The women caused all the trouble. They were yelling and squealing. They were the disturbers. They are more excitable and they got the men excited by yelling."³⁰⁷

Fifteen people were arrested on the picketline, including three women.³⁰⁸ All strikers were released immediately with \$1000 bail with the exception of Alex Welch. Welch was held from August 10 to the 19th when the strike had ended. While bail was initially refused Welch, the municipal authorities eventually accepted \$5000 surety from the president of the Peterborough Trades and Labour Council, Tom McMurray.³⁰⁹ When Welch was released, he charged Peterborough chief of police, Samuel Newhall with 'false arrest and forcible detention'.³¹⁰ Welch also wanted \$20 thousand in damages.

While Welch was still in jail, a tentative agreement was reached with the strikers who agreed to submit the wage dispute to the Labour board.³¹¹ An initial agreement³¹² was reached on the 19th but on the 20th, Auburn workers walked out

307 "Mayor is Refused Hearing at The Bonner-Worth Mill-Women caused Trouble" *The Peterborough Examiner* (10 Aug. 1937) 1.

308 "15 Arrested as Police Open Textile Mills, TearGas, Clubs Used to Force Way Into Plant" *The Peterborough Examiner* (10 Aug. 1937) 1.

309 R.G.27, vol.388, strike 176 *The New Commonwealth* (21 Aug. 1937).

310 R.G.27, vol.388, strike 176 *The New Commonwealth* (21 Aug. 1937).

311 "Agreement is Submitted Woollen Strikers- Terms are Believed to Be Acceptable to Textile Strikers" *The Peterborough Examiner* (18 Aug.1937) 1.

312 "Strikers Rejoice as Settlement Announced" *The Peterborough Examiner* (19 Aug. 1937) 1.

again over an unfair distribution of work.³¹³ The Auburn mill had piecework as well as hourly work, due to the weaving process. However, this walkout ended, and workers returned to work on the following Monday ³¹⁴, August 23, 1937. The draft agreements reached for both Canadian Cottons and Dominion Woollens were tentatively approved by J.L. Cohen.³¹⁵

Once the strike had ended finally on August 20, the strike cases were heard in court. Of 21 charges, nine initial charges were withdrawn by the Crown without court costs: four counts of intimidation, three counts of causing a disturbance and one each of obstructing police and assault.³¹⁶ The other charges were adjourned until September 1.

Alex Welch was initially charged with the intimidation of workers and assault of Chief Constable Sam Newhall.³¹⁷ This was later amended to charges under section 501(e) and (f).³¹⁸ Other charges were: Harvey Murphy spreading false news; Alphonse Coughlin- 2 charges of assaulting provincial police officers; Dorothy Walwork-2 charges of intimidation and obstructing the Chief Constable in the execution of his duty "by throwing pepper or other noxious powder in his face."; and

313 "150 Auburn Workers Out on Second Strike-Fair Distribution of Work Available Asked by Strikers" *The Peterborough Examiner* (20 Aug. 1937) 1.

314 "Auburn Strikers Are to Return on Monday" *The Peterborough Examiner* (21 Aug. 1937) 1.

315 R.G.27, vol.388, strike 176 *The New Commonwealth* (21 Aug. 1937).

316 "Nine Charges are Withdrawn Against Textile Strikers." *The Peterborough Examiner* (24 Aug. 1937).

317 *The Peterborough Examiner* (24 Aug. 1937) 1.

318 R.G.27, vol.388, strike 176 *Oshawa Daily Times* (25 Aug. 1937).

Edwin Sanders with assaulting Emmet Travis. Charged with intimidation of workers were: Ethel Easton, Mrs. Edith Prizelle, Michael English, Gordon Dundas. Section 501 was commonly understood to be the 'intimidation clause', although it is unclear where the authorities intended to charge the picketers with explicit actions which intimidated the strikebreakers or whether the picketers' presence constituted 'watching and besetting' and thus intimidation. As none of the charges were proceeded upon and little further detail exists to explain what was intended by the charge of 'intimidation'.

Nine of these remaining charges were withdrawn by the Crown with the exception of two remaining charges against Alex Welch and Harvey Murphy (both Communists): the spreading false news charge and an obstruction charge.³¹⁹ Police Chief Newhall told the Bench that in some instances, he did not consent to withdrawal. The intimidation charge against Welch was dismissed because the Crown could not make out a case. Defence counsel, J.L. Cohen explained to the court that the Associated Screen News had filmed the riot at the Bonner Worth plant but that the Ontario Board of Censors prevented them from being publicly exhibited. The police chief refused to get the films as evidence and claimed that tear gas was an excellent cold cure.³²⁰ Finally, Magistrate O.A. Langley committed Welch for trial on the charge of obstructing Sam Newhall.³²¹

319 "Crown Withdraws Nine of Charges Against 7 Strikers" *The Peterborough Examiner* (2 Sept. 1937) 1 & 5.

