Carleton University

Challenging employee status using legal mobilization: Home-based child care workers and rural and suburban mail carriers organize

A thesis submitted to
the Faculty of Graduate and Postdoctoral Affairs
in partial fulfillment of the requirements for the degree of
Master of Arts

Institute of Political Economy

by

Sarah Ryan, B.A. (Hons.)

Ottawa, Ontario

May 2011

Your file Votre référence
ISBN: 978-0-494-81622-6
Our file Notre référence
ISBN: 978-0-494-81622-6

Abstract

This research explores the limits and possibilities of unions using legal mobilization to challenge the employment status of rural and suburban mail carriers and home-based child care workers. These two groups of workers were defined as independent contractors in two separate pieces of legislation federally and in Quebec, which excluded them from labour and employment protections. The workers and several unions used legal action to different extents in broad-based political and grassroots mobilization campaigns to challenge the workers' employment status. This research explores the constraints and possibilities of legal tactics in the respective campaigns in terms of the material benefits for workers, changes in power relations with the government and/or employer and the development of workers' rights consciousness. The campaigns illustrate the variety of legal tactics that can be used as well as the creative and innovative ways in which legal action can be employed.

Acknowledgements

I would like to express a huge thank you to my supervisor, Rosemary Warskett, for her insight and comments throughout the entire process. I would like to thank my reader, Teresa Healey, for her thoughtful contributions to my thesis. I would also like to thank Wallace Clement for thought-provoking questions at the defence. A huge thank you also goes out to Donna Coghill, who was the best guide a Masters student could ask for throughout these past two years. Furthermore, a big thank you to Janet Siltanen and Rianne Mahon for an enriching learning experience with the Institute of Political Economy. And finally, I would like to thank my partner, Rocque Gameiro, and my parents, Diane and Mike Ryan, for all their love, patience and support throughout the last two years.

Table of Contents

List of Appendices

Acronyms

ADIM - Alliances des intervenantes en milieu familial
ARRMC - Association of Rural Route Mail Couriers
CLC - Canada Labour Congress
CLRB - Canada Labour Relations Board
CMAC - Country Mail Association of Canada
CPC - Canada Post Corporation
CPC Act - *Canada Post Corporation Act*
CRT - Commission des relations du travail
CSN - Confédération des syndicats nationaux
CSQ - Centrale des syndicats du Québec
CUPW - Canadian Union of Postal Workers
FIPEQ - Fédération des intervenantes en petite enfance du Québec
FSSS - Fédération de la santé et des services sociaux
FTQ - Fédération des travailleurs et travailleuses du Québec
ILO - International Labour Organization
LCUC - Letter Carriers Union of Canada
MP - Member of Parliament
MNA - Member of the National Assembly (Quebec)
NAALC - North American Agreement on Labour Cooperation
NAFTA - North American Free Trade Agreement
NDP - New Democratic Party
OECD - Organization for Economic Cooperation and Development
ORRMC - Organization of Rural Route Mail Couriers
RRMC - Rural Route Mail Couriers
RSMC - Rural and Suburban Mail Carriers

Chapter 1

This thesis explores several labour unions' multi-faceted legal mobilization campaigns to contest the independent contractor status of rural route mail couriers and home-based child care workers. The distinction between independent contractor and employee status has material effects for workers in that it determines whether they are subject to competition and the principles of commercial law or covered by employment and labour standards legislation (Cranford et. al, 2005, p. 37). This research analyzes the limits and possibilities of using the law to mobilize around and challenge the legal classification of the workers. Law can be seen as specific cultural conventions, logics, rituals, symbols, skills, practices and processes citizens use in practical activity (McCann, 1996, p. 210). Legal meanings shape citizens' understanding, aspiration and interaction with others (McCann, 1991, p. 227). While the law is viewed as constraining the opportunities of social movements, it is also considered a terrain of struggle upon which social movements can mobilize and pressure opponents to make concessions or compromise (McCann, 1998, p. 88-90). Legal mobilization theory, which combines elements of critical legal theory and social movement theory, may be considered a loose collection of affiliated interpretive models with various conceptual concerns and empirical applications (McCann, 1994, p. 5; McCann, 1998, p. 78). While much critical legal theory research maintains that legal justice is a myth, social movement research has recognized the role of legal norms, tactics, institutions and experts in numerous social movement campaigns but without a theoretically rigorous analysis of 'law' (McCann, 1998, p. 78). The combined theoretical framework will allow for a nuanced analysis of both the domination and resistance that are central to the operation of law along with an

