

Canadian Labour Rights, International Trade, and Human Rights Law

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Part 1: Introduction

This report will cover the position and status of Canadian domestic laws protecting labour from the perspective of human rights. It will also discuss the stance of international laws in this domain within the scope of labour standards and global trade. Overall, it will analyze the labour standards policies. It will emphasize the existence of strict labour laws and give arguments. It will also refer to the practical difficulties in enforcing labour standards and will cover World Trade Organization penalties, private sanctions and the position of Uncle Sam in this regard.

Part 2: Analysis/Body

1. The method of approaching labour rights as human rights contributes to the depoliticization of the labour movement and, thus, undermines class-based responses to neoliberal globalization.
2. This report advocates the development of non-statutory unionism operating alongside established labour unions; it will be characterized by non-standard, non-union, independent employee organizations.
3. The recent decisions of the Supreme Court of Canada have renewed the international interest in the relationship between human rights and workers' rights; the freedom of association has been brought closer to the international norms.

Part 3: Conclusion

1. The approach of promoting labour rights as human rights has done very little to shift the class balance in the country.
2. There is a need for a sustained political struggle to protect and enhance the rights of the workers.
3. The right to collective bargaining has been saved by the Canadian government as it did not sign on to the ILO Convention 98.

Recommendations:

1. The density level has dipped to only twenty per cent in the private sector; special attention must be given to this area.
2. The Canadian labour unions must understand that Canada and its corporate elites are agents of neoliberal globalization in order to contest neo-liberalization in an effective and meaningful manner.
3. The Canadian unions must resist the legalization of politics; they must retreat to legal institutions as an alternative strategy.

Specific Page Numbers:

Chapter 5: Page No. 155-185

Chapter 6: Page No. 191-216

Two Quotes from the Textbook by Nicholson:

Page No. 161: More immediately relevant to our discussion of human rights and international trade are the main principles set out in the UN Global Compact, which covers four main areas: human rights, labour standards, environment, and anti-corruption. These principles have been developed by three international organizations: the UN, the ILO (International Labour Organization), and the OECD.

Page No. 162: These ten Global Compact principles require businesses to uphold the elimination of all forms of forced and compulsory labour, the effective abolition of child labour, and the elimination of discrimination with respect to employment and occupation.

Informal List of References:

S. #	Title	Author(s)
01	The best of both worlds: A pragmatic approach to the construction of labour rights as human rights.	Walchuk, B.
02	From Statutory Right to Human Right: The evolution and current status of collective bargaining.	Adams, R. J.
03	Organized Labour and the Canadian charter of rights and freedoms.	Savage, L.

04	A long overdue beginning: The promotion and protection of workers' rights as human rights.	Gross, J. A.
05	Supreme Court Shifts on Right to Bargain.	Smith, C.
06	<i>Labour left out: Canada's failure to protect and promote collective bargaining as a human right.</i>	Adams, R. J.
07	<i>Collective bargaining in Canada: Human right or Canadian illusion?</i>	Fudge, D.
08	Graduated freedom of association: Worker voice beyond the Wagner model.	Doorey, D. J.
09	The rights revolution.	Lichtenstein, N.
10	The right to bargain collectively in international law: Workers' rights, human rights, international rights?	Macklem, P.
11	Labour rights as human rights? A response to Roy Adams.	Savage, L.
12	The best of both worlds: A pragmatic approach to the construction of labour rights as human rights.	Walchuk, B.

Introduction

This report will cover the position and status of Canadian domestic laws protecting labour from the international perspective of human rights. It will emphasize the existence of strict labour laws and give arguments. It will also discuss the stance of international laws in this domain within the scope of labour standards and global trade. Overall, it will analyze the labour standards policies. It will also refer to the practical difficulties in enforcing labour standards and will cover World Trade Organization penalties, private sanctions and the position of Uncle Sam in this regard.

Firstly, the report will analyze the method of approaching labour rights as human rights contribute to the depoliticization of the labour movement. It will determine the class-based responses to neoliberal globalization in this regard by discussing that the labourers must not be viewed as bearers of fundamental human rights instead of being economic interests.

Afterwards, this report will advocate the development of non-statutory unionism operating alongside established labour unions. Moreover, it will also discuss the non-standard, non-union, independent

employee organizations.

Moving towards the end, this report will incorporate relevant information from the recent decisions of the Supreme Court of Canada, which have renewed the international interest in the relationship between human rights and workers' rights. As a result of which, the freedom of association has been brought closer to the international norms.

Lastly, the report recommends that special attention must be paid to the density level, which has dipped to only twenty per cent in the private sector. It further suggests that Canadian labour unions must understand that Canada and its corporate elites are agents of neoliberal globalization to contest neo-liberalization in an effective and meaningful manner. Moreover, it recommends that Canadian unions resist the legalization of politics by treating legal institutions as an alternative strategy.

Body

The nature of labour relations in the North American context has been a debate in an endeavour to develop a link between human rights and labour rights in recent years. Roy Adams and several other leading industrial relations have taken part in this debate. They have argued that labourers must not be viewed as bearers of fundamental human rights but rather as economic interests. The method of approaching labour rights as human rights contributes to the depoliticization of the labour movement. In liberal democratic societies, the human rights discourse has a normative weight associated with it, transforming it into a popular practical tool for social movements.