320 *The Peterborough Examiner* (2 Sept. 1937) 1 & 5. Police Chief Newhall also "denied drinking on the morning in question."

321 *Ottawa Morning Journal* (2 Sept. 1937) 1.

Welch's trial was heard in January, 1938. Of the eight witnesses called, all four Crown witnesses were policemen whereas the defence included reporters from the *Toronto Star* and *The Peterborough Examiner*.³²² Chief Newhall was questioned about an article signed by him in the *National Police Review*, which portrayed a biased view of the strike.³²³ Newhall admitted to signing the article but "claimed that it had been written "by some Communist."³²⁴ Alex Welch was acquitted of the charge of obstruction.³²⁵ J.L. Cohen served Newhall with a writ for false arrest.

The final charge arising from the August 10 'riot' was settled on February 17, 1938. A jury acquitted Harvey Murphy (now President of the Ontario Federation on Unemployment) of charges of spreading false news under sec.136 of the *Criminal Code*.³²⁶ It had been alleged that Ivena Reid, a 14 year old girl striker had suffered a facial injury from tear gas thrown by police.

Public support of this strike was not as strong as in the Courtaulds strike. Although local farmers donated vegetables and money was raised, the company took out paid ads in the local press to play for support. These emphasized that both the businessmen(sic) and the citizens suffered financial losses as a result of the strike. The C.C.F. Club fed and housed some of the strikers. However, without federal

322 R.G.27, vol.388, strike 176 *Toronto Clarion* (11 Jan. 1938).

323 R.G.27, vol.388, strike 176 *Toronto Clarion* (11 Jan. 1938).

324 R.G.27, vol.388, strike 176 *Toronto Clarion* (11 Jan. 1938).

325 *The Peterborough Examiner* (12 Jan. 1938) 1.

326 *The Peterborough Examiner* (17 Feb. 1938) 1.

intervention, Hepburn's anti-labour position prevailed. This may have encouraged municipal authorities who used section 501 to temporarily imprison labour activists but without any legal foundation to the charges, they had to withdraw them.

Strike Aftermath:

While wages and hours of work were to be determined after the Industry and Labour Board of Ontario had completed their investigation, the workers and company negotiated other changes under the supervision of the Ontario Department of Labour.³²⁷ It was agreed that wages would be retroactive, that payment for waiting for work was to be made to piece workers, and that there be rest periods for female employees.³²⁸ These rest periods were for 10 minutes break at 9 am and 3 pm, provided the machines were not stopped.³²⁹ Ultimately, Dominion Woollens and Worsteds increased³³⁰ the wages generally by 11%. There was no union recognized as a result of this strike.

While Dominion Woollens reported losses³³¹ for the period of 1933-35, they reported a profit of about ten thousand dollars in 1936. Questions were raised regarding allowances made for depreciation and bond interest which resulted in the

327 *Turgeon Report* 187.

328 *Turgeon Report* 187.

329 *The Peterborough Examiner* (17 July 1937) 1.

330 *Turgeon Report* 160.

331 *The Peterborough Examiner* (12 July 1937) 4. In 1935, they reported a loss of \$238,756.

losses.³³² The managing director H.Barrett defended the existence of a reserve fund of an undetermined amount, which he claimed came from bond holders.³³³ The *Turgeon Commission* did not pursue this issue, probably because of the relatively low tariffs for this industry. The tariff rates for yarn in the woollens and worsteds industry had remained unchanged from 1907-37. They provided for a general tariff of 20% or a minimum of 17 1/2 cents per pound.³³⁴ This was considerably less than the rayon yarn tariff of 35%.

Union organizer Alex Welch became the secretary of the newly formed National Textile Council.³³⁵ In 1938, Welch reported that Dominion was having difficulty speeding up its workers, so it had moved the dyeing and finishing departments to its plant in Hespeler.³³⁶ Fifty workers were put on relief as a result of this move.

As less detail is available in the Dominion Woollens and Worsteds case study, there is less information on women's participation. However, newspaper accounts depicted the women as 'squealing' and 'irrational' and the police chief did not acknowledge their presence as valid strikers. As three women were initially charged in this strike, it is safe to say that women were active participants in this labour dispute. Other involvement in the strike would be in supportive roles, such as feeding strikers.

332 *The Peterborough Examiner* (17 July 1937) 2. Losses suffered by the company averaged \$175,000, which includes a provision for \$106,000 in depreciation and \$63,000 in bond interest.

333 " Barrett Declares Reserve Obtained From Bond Holders" *The Peterborough Examiner* (19 July 1937) 1.