exploration of the limits and possibilities of using legal mobilization to challenge the hierarchical distribution of power and resources. The limits and possibilities are conceived broadly to include both direct and indirect impacts of legal action alongside changes in the subjectivities of participants through the development of a legal or rights consciousness that will help in future movement building. Furthermore, the legal action will be situated firmly within the overall political context and broader political and grassroots mobilization campaigns undertaken by the respective unions. Legal mobilization theory will provide the framework within which to explore the myriad of ways in which the labour unions in the two case studies employed legal action to challenge the legal classification of rural route mail couriers and home-based child care workers.

This distinction between independent contractors and employees has become increasingly debated in recent years due to the increase in the number of workers defined as independent contractors. Since the 1980s and 1990s, there has been an increase in the incidence of independent contracting (self-employment) across industrialized countries (Organization for Economic Co-operation and Development [OECD], 2000). In Canada, self-employment grew as a share of employment through the 1980s and 1990s, reaching 16 per cent in 2000 (Cranford et al., 2005, p. 9). There are a wide variety of workers who are constructed as self-employed, from the professional who employs others, to skilled professional workers such as doctors or lawyers, to personal care workers and child care workers who work in their own home. In fact, there is no generic form of self-employment (Cranford et al., 2005, p. 5-8), which makes the legal distinction between independent contractors and employees problematic.

The OECD has noted that Canada has seen an increase in self-employed workers who work for only one company and whose employment status may be aimed at reducing total taxes paid by firms and workers (OECD, 2000, p. 187). This is aided by the fact that the distinction between independent contractor and employee status is complex and ambiguous. Historically, self-employment has been linked to workers' ownership of the means of their own production and self-direction or autonomy over their work (Dale 1986). However, the link between self-employment and entrepreneurship is no longer clear (Cranford et. al, 2005, p. 7). Fudge notes the distinction between the statuses often "does not capture the difference between entrepreneurship and economic dependence" (Fudge, 2003, p. 38). Some theorists note a continuum of self-employment with different levels of quality and rewards and economic success and security (Hakim 1988; Leighton & Felstead 1992). Some types of self-employment allow people to reach their potential and align rewards with efforts while others leave workers in a marginalized position (International Labour Organization, 1990). It is clear that there are no standard or constant factors that differentiate independent contractor and employee status.

The distinction between the two categorizations is important in that employees are covered by employment and labour legislation while independent contractors are not.[1] Employment standards cover various aspects of the employment relationship such as statutory holidays, minimum wage, hours of work, overtime, vacation, and notice of termination. Labour standards involve access to collective bargaining regimes. These two

[1] The status of dependent contractor, which is present in certain Canadian jurisdictions, was developed to address the contractor who was dependent economically (Arthurs, 1965, p. 89). Dependent contractors have access to collective bargaining regimes.

social entitlement regimes, though at times difficult for precarious workers to access,[2] offer tools and structures to improve working conditions. In this thesis, the term "precarious work" will be used to describe work with atypical contracts, limited social benefits and statutory entitlements, job insecurity, low earnings, low job tenure, poor working conditions and high risks of ill health (Cranford, Vosko & Zukewich, 2003, p. 455). Precarious work focuses on workers' experiences of labour market insecurity. The use of the concept of precariousness ensures that economic insecurity is not treated as uniform in its effect but different in various contexts (Vosko, 2006, p.4). Independent contractors are not necessarily engaged in precarious work but, undoubtedly, a percentage of them would be classified as such.

