

THE MEANING OF THE TORIES' LABOUR LAW, BILL 7

BY HARRY J. GLASBECK

Since 1944, there has been unwavering elite support for a public policy that acknowledges that independent trade unionism enhances democratic rights. Legislators throughout Canada and Quebec have facilitated trade unionism by limiting the enormous control the ownership of assets gave employers over the lives of their workers. Over time, legislatures of all political stripes developed provisions that limited the power of intransigent employers to sack, intimidate, and coerce workers, or simply to chill the workplace atmosphere, thereby inhibiting workers who otherwise might be interested in joining a trade union. And, to create economic stability and secure freely made choices to form a union, trade unions were given protections against employer-engineered drives for decertification. The NDP had always adhered to these policies because it believed that the ensuing stable, narrowly focused economic collective bargaining scheme would improve overall productivity. Bill 40, the NDP's 1992 legislative amendments to collective bargaining legislation in Ontario, was based on this assumption. It brought to Ontario protections for trade unionism that were already in place elsewhere in Canada. Additionally, the NDP devised some novel procedural means by which to constrain employer interventions.

Ontario's Progressive Conservative government is adamant that the NDP's labour legislation, Bill 40, which it has repealed, hurt the economy by giving collectivized

labour too much power. It is equally convinced that the NDP-enhanced trade unions' strength overrode the freedom of choice of individual workers. Both propositions are arant nonsense.

There is not a scrap of credible evidence that either economic welfare or political liberties were in any way affected by Bill 40. On the economic front, inasmuch as there are any empirical data at all, they tend to show that things improved for both investment and job creation during the reign of Bill 40. Although the economic claim made by the Tories is mere bombast, the claim that their Bill 7, in comparison with the NDP's Bill 40, is deeply democratic, is blatant demagoguery.

AN AMERICAN IDEA

The Tories' basic assumption is unlike that of any other Canadian drafters of labour legislation. The Tories purport to believe that workers are more likely to be coerced by trade unions than they are by employers. All historical experience is to the contrary. Trade-union-promoting measures were instituted precisely because intransigent employers were the enemy of workplace democracy. Our legal books are dotted with the names of otherwise respectable businesses — for example, Radio Shack, K-Mart, and Fleck Manufacturing — whose hatred for effective workers' participatory rights, for democracy, caused them to engage in intimidatory tactics. The Harris government and its sophisticated advisers must be aware of this history and must know that, as they trumpet their al-

legiance to democracy in the workplace, they are pursuing its opposite.

The new Tory legislation, Bill 7, accepts the American model that requires an application for certification by a trade union to be voted on, regardless of how many people in the workplace have indicated their preference for the applicant trade union. Voting, of course, is popularly associated with democracy, but the hidden message is that a trade union is like a government, an exerciser of coercive power — a very American idea. In the American bargaining setting, the time it takes to vote has given red-neck American employers the opportunity to use tactics that successfully undermine workers' efforts to organize. The Harris government's provisions seek to soften the American model by proposing to hold the vote within five working days of an application, if possible. The idea is that there will be little time for employers to distort workers' views during such a short period.

ANTI-UNIONISM

There will be practical obstacles. Further, even if a trade union is successful after a vote, its representative capacity may still be challenged by an employer's right to litigate other issues. In addition, Bill 40's efforts to enhance the Labour Relations Board's powers to reverse an employer's unfair labour practices before a trade union is ready to apply have been very seriously diluted by Bill 7. This anti-unionism is evident throughout Bill 7.

If a trade union fails to win a certification when it applies to be the representative agent, it will be barred from applying again for at least 12 months. If anti-union workers (likely to be covertly supported by the employer) fail to win a decertification vote, they can make

another decertification application as soon as they (and their hidden ally) can get their act together. The Tories' agenda is transparent: they can't outlaw unions, but they are intent on making unions harder to form, and easier to destroy. The message Bill 7 sends is that unions, not employers, are the enemy of workplace democracy.

There is a whole series of anti-free choice provisions hidden from view by the Tories' clever emphasis of a purported purpose, namely the

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repeal of the shopping plaza picketing and anti-scab provisions included in the NDP's Bill 40. It is true that these provisions were ideologically repugnant to the Progressive Conservatives, but they were never of much practical importance; for instance, scabs are used in less than three percent of all cases in which they could be used by employers. Much more significant to the Tories and employers than the repeal of these provisions was the need to make somewhat protected workers less so, regardless of their wishes and established rights. This is the real burden of the new Bill.

UGLY NOTION OF DEMOCRACY

One more example will suffice. Public sector workers who have freely chosen their collective bargaining agent and have earned certain collective bargaining rights will lose them if the government

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contracts out a government function to a private entrepreneur. This enhances the position of the private entrepreneur and harms that of the workers who had exercised their freedom of choice under laws that preceded the NDP's Bill 40.