334 *Turgeon Report* 263. Rates are up until February 26, 1937.

335 R.G.27, vol.388, strike 176 *Toronto Clarion* (11 Jan. 1938).

336 R.G.27, vol.388, strike 176 *Toronto Clarion* (13 Aug. 1938).

Conclusion:

Although the Dominion Woollens and Worsteds strike eventually ended with provincial conciliation and then the arbitration of wages by the Ontario Industry and Labour Board, the inherent flaws of the *I.S.A.* are exposed once again. The employer was able to stall, use strikebreakers with police protection, and initially refuse wage arbitration. In the meanwhile, Dominion Woollens enjoyed lucrative tariff protection, and a depreciation write-off. Without the premier's intervention, the strike might have lasted longer. Hepburn's stance against the C.I.O. combined with the upcoming election, made it imperative that the textile strikes be settled quickly. As the *Turgeon Commission* was wrapping up, there is no apparent federal intervention. However, Dominion Woollens was a domestic company, not a monopoly industry and did not have as high a tariff as Courtaulds, and thus did not invite federal concern.

The use of section 501 to temporarily imprison strikers and to deter others on the picketline is also at issue here. As in the Courtaulds strike, there is a differential treatment of the main union organizer.(Alex Welch,in this case) However, unlike Courtaulds, most of the charges against the picketers were withdrawn by the Crown or failed to proceed to trial. The remaining charges of obstruction and spreading false news resulted in acquittals for both Alex Welch and Harvey Murphy. However, the end result was that Welch was imprisoned for nine days and the strike ended in his absence. While the Dominion Woollens strike did not result in an union, the workers were able to change their working conditions and eventually received a wage increase.

CHAPTER FIVE: CONCLUSIONS

This research has looked at the involvement of Canadian federal, provincial and municipal governments in two labour disputes. I have used a political economy approach on two case studies to elaborate on the development of the federal *I.D.I.A.*, the provincial *I.S.A.* and the municipal/provincial use of section 501 of the *Criminal Code*. How this legislation shaped the outcomes of the two textile industry disputes in Cornwall, 1936 and Peterborough, 1937 shows that labour law does not progress in a linear fashion but instead, is characterized in its administration by the co-existence of both voluntarist and repressive legal measures. The regulation of industrial conflict is ultimately strategically constrained by repressive criminal law measures. The broader historic political climate would influence the social zone of toleration for the strike and the consequent legal measure employed.

At the federal level, the *I.D.I.A.* allowed the employers to refuse negotiation with workers while enjoying the benefits of 'profit protection' provided by Canadian taxpayers through tariffs. Resort to the *I.D.I.A.* was rejected in the Courtaulds strike and was never an issue in the Dominion Woollens and Worsteds strike. This federal legislation provided for the voluntary settlement of industrial disputes but both employer and workers did not appear to trust the federal government intervention. The formal legal mechanism had its defects but as the *I.D.I.A.* was not used, these did not come into play.

On an informal level, however, the efforts of the federal conciliator, M.S. Campbell, seem crucial to the settlement of the Courtaulds strike. The *Turgeon Royal*

Commission was investigating the textile industry at the time and public pressure forced the federal government to maintain appearances. Local support of the strike was strong and so this strike was settled in a friendly manner. At the time of the Dominion Woollens strike, the *Turgeon Royal Commission* was wrapping up and therefore, little federal intervention resulted.

At the provincial level, the *I.S.A.*, also voluntarist law, meant that Ontario's employers could refuse to negotiate during labour disputes. The *Industrial Standards Act* was time-consuming to administer with its lengthy consultation process. Also, the Department of Labour was resource-starved, having other legislation like the *Minimum Wage Act* to deal with. The *I.S.A.* was not intended to help workers, its purpose was to 'stabilize labour costs in industry'. Provincial legal measures failed in the Courtaulds strike as the conciliators were unable to establish a trust relationship with the picketers. While Courtaulds workers rejected using the *I.S.A.*, Premier Hepburn's intervention into the Dominion Woollens strike preceded the use of the *I.S.A.* It is difficult to elaborate on the details of the actual administration of the *I.S.A.* with regards to the Dominion Woollens dispute as written materials were not readily available as with the Courtaulds strike. However, it is clear that the impending election year for Ontario and Hepburn's anti-labour policy meant that a tough stance against the picketers was taken in the Dominion Woollens strike. Although Peterborough residents were sympathetic and supportive of the strikers, provincial toleration of any industrial dispute was low. This textile strike and others including Canadian Cottons (Cornwall) would be settled at all costs. The *I.S.A.* was imposed upon the Dominion Woollens strikers even though

they initially rejected it. Canadian Cottons, and other textile strikes which were in progress at the time, were settled in a similar fashion.