A crucial distinction between forms of self-employment is whether the individual hires other employees or whether they are 'own-account' and do not hire employees. Statistically, there is great variation between independent contractors and between independent contractors and employees. The majority of the increase in self-employment during the 1990s was in the own-account category, which increased from 6 to 10 per cent of overall employment between 1976 and 2000 (Cranford et al., 2005, p. 9). In comparison to paid employees, the own-account self-employed are generally less likely to have access to training, earn overtime pay, receive maternity, parental or sick leave, and report longer working hours (Cranford et al., 2005, p. 13). In terms of remuneration, there is also a clear difference between paid employment and own-account self-employment, and between workers engaged in own-account self-employment based on

[2] Non-unionized workers engaged in precarious work often have difficulty enforcing employment standards due to problems with lack of compliance and enforcement (Bernstein et al., 2006, p. 216). Furthermore, the contemporary structure of workplaces can make it difficult to organize workers in unions (Tufts, 1998, p. 227).

their social location.[3] In 1999, women and men working as own-account self-employed had average annual incomes of $13,032 and $19,769, respectively. The figures for female and male waged and salaried employees were on average $26,015 and $40,183, respectively (Cranford et al., 2005, p. 11). This indicates that the average annual income for the own-account self-employed is much lower than for paid employees. If we break down income for own-account self-employment by gender and immigration status, the average annual income of men born in Canada is $20,188, followed by men born abroad at $18,476, then women born in Canada at $12,918, and women born abroad at $11,929 (Cranford et al., 2005, p. 11-12). This illustrates how social location has a dramatic impact on the incomes of own-account self-employed workers. In other words, the distinction among different independent contractors and between independent contractors and employees affects the lived material reality of workers.

The case studies

This thesis will explore two cases where groups of workers - rural and suburban postal workers and home-based child care workers - challenged their employment status. Both involved a rigidly defined independent contractor status in that it was legislatively applied rather than being determined by the employer or employee. Normally government programs or agencies such as the Canada or Quebec Pension Plan, Employment Insurance or the Canada Revenue Agency and tribunals or courts determine employment status depending on the situation and claim being made. However, rural and suburban postal workers and home-based child care workers--both in the para-public

[3] Social location is used to refer to one's location in the social structure, specifically, the spaces created by the intersection of race, gender, class and culture (Zavella, 1997, p. 187-188). Gender, race, class, ethnicity and age are locations shaped by the political, economic and other social relations in a specific time and place (Cranford, Vosko and Zukewich, 2003, supra. 2).

sector--were defined as independent contractors in respective pieces of federal and Quebec legislation. Therefore, the workers had a much more intensive struggle to contest this status. Workers and unions used a combination of legal, political and grassroots mobilization to challenge dominant power relations. This research will evaluate the limits and possibilities of using legal mobilization as part of a broader campaign to contest employment status.

The first and earliest case involved Rural Route Mail Couriers (RRMCs) attempting to challenge Section 13.5 of the *Canada Post Corporation Act*, which, when it was instituted in 1981, classified them as 'mail contractors', or independent contractors. This prevented rural postal workers from accessing collective bargaining rights in Part III of the *Canada Labour Code* and the minimum employment standards in Part I of the Code. There were several phases of the campaign to challenge this exclusion beginning with the Association of Rural Route Mail Couriers (ARRMC), an association of RRMCs that started in Ontario. This was followed by Canadian Labour Congress (CLC) Local 1801, which started signing up workers in a unionization campaign. The organizations engaged in extensive litigation, mobilized workers in a union sign up campaign and organized politically. Later, an organization called the Organization of Rural Route Mail Couriers (ORRMC), along with the Canadian Union of Postal Workers (CUPW), mobilized to challenge the exclusion. The organizations used diverse tactics such as a complaint through the North American Agreement on Labour Cooperation (NAALC), an administrative complaints process and political lobbying to challenge the workers' status. On January 1, 2004, Rural and Suburban Mail Couriers (RSMC) became unionized

employees of Canada Post, having been contracted-in as part of the urban postal worker collective bargaining process.