If Bill 7 were a mere repeal of Bill 40, it would have been a mindless, but not very important, exercise. It would have left the understandings of Canada's matured capital-labour relations system intact. The truth is that the NDP did not change anything fundamental with its Bill 40. Under the guise of being merely a reaction to Bill 40, Bill 7 turns out to be a radical attack on 50 years of employer-employee relationships in Canada. The Tories' unstated belief that primitive domination by wealth owners over the rest of us is a good thing is thereby revealed. Their notion of democracy is an ugly one. Bill 7 shows they believe that formal equal treatment of the rich and powerful and the poor and vulnerable amounts to democracy. Even the Supreme Court of Canada, a none-too-radical body, has denounced this proposition. Under the guise of the pursuit of democracy for individuals, the attack on organized workers, by dint of Bill 7, is of the same order as the Tories' economic attack on welfare recipients. The idea is that individuals should be pushed back to rely on their own, non-existing resources to do battle with those who have massive resources. This is the Tories' vision of a just and democratic society. ♦

Harry J. Glasbeek is a professor of law at Osgoode Hall Law School, York University.

I KNOW JACK KEMP AND, MR. HARRIS, YOU ARE NO JACK KEMP

BY ALAN S. ALEXANDROFF

With the Common Sense Revolution (CSR) as a compass, the Harris government sailed directly for the fiscal target set out in the CSR — a balanced budget in Ontario by the end of the 2000-01 budget year.

To do this, according to the Dominion Bond Rating Service (B. Miron, "Province of Ontario: An Analysis of the Fiscal and Economic Statement" in *A Report by DBRS*, December 1995, at 15), the Harris government will have to reduce Ontario's total expenditures (capital, program, and public debt interest) from \$56.094 billion to \$51.970 billion, and program spending from \$47.125 billion to \$41.410 billion in 2000-01.

We have already witnessed two installments of reductions by Minister of Finance Ernie Eves. Unfortunately, the first of these, a cut of \$1.9 billion on July 21, 1995, was occasioned by the largely discredited NDP government's continuing mismanagement, and was required merely to place the government in a position to commence the CSR at about the point originally indicated by the electoral plan. The second installment came on November 29, 1995, and represented something very close to a budget statement. The statement announced transfer payment cuts to municipalities, universities/colleges, and hospitals (MUSH) of about \$4.1 billion over the next two years, plus reductions of some \$1.4 billion to government operations. The government's determination is evident: further expenditure cuts

appear to be on their way in the first Harris budget in April or May 1996, the kick-off of the CSR, and rumours are already out that the cuts to the Ontario Public Service (OPS), originally estimated in the CSR to total 13,300, could

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eliminate well over 20,000 positions. What, then, is the problem?

CONTRADICTION: A BALANCED BUDGET AND A TAX CUT

One contradiction is obvious and has been noted by opposition parties, the media, and economic commentators: the tension generated by the CSR's effort to attract the fiscally prudent and conservative by simultaneously promising to balance Ontario's budget and to cut income taxes by some 30 percent. The second contradiction is less well understood and even less frequently commented on: the CSR is not revolutionary, certainly not in conservative and supply-side terms. It neither

attacks government in the radical way that supply-siders such as Steve Forbes and Jack Kemp are proposing, nor does it focus sufficiently on a growth agenda.

It is unclear what was originally promised by the Conservatives — a 30 percent personal income tax cut, or a 30 percent reduction in income tax rates for Ontario taxpayers — but the tension between a balanced budget and a tax cut is apparent. In the first budget year (1996-97) of the CSR, after taking into account 50 percent of the total tax cut (or some \$2.2 billion in revenue reductions) as promised by the CSR, the government was projected to reduce Ontario's deficit by less than \$1 billion. And the CSR's target for a balanced budget beyond the turn of the century (and, not coincidentally, beyond Harris's first mandate), would lead to Ontario's debt rising from almost \$100 billion to nearly \$120 billion.

It is, therefore, not surprising that the more traditional Tory elements and the more fiscally minded business interests have sounded the alarm on the CSR. They have urged the Harris government either to forget the tax cut altogether until a balanced budget is achieved, or at least to postpone its initial implementation by commencing the cut on January 1, 1997, and subsequently reviewing the fiscal situation to determine if further cuts are possible.

NEITHER "COMMON SENSE" NOR A "REVOLUTION"

Yet the more intriguing and, perhaps, more significant aspect of the plan is its failure to live up to its "revolutionary" and "growth" character. Failure to fulfill the former aspect was evident in Harris's decision to exempt health from the plan. At \$17.4 billion, this exemp-