On the municipal level, the authorities resorted to criminal law powers, providing police protection for strikebreakers and using criminal charges to regulate the picketline. The use of section 501 to temporarily imprison strikers had a direct impact on how the strikes proceeded. Both case studies involved the jailing of the main labour activists and the differential treatment by authorities of the main union organizers. In the Courtaulds case study, Frank Love was convicted under section 501(f) and given a suspended sentence of 2 months and court costs. Love was jailed for a week before bail was finally posted for him. In the Dominion Woollens strike, Alex Welch was jailed for nine days ending just as the strike settled. While Welch was initially charged with section 501(f), the Crown failed to make out a case. A further charge of obstruction against Welch resulted in an acquittal at a later date.

The criminal law represented the possibility of direct and immediate intervention into a strike but the authorities had to be cautious. With public sentiment behind the picketers, only those labour organizers who were deemed 'outsiders' could be given harsher treatment. With the repeal of section 98 of the *Criminal Code*, authorities could no longer charge union activists with being members of "an unlawful association", even Communists. Section 501 was most useful for its ability to isolate the main labour activists, at least until the strike settled. In the Dominion Woollens strike, the police chief refused to request censored film footage of the picketline

violence which would have revealed the truth of the matter.³³⁷

While both labour law structures and the instrumental use of section 501 were important to both strikes, the social, economic and political environment also made a difference. The U.S. influences of the *N.L.R.A.* meant that Canadian workers employed in semi and unskilled jobs felt confident enough to unionize, despite the absence of similar Canadian legislation. The rise of the C.I.O. as a symbolic catalyst for Canadian industrial workers created results, even though the American-based C.I.O. provided little substantive support. The *Turgeon Commission Investigation of the Textile Industry* impacted on the Courtaulds strike but the Dominion Woollens strike suffered from the fact that the commission was finishing up. This meant that the public eye was no longer focused on whether the *Turgeon Commission* was dealing effectively with textile labour disputes and federal intervention was notably absent. After the Oshawa strike, Ontario's premier Hepburn became decidedly anti-labour and this had a negative influence in the Dominion Woollens strike. The Peterborough labour dispute ended with the premier's intervention and use of the *I.S.A.*

Hepburn's anti-labour stance was encapsulated in a labour dispute settlement model reported in *The New Commonwealth*.³³⁸ This model described a technique where companies encouraged by Hepburn's anti-labour policy, would prolong strikes and refuse to negotiate until the workers had almost exhausted their resources. Then,

337 It was Ontario's policy to restrict the public showing of labour unrest under the pretext that this might spur further labour unrest, which was why the film was censored.

338 R.G.27, vol.388, strike 176 "Hepburn Aids Strike-Breakers, In Role of Mediator He Sends Workers Back Without Union Recognition or Concessions" *The New Commonwealth* (4 Sept. 1937).

Hepburn would step in to negotiate, but no union was allowed to negotiate as an union. Once the strike was settled, then workers would go back to work with a promise that wages would be investigated at later time. However, when the wage schedules are released as an *Industrial Code*, the workers would get the minimum. This model overlooks the active role that municipal officials and companies took in the labour disputes. It further ignores the possibility of the use of criminal law to regulate the labour dispute and specifically the picketline.

In both industrial disputes, the employers actively resisted the attempts to have a formative union recognized in their workplace. This manifested itself through the repeated refusal to deal with experienced labour activists such as Alex Welch and Frank Love, and the references to having negotiation committees which were 'representative' of the workers. The existing labour legislation allowed the employers to drag out the strike and even permitted the use of strikebreakers or scabs. While Courtaulds did not use strikebreakers, Dominion Woollens did, resulting in picketline violence. But just examining the labour legislation's interaction in the strikes is not enough. The criminal law measures which were selectively employed at strategic moments reveals more of the darker nature of legal interventions.

Both the Courtaulds and Dominion Woollens strikes had what might be deemed a 'culminating incident' on the picketline where violence may or may not have been provoked. Municipal and provincial police then stepped in to arrest the main labour activists and effectively forestall the strikers' unionization efforts. A dampening effect is felt on the rest of the picketers because of the arrests and their morale is broken. At

the very least, their organization is scattered and the workers must scramble to find new leadership among the remaining strikers. Even when a suspended sentence and a 'court costs' fine is imposed, the damage is far greater than it seems. At a key point in the strike, the strike leaders are removed from the situation and shortly after, the strike settles. However, the municipal and provincial authorities had to act expediently to forestall the possibility of jury nullification and therefore proceeded to summary convictions, against the picketers' wishes to have a trial by jury.(Courtaulds) If the picketing cases proceeded before a jury, the likely outcome would have been an acquittal, given the public support that the strikers enjoyed. The potential acquittal of the picketers would call the criminal law into question and put its administrators under public scrutiny. In the Dominion Woollens strike, the charges were either dropped or withdrawn, after the strike had ended. As local sentiment was with the picketers, the authorities could not impose greater penalties without invoking public outcry.