In the second case, the Centrale des syndicats du Québec (CSQ) and the Confédération des syndicats nationaux (CSN) initially challenged home-based child care workers' employment status by applying for union certification. This came to an end when the Charest government passed Bill 8 on December 18, 2003,[4] which stated that home-based child care workers in Quebec were independent contractors rather than employees. This law applied retroactively to previous decisions by administrative, quasi-judicial or judicial bodies, which had already constituted some of the workers as employees and subject to employment standards protections and collective bargaining. This law removed employee status and union accreditations from the workers and unions that had been involved. The unions involved applied political pressure on the government and tried to mobilize public support through demonstrations and the media. The affected unions filed complaints with the International Labour Organization (ILO) Committee on Freedom of Association and received a decision in their favour (CSD, CSQ, FTQ, 2004, Plainte B.I.T.). They filed a challenge under the *Canadian Charter of Rights and Freedoms*[5] relying heavily on litigation to challenge the exclusion. They received a decision in their favour from Judge Danielle Grenier October 31, 2008 in the Quebec Superior Court. The judge declared Law 8 unconstitutional, invalid and without effect.[6]

---

[4] Projet de loi no 8, *Loi modifiant la Loi sur les centres de la petite enfance et autres services de garde à l'enfance,* 1 Sess, 37th Leg, Quebec, 2003, ch. 13. [*loi no 8*]

[5] *Canadian Charter of Rights and Freedoms*, s. 15, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11. Canada Post Corp. v. Assn. of Rural Route Mail Couriers, 1987, para. 3. [*Charter*].

[6] Confédération des syndicats nationaux c. Québec (Procureur général), 2008 QCCS 5076, [2008], para 481. [*CSN*].

The legal, political and grassroots mobilization resulted in a new law,[7] which maintained the workers' independent contractor status but gave them collective bargaining rights.

The ARRMC, CLC Local 1801, ORRMC, CUPW, CSQ and CSN incorporated various legal mobilization strategies and tactics as part of broad based campaigns to change legislation that excluded groups of para-public workers from social entitlements. This research will explore the limits and possibilities of legal mobilization to challenge the government of the day and/or the employer.

Theory

At a broad theoretical level, this thesis relies on a neo-marxist perspective, which assumes that inherent conflicts exist between workers and employers over the labour process, compensation and social issues (Albo, 2010, p. 6). The cases studied in this research are seen to have taken place in a context of neoliberal capitalism, defined as a set of policies that seek to reinforce "free market, private property, and capitalist social relations through privatization deregulation, flexibilization (the increasing of management abilities to deploy labour freely), free trade, de-unionization, and financialization" (Albo, 2010, p. 4). The case studies reflect particular incarnations of the social relations present at a juncture in time and space. The specific political economic context of the different jurisdictions and times at which the cases occurred will be explored to highlight opportunities and constraints for mobilization. Gramsci's interpretation of 'compromise' will be used to illustrate how capital and the state take into account some of the needs of groups over which they exercise power. These

---

[7] *An Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, and amending various legislative provisions.* L.Q. 2009, c. 36 [*Representation*].

compromises never challenge essential elements of the hegemonic system (Gramsci, 1971, p. 161). Hegemony is rule which exists in active forms of experience and consciousness in addition to political institutions and relations (Williams, 1976, p. 145; Hall, 1988; Hunt, 1990; Morera, 1990). The ruling class persuades subordinate classes to accept and "interiorize" the values and norms that the dominant classes believe to be right and proper (Miliband, 1990, p. 347). This framework will help explore the power relations and dynamics between labour, capital and the state. They also situate the cases in distinct political economic contexts. Specifically, the role of the judicial arm of the state will be explored in terms of maintaining and challenging dominant relations between capital, the state and labour in terms of workers' struggles.

Given that the role and use of legal action and the law is at the heart of this thesis, the way that law functions as a tool of both domination and resistance will be explored theoretically. The specific theoretical framework of legal mobilization will be used, which combines elements of both critical legal theory and social movement theory (McCann, 1998, p. 78). This combination results in research which decentres court-focused analysis and places legal action in its grass-roots social movement context. There are many critiques of social movements engaging in legal action (Kairys 1982; Kelman 1987; Gabel 1982; Bumiller 1988; Klare 1982; McCann 1986; Milner 1986; Clarke, 2003). Given that law is a central means of social control in society, what are the limits and possibilities of using legal process, norms and discourse in forms of resistance? This research will engage with critiques of law to explore the limits and possibilities of using legal mobilization to challenge employee status. Much of the previous research deals with rights-based critiques and the use of the Charter for individual rights, while there is

little research that evaluates the role of legal mobilization by labour unions to challenge the legal construction of workers.