Important questions concerning the relationship between international obligations and domestic labour laws have been raised due to the adoption of this approach. Questions concerning the manner in which the rights of workers are interpreted by the Canadian government have been raised as well. However, the 'labor rights as human rights' agenda contribute to the depoliticization of the labor movement. Therefore, it undermines the class-based responses to neoliberal globalization. Thus, this approach tends to downplay as it ignores the central role of economic conflict and the material dimension of collective worker action in the employment relationship.

Thereby, it can be argued that the approach concerning labour rights as human rights by the governments in Canada is flawed because it believes that the flow of power and authority comes from the rights. The opposite is true, as demonstrated by the history. The Canadian society along class lines is polarized by the inequalities in wealth and power; the liberal human rights discourse does not address these inequalities. Therefore, the class-based approaches to advancing the rights of the workers are undermined by shifting the focus towards labour-management relations as an understanding of liberal human rights instead of the employment relationship. As such, the agenda concerning labour rights as human rights is a potentially dangerous strategy because it continues to fight a defensive battle for a labour movement in an era of neoliberal globalization.

More immediately relevant to our discussion of human rights and international trade are the main

principles set out in the UN Global Compact, which covers four main areas: human rights, labour standards, environment, and anti-corruption. These principles have been developed by three international organizations: the UN, the ILO (International Labour Organization), and the OECD. In Canada, the National Union of Public and General Employees and the United Food and Commercial Workers, from a labour union perspective, have been at the forefront of promoting the agenda of catering to labour rights as human rights. At the International Labor Organization's (ILO) Committee on Freedom of Association, these unions highlighted the country's dismal record with the purpose of embarrassing governments to comply with international labour rights. The Canadian Professional Police Association and the National Teachers' Federation joined these unions in 2007. They call on the federal and provincial governments to respect the rights of collectively organising and bargaining, as the International Labor Organization elaborated. In light of these developments, the labour movement must reexamine the exclusive-agent certification model that is being used to extend collective bargaining rights in the country.

The development of non-statutory unionism operating alongside established labour unions is essentially critical. The union must grip with the legitimacy of such non-traditional procedures and independent organizations, which are preferred over certified exclusive agent representation by many employees who must be enabled to establish a broader range of organizations in a truly human rights-compliant system. On the other hand, organizations must be able to negotiate arrangements with their employers. Such organizations often oppose the development of these non-standard employee associations. However, it is not the only threat in this regard; they lack the statutory strength of labour unions, and in an attempt to dissuade unionization, these organizations are often organized at the behest of employers.

The development of the non-standard, non-union, independent employee organizations complies with the ten Global Compact principles; they require businesses to uphold the elimination of all forms of forced and compulsory labour, uphold the effective abolition of child labour, and uphold the elimination of discrimination concerning employment and occupation.

It is worth mentioning here that the recent decisions of the Supreme Court of Canada have renewed the international interest in the relationship between human rights and workers' rights. As a result of it, the freedom of association has been brought closer to the international norms. For instance, the Ontario Law prohibiting agricultural workers from organizing into unions was struck down by the Court in *Dunmore v. Ontario* (2001). The Court determined that the right to freedom must be maintained as the collective agenda of the union despite being inconceivable on the individual level. This decision effectively opened the doors to the International Labor Union as a reference body.

Agricultural Employees Protection Act (Bill 137) came as a creative anti-union response to the decision of the Court in *Dunmore v. Ontario* (2001). Under this Act, agricultural workers were permitted to form unions. However, they could not strike or bargain collectively. The constitutional validity of the new law was challenged by the United Food and Commercial Workers. However, the Supreme Court ruled that the Charter was not violated because Bill 137 provided adequate protection

of the right to freedom of association to the agricultural workers. The case is currently under process after the appeal of the union. In 2002, the Health and Social Services Delivery Improvement Act (Bill 29) was enacted by Premier Gordon Campbell's right-wing Liberal government.

The law allowed extensive privatization of the healthcare system and hospital closures in the provinces. It radically altered the relations of the province's healthcare system with its labourers because it precluded bargaining on several aspects of the employment relationship and invalidated some provisions of existing collective agreements. The union filed a complaint with the International Labor Organization because the law violated the guarantee of Freedom of Association and equality provisions of the Charter. However, the challenge was rejected. Thus, the practical application of the unions is questioned.

Conclusion

The approach of promoting labour rights as human rights has done very little to shift the class balance in the country. There is a need for a sustained political struggle to protect and enhance the rights of the workers. The right to collective bargaining has been saved by the Canadian government as it did not sign on to the International Labor Organization Convention 98. Therefore, special attention must be paid to the union density level, which has dipped to only twenty per cent in the private sector. In the long run, it needs a strategic plan and vision that involves multiple unions. Furthermore, Canadian labour unions must understand that Canada and its corporate elites are agents of neoliberal globalization to contest neo-liberalization in an effective and meaningful manner. It will allow the unions to view their struggles as distinct and separate from the interests of the businesses. Additionally, the Canadian unions must resist the legalization of politics. Instead, they must retreat to legal institutions as an alternative strategy. This shift will allow the political strategy to embrace judicial rights discourse in an attempt to link it to its unprecedented post-war weakness.