Stuart Jamieson, in *Times of Trouble*, points out that labour disputes and picketline violence were not caused solely by workers. The employers and various levels of government did not merely respond to workers's actions but by using police or militia "...in anticipation of threatening actions by organized labour groups"³³⁹ may have been the cause of picketline violence. In both case studies, police protection was given to the companies while they attempted to ship goods out of the respective plants. As well, in the Dominion Woollens strike, the use of strikebreakers aided by police officers may have provoked picketline violence which

339 Jamieson, *Times of Trouble* 19.

resulted in the use of tear gas and arrests being made. However, the employer and the police's role in creating the conditions under which violence erupted is ignored and the picketers are blamed.

The Courtaulds strike lasted from August 11 to September 10, 1936 and involved 1753 workers. As a British controlled Canadian company and monopoly producer of viscose rayon yarn, Courtaulds enjoyed a high tariff protection of 35% for their yarn. Because of picketline violence on August 18, seventeen men were arrested and ultimately received 2 months suspended sentence and court costs. The main union organizer, Frank Love was jailed for a lengthier period of time than any of the others arrested. As Love was a Communist and not a Courtaulds employee, he was perceived as a threat (by Courtaulds and municipal officials) to the timely resolution of the strike. Both Alex Welch and Frank Love were actively involved in organizing the textile workers and Courtaulds was not prepared to recognize the union.

An initial wildcat walkout by women workers sparked the Courtaulds strike. Women were active on the picketline and remained on duty even when asked to leave because of impending police violence. While their picketline actions of peacefully walking down the sidewalk, hand-in-hand and singing do not generally connote labour activism to some, their presence and support of the strike is unquestioned. No women picketers were arrested in the Courtaulds strike. Whether this is because their actions were insufficient to invite police attention or whether their gender made them appear less of a threat is debatable. Speculations might be made as to the involvement of Hepburn's 'special forces' as they existed at this time.

The second case study presents the opportunity for some comparisons. By contrast, Dominion Woollens and Worsteds was Canadian owned and not a monopoly industry, thus there was no arms-length negotiation with absent foreign managers or owners. However, the Dominion Woollens and Worsteds company had a board of directors but refused to consult them as was necessary for any wage rate approval. This strike lasted from June 29 to August 19 and 20, 1937, involving 650 workers. There was a lower tariff of 20% for worsted yarn, but Dominion Woollens produced more than yarn. As well, Dominion Woollens had more than one plant; piecework was involved, and it was a combination of strike and lock-out. When violence erupted on the picketline on August 10, fifteen people, including 3 women were arrested. This violence was spurred by the use of strikebreakers or scabs. Although these picketers were charged under section 501(f), the charges were withdrawn by the Crown without court costs. This suggests that the charges may not have had any legal foundation to them and that their main purpose was the removal of labour activists. The main union organizer, (also a Communist and not an employee) Alex Welch was jailed for nine days. The strike ended the day he was released. Further charges against the picketers resulted in acquittals.

Media accounts of the Dominion Woollens strike portray the women strikers as trouble-makers, irrational and hysterical. Further, Police Chief Newhall was confused over the fact that women were the strikers and saw the women strikers as obstacles that prevented the police from getting at the 'real' strikers. Even Peterborough Mayor Macdonald, upset at a poor reception of his address to the strikers, alleged that the

women caused all the trouble with their 'squealing'. Although the women workers formed half of the workforce involved in this dispute, they did not receive half of the credit nor the respect due them.

In conclusion, the Courtaulds and Dominion Woollens' strikes present the opportunity to examine the operation of the *I.D.I.A.*, *I.S.A.* and how the use of section 501 regulated labour disputes. How the different levels of government responded to each industrial dispute depended upon the prevalent social, political and economic environment. Courtaulds' workers benefitted from the *Turgeon Commission* being active at the time of the strike. Dominion Woollens' workers unfortunately suffered from having an anti-labour premier in an election year. Both case studies provide insights into government intervention in labour disputes and hopefully enrich a small corner of Canadian labour history.

BIBLIOGRAPHY

Statutes:

The Criminal Code R.S.C. 1927, c.36, as amended by 1934, c.47, s.12, especially s.501.

The Department of Labour Act S.O. 1927, c.27, R.S.O. 1937, c.62.

The Factory, Shop and Office Building Act 1932 c.35, R.S.O. 1937, c.194.

