

The Environmental Challenges for Collective Bargaining in the College System in 2014

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**PRESENTATION TO MANAGEMENT ACADEMY
MARCH 18, 2014
COLLEGE EMPLOYER COUNCIL**

Outline

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- **Why should you care about Collective Bargaining?**
- **What is Collective Bargaining?**
- **Background to Collective Bargaining in Canada**
- **Collective Bargaining in the Colleges**
- **Environment for Bargaining 2014**
- **Bargaining Agents: OPSEU + CEC**

Headlines

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- **Unions entitled to collect personal contact information from employers**
- **BC Supreme Court Awards \$2 million in damages for freedom of association violation**
- **Arbitrator awards over \$500,000 in damages to terminated employee**
- **Ontario Arbitrator upholds termination for employee breach of trust and abuse of benefits**

Individual Employment Law

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- **Contract Between Employer and Employee**
- **Terms and Conditions set by individual agreement**
- **General Statutes creating obligations that must be followed- Employment Standards (ESA)**
- **Termination with “Reasonable Notice”**
- **Adjudication- Courts –Wrongful Dismissal-if reasonable notice not given sue for damages**
- **Specialized Tribunals – Labour Relations Board deals with ESA**

ESA and the Colleges

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Apply to Colleges

- Leaves of Absence
- Termination and Severance of Employment
- Equal Pay for Equal Work
- Benefit Plans
- Lie Detectors
- No Reprisals
- Building Services Providers
- Continuity of Employment
- Wage Priority

Don't Apply to Colleges

- Payment of Wages
- Records
- Hours of Work
- Overtime
- Minimum Wage
- Public Holidays
- Vacation with pay

Unionized Work Environment

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- **Collective Agreement**
- **Individual bargaining not allowed**
- **Representation by the union**
- **Layoff/Bumping provisions**
- **Termination for just cause**
- **Adjudication by Arbitration not by courts**
- **Arbitrator may reinstate employment**

History of Collective Bargaining

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- **Pre 1872- Unions Criminal Conspiracy in Restraint of Trade**
- **1872- Unions Permitted but no legal regime to regulate activity**
- **Wagner Act U.S. – New Deal- Keynesian Economics**
- **Privy Council Order- Canada- Wartime to reduce strikes- (Copy of Wagner Act)**
- **Labour Legislation- Provinces copy “Wagner Act”-OLRA**

Post War Labour Compromise-“Fordism”

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- Labour Specialists adjudicate issues- Labour Relations Boards/Arbitrators
- Union Right to organize free from interference
 - Apply to Labour Board for certification (no recognition strikes)
 - Membership support to get union (Vote based/Card based)
- Union- Exclusive bargaining agent for group of employees
 - Rand formula union security –must pay dues
- Bargaining impasse- strike/lockout
 - before strike/lockout must have 3rd party assistance at bargaining
- During Collective Agreement - no strikes
 - Grievance/Arbitration
- Unfair Labour Practices prohibited
 - Bargain in good faith

Public Sector Bargaining

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- Later than private sector
- “You cannot bind the Crown”
- 1967- *Public Service Staff Relations Act*- Federal
- 1972- *Crown Employees Collective Bargaining Act*- Provincial
- Now public sector more widely unionized
- Largest unions public sector- CUPE, PSAC
- Traditional Private Sector Unions- public sector components - Steelworkers (U of T), Unifor(McMaster, U of Windsor)

Arbitration

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- Neutral third Party to resolve disputes about interpretation, application administration or alleged violation of Collective Agreement
- Hearing is less formal than courts but still is a legal procedure
- Counsel, opening statements, witnesses, cross examination
- Awards

The Charter/Labour Trilogy

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- Freedom of Association guaranteed in the Charter
- Union's challenge Government's limits to Collective Bargaining
- In three cases (Labour Trilogy) SCC makes it clear that collective rights are not protected by the Charter
- SCC held that association rights only guaranteed the right to do together what you could do as an individual

BC Health Services

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- Freedom of Association guaranteed in the Charter includes collective bargaining
- Overrules the Labour trilogy
- Unions rejoice
- Union's expect this means a guarantee of the traditional model of labour relations ("Fordism")
- Including right to strike
- Government would have to justify interference with this right



“We conclude that the s. 2(d) guarantee of freedom of association protects the capacity of members of labour unions to engage in collective bargaining on workplace issues.”

Supreme Court of Canada 2007- “BC Health Services” Case

Retreat from BC Health Services

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- **Fraser** SCC (Agricultural workers) wait a minute the BC Health Services decision does not mandate the traditional model of bargaining a separate legal regime with lesser rights is okay
- Waiting SCC decisions on:
 - Right to Strike limitations –**Saskatchewan Federation of Labour**
 - Right to Exclude workers from selecting their own “union” - **Delisle (RCMP)**