Research questions

The key question that will be explored throughout this thesis is what are the limits and possibilities of using legal strategies and tactics to challenge the workers' legal construction in order to improve working conditions and give them greater power and control in the workplace? A secondary research question involves a discussion of how the various types of legal tactics mobilized and demobilized the workers in these cases. The research will also explore the direct and indirect results of various legal mobilization strategies and tactics used by the labour unions. The way legal mobilization fits in with the broader political and grassroots mobilization used in the campaign will be examined throughout the thesis. The research will explore how the political and economic context affected the legal mobilization efforts and how the chosen legal mobilization strategies and tactics affected the possibilities for connecting with allies and the public. Furthermore, how did legal mobilization affect the possibilities of more transformative change? By investigating these questions, this thesis will explore the contours and edges of how the law acted as a force of domination and resistance, opportunity and constraint in the particular campaigns.

Chapter outline

The thesis will explore these central research questions in five chapters. In Chapter Two, the theory and methodology being used in the thesis will be discussed in greater detail. Legal mobilization theory will be explored with an examination of key concepts such as the law, legal discourse, ideology and legal consciousness. The

distinction between employees and independent contractors will also be discussed. The methodology section will outline the critical realist methodological framework being used for the research. The chapter will close with a discussion of case study selection and some of the key similarities and differences between the two cases.

The third chapter will explore the first case of RRMCs struggling to challenge section 13.5 of the *Canada Post Corporation Act*, which defined them as independent contractors. The interactions in how legal, political and grassroots mobilization were employed to challenge the position of Canada Post and the government will be discussed. The ARRMC's litigation will be discussed in terms of the risks and limits of relying on litigation to contest the dominant power relations. After years of costly legal action, the courts failed to alter the 'independent contractor' status of RRMCs. The chapter will also explore the CUPW and ORRMC phase of the struggle, which involved the most minimal use of legal action. The priority was placed on political and grassroots mobilization in their campaign strategy. When legal mobilization was used, it was in a strategic and subversive manner to strengthen other prongs of the campaign.

Chapter Four will consider the limits and possibilities of employing legal mobilization in the second case study of home-based child care workers challenging Law 8, which modified the *Loi sur les centres de la petite enfance et autres services de garde à l'enfance*.[8] To challenge this legislation, the unions filed a Charter challenge, made use of administrative complaints processes, and filed a complaint with the ILO's Committee on Freedom of Association. Both case studies firmly root legal action in broader political and grassroots worker mobilization. They show some of the innovative, strategic, multi-

[8] Loi modifiant la Loi sur les centres de la petite enfance et autres services de garde à l'enfance, L.Q. 2003, c. 13 [*Loi sur les CPE*]

faceted, constrained and limited ways in which law can be employed to challenge the workers' employment status.

The fifth chapter will discuss the similarities and differences between the cases that affected opportunities and constraints. What options and possibilities were open at specific junctures of time and space with regards to challenging the status quo? The two cases will be assessed with regard to whether they achieved material benefits for workers and altered the power relations between workers and the dominant group. This chapter will explore both the direct and indirect consequences of the respective organizations' legal mobilization campaigns. Furthermore, the effect of legal mobilization on the workers' consciousness of their rights and on the broader discourse and ideology will be explored. The chapter will will close with a discussion of future possibilities for research and some reflections on the theoretical framework.

Thesis

This thesis argues that at some points, legal action helped to improve working conditions and shift the balance of power between labour and the government and/or the employer. At the same time, recourse to the law without any mobilization of workers was limited in terms of its direct and indirect results. The cases showed that legal action had the strongest results when combined with grassroots and political mobilization. They illustrated how legal discourse and process can be used to challenge privilege and hierarchy. As one tactic in many, legal action can help construct a powerful counter-hegemonic discourse and build the bargaining power of labour. Conversely, legal action had serious limitations due to its high cost, the level of expertise necessary, its demobilizing potential and the lack of control over outcomes. These cases illustrate that

legal mobilization can occur at different sites and scales, and with different objectives and goals. Rather than develop a simplistic and monolithic view of legal mobilization, this thesis will argue that a nuanced and flexible understanding is needed to contend with the level of variation in possible legal strategies and tactics.