The Industrial Disputes Investigation Act (I.D.I.A.), 1907, S.C. 1907, 6-7 Edward VII, c.20, *An Act to Aid in the Prevention and Settlement of Strikes and Lockouts in Mines and Industries Connected with Public Utilities*-amendments 1910, 1918, 1920, 1925.

The Industrial Standards Act (I.S.A.) S.O. 1935, c.28.

The Minimum Wage Act S.O. 1937, c.43.

Archival Material:

R.G.27, vol.143, files 611.04:16 and 611.04:16A, correspondence relating to the *Royal Commission on the Textile Industry*. Report: Dated 20 Jan.1938- Tabled in the House of Commons on 31 Mar.1938,Sessional paper No.137b, 1938.

R.G.27, vol.388, strike 176, *Department of Labour-Report on Strikes and Lockouts in Canada*.

R.G.33-Royal Commission Reports-R.G.33/20 *Royal Commission on the Textile Industry*,1871-1938, 9.7m (Vols.1-91).

Hearings held 20 Feb. 1936 to 20 March 1937.

Authority Order in Council P.C.223, 27 January 1936,under Part 1 of the *Inquiries Act* (R.S.C., c.99, 1927) and on the recommendation of the Minister of Finance.

Consult finding aid 33/20-17, especially R.G.33/20, vol.5, 19, 20, 57-9, *Submissions to the Royal Commission on The Textile Industry*.

M.G.28, I.219, Amalgamated Clothing and Textile Workers Union, vol. 83-130, esp.v.96, files 1-8.

Government Documents:

Department of Labour of Canada, Labour Legislation in Canada (Ottawa: Legislative Branch, 1945).

Dominion Bureau of Statistics, *The Canada Year Book 1942* (Ottawa: Edmond Cloutier, 1942).

Jamieson, Stuart, *Times of Trouble: Labour Unrest and Industrial Conflict in Canada, 1900-66* (Ottawa: Privy Council Task Force on Labour Relations, Study no.22, 1968).

Official Report of Debates House of Commons Third Session, Eighteenth Parliament, 2 George VI, 1938, Vol.IV.

Fourth Session-Eighteenth Parliament, 3 George VI, 1939, Vol.IV.

Ontario Legislative Assembly-Newspaper Hansard Debates, 15 Feb. 1933- 9 Apr. 1936, Leg.18 Sess.4- Leg.19 Sess.2.

19 Jan.1937- 15 Apr.1942, Leg.19 Sess.3 - Leg.20, Sess.7.

Report of the Royal Commission on The Textile Industry (Ottawa: J.O. Patenaude, I.S.O., Printer to the King's Most Excellent Majesty, 1938).

Newspapers:

Daily Standard-Freeholder (Cornwall, Ont.), National Library microfilm 1936-38.

The Peterborough Examiner (Peterborough, Ont.), National Library microfilm 1937-38.

Ottawa Morning Journal (Ottawa, Ont.), National Library microfilm 1936-38.

Theses:

Hobbs, Margaret, "Dead Horses and Muffled Voices: Protective Legislation, Education and the Minimum Wage for Women in Ontario" (M.A. Thesis, University of Toronto, 1985).

Scheinberg, Ellen Carrie, "Women, War, And Work: Female Textile Workers in Cornwall, Ontario, 1936-1946" (M.A. Thesis, Queen's University, 1990).

Sykes, Peggy J., "A History of the Ottawa Allied Trades and Labour Association, 1897-1922: A Study of Working-Class Resistance and Accommodation by the Craft Worker" (M.A. Thesis, Carleton University, 1992).

Secondary Literature

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

- Abella, Irving (ed.), *On Strike: Six Key Labour Struggles in Canada, 1919-1949* (Toronto: James Lorimer & Company, 1975).
- Acton, Janice, Penny Goldsmith and Bonnie Shepard (eds.), *Women at Work, Ontario, 1850-1930* (Toronto: The Canadian Women's Educational Press, 1974).
- Anderson, John C. and Morley Gunderson, *Union-Management Relations in Canada* (Don Mills: Addison-Wesley Publishers, 1982).
- Arthurs, H.W., D.D. Carter, J. Fudge, and H.J. Glasbeek, *Labour Law and Industrial Relations in Canada* (Toronto: Butterworths, 1988).
- Avery, Donald, *"Dangerous Foreigners": European Immigrant Workers and Labour Radicalism in Canada 1896-1932* (Toronto: McClelland and Stewart Limited, 1988).
- Bercuson, David Jay, *Confrontation at Winnipeg: Labour, Industrial Relations and the General Strike* (Montreal: Queen's University Press, 1980).
- Bohnen, Linda S., "Women Workers in Ontario: A Socio-Legal History" (1973) 31 *University of Toronto Faculty Law Journal* 45.
- Bradbury, Bettina, "Women's History and Working-Class History" (1987) 19 *Labour/Le Travail* 23.
- Brandt, Gail Cuthbert, "Research Report: Weaving It Together: Life Cycle and the Industrial Experience of Female Cotton Workers in Quebec, 1910-1950" (1981) 7 *Labour/Le Travailleur* 113.
- Carrothers, A.W.R., *Collective Bargaining Law in Canada* (Toronto: Butterworths, 1965).
- Christie, I.M., *The Liability of Strikers in The Law of Torts: A Comparative Study of The Law in England and Canada* (Queen's University, Kingston: Industrial Relations Centre, 1967).
- Cohen, Marjorie Griffin, *Women's Work, Markets and Economic Development in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1988).
- Cohen, J.L., K.C., *Collective Bargaining in Canada* (Toronto: Steel Workers Organizing Committee, 1941).
- Coleman, D.C., *Courtaulds: An Economic and Social History* (Oxford: Clarendon Press, 1969).