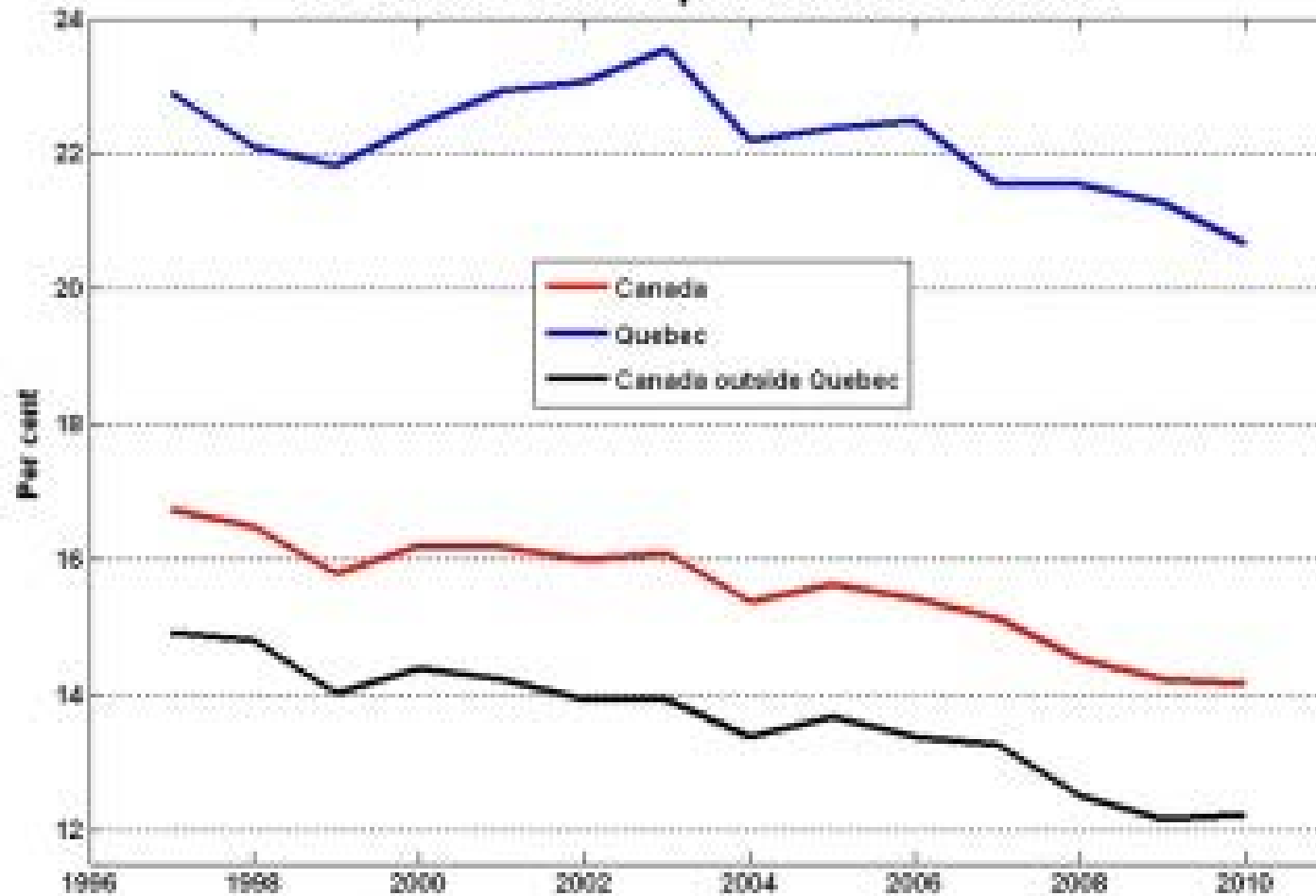
Legislatures are not constitutionally required, in all cases and for all industries, to enact laws that set up a uniform model of labour relations imposing a statutory duty to bargain in good faith, statutory recognition of the principles of exclusive majority representation and a statutory mechanism for resolving bargaining impasses and disputes regarding the interpretation or administration of collective agreements. - **SCC Fraser Case 2011**

Environment-2014

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- **Union Density –Down**
- **Governments willing to interfere in Collective Bargaining**
- **Governments pre-occupied with deficits**
- **New bargaining regime for teachers in Ontario**
- **Union mergers- Unifor (CAW + CEP)**
- **Challenge to Defined Benefit Pension Plans**
- **Focus on reducing sick leave benefits**

Unionised share of private-sector workers



<http://www.theglobeandmail.com/report-on-business/economy/economy-lab/stephen-gordon/what-does-shift-in-union-membership-mean-for-canada/article2153746/>

Labour Organizations

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- **Local Union- Workplace-**
 - <http://www.opseu110.ca/>
- **National/International Union-**
 - **OPSEU-www.opseu.org**
 - **NUPGE- <http://www.nupge.ca/>**
 - **UNIFOR -<http://www.unifor.org/>**
- **Labour Councils- Municipal**
 - <http://sudburylabour.ca/>
- **Labour Federations**
 - **OFL-<http://www.ofl.ca/>**
 - **CLC-<http://www.canadianlabour.ca/home>**

Colleges Collective Bargaining Act

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- Special legislation for Colleges
- Two unionized bargaining units for full-time employees– Academic Staff and Support Staff
- Two non-unionized bargaining units for part-time employees
- Multiple employers (24 Colleges) but one agreement for each bargaining unit-2 Agreements
- Province-wide bargaining- OPSEU and College Employers Council (CEC)
- Unique model in Ontario

OPSEU

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- Started out as Civil Service Association of Ontario (CSAO)
 - becomes union in 1966
 - Name change to Ontario Public Service Employees Union 1975
- Organizes College Support Staff in 1966
 - First Collective Agreement 1968
- Organize Faculty in 1971
 - First Collective Agreement 1973
- Strikes Support Staff (79 and 11), Faculty (84,89,06)

College Employer Council

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- Statutory organization to bargain for Colleges and to be policy holder for provincial benefits plans
- Non-profit corporation
- Owned and run by Colleges- Board composed of 24 Presidents and 24 College Board Chairs
- **Is not an agency of the Government of Ontario**

Questions/Discussion

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