Methods

This research relied primarily on qualitative research methods in order to explore "the dynamic, constructed and evolving nature of social reality" (Devine, 2002, p. 201). The methods reflected the critical realist methodology of the research, in that efforts were made to explore social phenomena and how it was constructed, interpreted and understood. The combination of secondary sources, primary document sources and interviews provided analysis and insight into social phenomena and various actors' interpretations of those phenomena. The evidence for the research project came from a combination of secondary sources, statistical research, media coverage and interviews. Secondary sources such as research on social movements, labour unions, legal mobilization theory and materialist frameworks were used to frame the topic. The publications from the respective unions and the provincial and federal governments were used to explore the campaign events and organizational interpretations. Articles and books relating to the actual cases were used to provide analysis and context. News media coverage provided more information on campaign events and the degree and nature of the publicity achieved.

The research involved interviews with ten central actors involved in the ARRMC, Local 1801, ORRMC, CUPW and CSQ and CSN campaigns. The interviews are listed in Appendix A of this thesis with the name and title of the participant in addition to the

interview date. Throughout the thesis, the interviews will be referred to by their interview number and the last name of the participant. The CSQ and CSN interviews were conducted in French. The quotes used in this thesis have been translated into English; however, the original French text can be found in Appendix D. These open-ended one-to-two hour interviews were recorded, transcribed and analyzed to fill in gaps in the other primary and secondary sources. The interviews provided opinions, interpretations and analysis from those who were most involved in the campaigns. One set of interviews was undertaken with two individuals at once. Participants were asked to sign a letter of information about the research process and ethics issues, which can be found in Appendix B of the thesis. An interview guide was created as a checklist of topics to be discussed, although a rigid structure or order was not followed. Additional questions were added if interesting subject matter was mentioned that was not part of the interview guide. The open-ended questions allowed participants to talk at length, with probing follow-up questions used to elicit more information on specific matters. This interview guide can be found in Appendix C of this thesis. The interviews were recorded using an MP3 digital recorder, except for one interview where extensive notes were taken instead. Major themes were coded and entered in a spreadsheet. Interviews formed the primary basis for exploring the legal consciousness, legal symbols, and discourse that workers and staff campaigners used to reconstruct and challenge workers' status. This research process was not free of bias or objective as the researcher brings certain theoretical frameworks and perspectives into the research and interview process. However, the researcher attempted to let the research guide the interpretation and analysis. The interview process allowed for

a detailed, nuanced and rich perspective from campaign activists on the limits and possibilities of legal mobilization.

Chapter 2

This chapter will provide the theoretical and methodological framework for this research. To understand the limits and possibilities of legal action, the concepts of law and legal ideology, discourse and consciousness will be explored within the conceptual framework of legal mobilization theory. This theory incorporates aspects of both critical legal theory and social movement theory in order to understand the role of law in society as well as how social movements can strategically and tactically engage in legal action in order to (re)structure power relations and hierarchies. This thesis places legal action firmly within comprehensive political and grassroots mobilization campaigns in order to fully grasp how legal action fits into broader campaigns. Scale theory will be incorporated into legal mobilization theory in order to more fully explore how unions employed multi-scalar legal tactics to challenge employment status. Furthermore, the status and distinction between 'independent contractor' and 'employee' will be explored.

Chapter two will also outline the epistemological and ontological underpinnings of the research. Methodologically, this thesis is from a critical realist perspective, which acknowledges an independent world that we can attempt to know and understand (Sayer, 1992, p. 5). Finally, there will be a discussion of the role of the case study methodology as well as the similarities and differences between the two cases used in this research.

Theory

Legal discourse, ideology & consciousness

This research relies extensively on legal mobilization theory to explore the limits and possibilities of legal action. Central to this exploration is developing a definition of 'law' and legal discourse, ideology and consciousness. These conceptual terms will help