Craven, Paul, *"An Impartial Umpire": Industrial Relations and the Canadian State, 1900-1911* (Toronto: University of Toronto Press, 1980).

Cruikshank, Douglas and Gregory S. Kealey, "Strikes in Canada, 1891-1950" (1987) 20 *Labour/Le Travail* 85.

Drake, Barbara, *Women in Trade Unions* (London: Virago, 1920).

Eaton, Jonathan B., "Is Picketing a Crime?" (1992) 47:1 *Relations Industrielles/Industrial Relations* 100.

Finkelman, Jacob, "The Law of Picketing in Canada: I & II" (1937-8) 67 *The University of Toronto Law Journal* 344.

Fitzgerald, Maureen, Connie Guberman, and Margie Wolfe (eds.), *Still Ain't Satisfied!* (Toronto: The Women's Press, 1982).

Forsey, Eugene, *Trade Unions in Canada 1812-1902* (Toronto: University of Toronto Press, 1982).

Frager, Ruth, "No Proper Deal: Women Workers and the Canadian Labour Movement, 1870-1940" in Linda Briskin & Lynda Yanz (eds), *Union Sisters: Women in the Labour Movement* (Toronto: The Women's Press, 1983).

Frank, J.A., "The 'Ingredients' in Violent Labour Conflict: Patterns in Four Case Studies" (1983) 12 *Labour/Le Travailleur* 87.

French, Doris, *Faith, Sweat, and Politics: The Early Trade Union Years in Canada* (Toronto: McClelland and Stewart Limited, 1962).

Fridman, G.H.L., Q.C., *The Law of Torts in Canada*, vol. 2 (Toronto: Carswell, 1990).

Fudge, Judy, "Voluntarism, Compulsion, and the 'Transformation' of Canadian Labour Law during World War II" *Canadian and Australian Labour History: Towards a Comparative Perspective*, edited by Gregory S. Kealey and Greg Patmore, (Nathan, Australia: Central Reprographics, Australian Society for the Study of Labour History and the Committee on Canadian Labour History, 1990).

Fudge, Judy, "What Do We Mean by Law and Social Transformation?" (1990) 5 *Canadian Journal of Law and Society* 47.

Giles, Anthony and Gregor Murray, "Towards an Historical Understanding of Industrial Relations Theory In Canada" (1988) 43:4 *Relations Industrielles/Industrial Relations* 780.

Heron, Craig, *The Canadian Labour Movement: A Short History* (Toronto: James Lorimer & Company, 1989).

Heron, Craig and Bryan D. Palmer, "Through the Prism of the Strike: Industrial Conflict in Southern Ontario, 1901-14" (1977) 58:4 *The Canadian Historical Review* 423.

Heron, Craig and Robert Storey (ed.), *On The Job: Confronting the Labour Process in Canada* (Kingston: McGill-Queen's University Press, 1986).

Hutchins, B.L. and A. Harrison, *A History of Factory Legislation* (New York: Augustus M. Kelley, 1968).

Jamieson, S., "Quebec Primary Textile Industry", in H.D. Woods (ed.), *Patterns of Industrial Dispute Settlement in Five Canadian Industries* (Montreal: The Industrial Relations Centre, McGill University, 1958).

Kealey, Linda and Joan Sangster (ed.), *Beyond the Vote: Canadian Women and Politics* (Toronto: University of Toronto Press, 1989).

Kealey, Greg, *Canada Investigates Industrialism: The Royal Commission on the Relations of Labor and Capital, 1889* (Toronto: University of Toronto Press, 1973).

Laskin, Bora, "Labour Law: 1923-1947" (1948) 26 *The Canadian Bar Review* 286.

Laxer, Robert, *Canada's Unions* (Toronto: James Lorimer & Company, 1976).

Lazarus, Morden, *Years of Hard Labour* (Don Mills: Co-operative Press Associates, 1974).

Lipton, Charles, *The Trade Union Movement of Canada, 1827-1959* (Toronto: NC Press, 1973).

MacNeil, Michael, "Courts and Liberal Ideology: An Analysis Of The Application Of The Charter To Some Labour Law Issues" (1989) 34:1 *McGill Law Journal* 86.

Mahon, Rianne, *The Politics of Industrial Restructuring: Canadian Textiles* (Toronto: University of Toronto Press, 1984).

McCallum, Margaret E., "Keeping Women in Their Place: The Minimum Wage in Canada, 1910-25" (1986) 17 *Labour/Le Travail* 29.

McCallum, Margaret E., "Labour and Arbitration in the Mowat Era" (1991) 6 *Canadian Journal of Law and Society* 65.

McCullough, A.B., *The Primary Textile Industry in Canada: History and Heritage* (Ottawa: Parks Canada, 1992).

Morton, Desmond and Terry Copp, *Working People* (Ottawa: Deneau & Greenberg, 1980).

Naylor, James, *The New Democracy: Challenging the Social Order in Industrial Ontario, 1914-25* (Toronto: University of Toronto Press, 1991).

Palmer, Bryan, *Working-Class Experience: The Rise and Reconstitution of Canadian Labour, 1800-1980* (Toronto: Butterworths, 1983).

Panitch, Leo and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms* (Toronto: Garamond Press, 1985).

Panitch, Leo and Donald Swartz, *The Assault on Trade Union Freedoms: From Consent to Coercion Revisited* (Toronto: Garamond Press, 1988).

Panitch, Leo and Donald Swartz, *The Assault on Trade Union Freedoms: From Wage Controls to Social Contract* (Toronto: Garamond Press, 1993).

Parr, Joy, *The Gender of Breadwinners: Women, Men, and Change in Two Industrial Towns 1880-1950* (Toronto: University of Toronto Press, 1990).

Pue, W.Wesley and Barry Wright, *Canadian Perspectives on Law & Society: Issues in Legal History* (Ottawa: Carleton University Press, 1988).

Robin, Martin, *Radical Politics and Canadian Labour, 1880-1930* (Kingston: Queen's University, Industrial Relations Centre, 1968).

Russell, Bob, *Back To Work? Labour, State and Industrial Relations in Canada* (Scarborough: Nelson, Canada, 1990).

Russell, Bob, "State Constructed Industrial Relations and the Social Reproduction of Production: the Case of the Canadian IDIA" (1987) 24:2 *Canadian Review of Sociology and Anthropology* 213.

Sangster, Joan, *Dreams of Equality: Women on The Canadian Left, 1920-1950* (Toronto: McClelland & Stewart Inc., 1989).

Scheinberg, Ellen, "The Tale of Tessie the Textile Worker: Female Textile Workers in Cornwall During World War II" (1994) 33 *Labour/Le Travail* 153.

Senior, Elinor Kyte, *From Royal Township to Industrial City: Cornwall, 1784-1984* (Belleville: Mika Publishing Company, 1983).

Steedman, Mercedes, "Skill and Gender in the Canadian Clothing Industry, 1890-1940" in *On the Job* 152.

Strong-Boag, Veronica, "The Girl of the New Day: Canadian Working Women in the 1920s" (1979) 4 *Labour/Le Travailleur* 162.

Strong-Boag, Veronica, *The New Day Recalled: Lives of Girls and Women in English Canada, 1919-1939* (Toronto: Copp Clark Pitman Ltd., 1988).

Tacon, Susan A., *Tort Liability in a Collective Bargaining Regime* (Toronto: Butterworths, 1980).

Tucker, Eric, "That Indefinite Area of Toleration": Criminal Conspiracy and Trade Unions in Ontario, 1837-77" (1991) 27 *Labour/Le Travail* 15.

Ursel, Jane, "The State and the Maintenance of Patriarchy: A Case Study of Family, Labour and Welfare Legislation in Canada" in James Dickinson and Bob Russell (eds.) *Family, Economy and State: The Social Reproduction Process Under Capitalism* (Toronto: Garamond Press, 1986).

Webber, Jeremy, "Compelling Compromise: Canada chooses Conciliation over Arbitration 1900-1907" (1991) 28 *Labour/Le Travail* 15.

Zieger, Robert H., *John L. Lewis, Labor Leader* (Boston: Twayne Publishers, 1988).

Zwelling, Marc, *The Strikebreakers: The Report of the Strikebreaking Committee of the Ontario Federation of Labour and Labour Council of Metropolitan Toronto* (Toronto: Ontario Federation of Labour and Labour Council of Metropolitan Toronto, 1972).

END

1 5-1 1-9 5

FIN