us understand the way legal action was used in the case studies. Law is conceptualized as "identifiable traditions of symbolic practice" (McCann, 1991, p. 227). Legal discourse, ideology and consciousness all meld in various ways to shape the way law is constructed and operates within society. Legal discourse refers to the intersubjective frameworks and cultural conventions that are found in the social world and exist within institutional structures (McCann, 1994, p. 7). Legal discourse is a location of ideological conflict (Klare, 2002, p. 3). Ideology refers to the role of legal norms and knowledge in maintaining hierarchical forms of power (McCann & March, 1996, p. 214). Ideology has material ramifications because it (re)produces what counts as "reality". Furthermore, the economic and political spheres are not only reflected in ideology but are also shaped by it (Hennessy, 1993, n.p.). Therefore, the (re)construction of ideology is a fluid process that interrelates with the political, economic and social spheres. The construction of ideology is not impenetrable but subject to "articulation" where a hegemonic discourse that becomes seen as "common sense"[9] is created out of "ideological struggle" (ibid). This is useful to explore in terms of the case studies because the respective unions and the government were both attempting to legitimize or challenge the particular understanding and discourse around the workers' legal construction. This construction fed into broader discourse and ideology around work, employment, gender and neoliberalization more broadly.

Law has a significant discursive and ideological power in that it sets itself above other knowledges. "Law sets itself outside the social order, as if through the application

[9] "Common sense" was used by Gramsci to mean the uncritical and largely unconscious way of perceiving and understanding the world that has become "common" in any given epoch (Hoare and Smith, 1971, p. 322).

of legal method and rigour, it becomes a thing apart which can in turn reflect upon the world from which it is divorced" (Smart, 1989, p. 11). Smart argued that law is able to make the same claims to truth as the sciences due to its discursive and ideological power (Smart, 1989, p. 14). "Indeed it may be argued that law is extending its dominion in this respect as Western societies become increasingly litigious and channel more and more social and economic policy through the mechanism of legal statutes" (Smart, 1989, p. 14). Law, through its claims to truth, exercises a power discursively and ideologically. This gives legal processes, rights discourse and legal decisions a moral and ethical weight not seen in many other domains. In employing this language and these processes, the unions attempted to use the power of law for their benefit. Both case studies involved a significant discursive struggle between the unions, the government and/or employer over how workers were legally situated.

Legal consciousness describes the subjective experience an individual has with the law through an intersubjective fluid process of creating meaning through cultural discourses and conventions (McCann, 1994, p. 7). McCann differentiates between consciousness *of* legal conventions, which involves the law as discrete but loosely interrelated rules, norms, logics, discourses, and procedures and consciousness *about* law, which emphasizes a more general perspective about law as a dimension or form about how the social world works, how it should work and for whom. These two types of consciousness inform and interact with each other (McCann, 1996, p. 215). However, the legal system and legal process translates knowledge and experience into a narrow focus. Smart argues that legal process makes its judgment on a tailored and scripted version of experience that excludes much that is relevant to the parties (1989, p. 11). It has the

power to disqualify other knowledges and lived experience. Therefore, legal consciousness can empower, in that it validates rights claims, but it can also demobilize and disempower through framing issues in a very narrow manner, especially as part of a formal legal process. At the same time, organizations using legal mobilization can choose to participate fully in this narrow (re)construction or maintain a richer recognition and value of lived experience and problems in workplaces. Legal symbols and discourse are often reconstructed as citizens advance their interests in everyday life (McCann, 1994, p. 228). Legal ideology, discourse and consciousness all interact and inter-relate in the way legal conventions are understood, (re)produced, and challenged. They take into account both the institutional and the individual level at which struggles occur over the meanings of legal conventions and practices. This relationship between legal discourses, ideology and consciousness will be explored in order to grasp the discursive and ideological power of law in terms of the struggles. Furthermore, legal consciousness will be recognized as related to but not entirely dependent upon the dominant discursive construction of the workers.

The legal order is here viewed as pluralistic rather than monolithic and involves diverse, indeterminate and often contradictory legal traditions (McCann, 1991, p. 229). Furthermore, it is not limited to formal court forums but can take place at various institutional sites in everyday life. In this thesis, law will be explored in the courts, quasi-judicial tribunals, administrative complaint processes and international complaint procedures. When necessary, this will involve a discussion of how the respective organizations exacerbated the contradictory, unpredictable and complex ways in which the various arms of the state function. The legal system is viewed as one part of the state

apparatus. Legal mobilization is conceptualized as one form of political activity where citizens make use of 'public authority' on their own behalf (Zemans, 1983, p. 690). Legal mobilization is placed within its political context with the recognition that judicial outcomes are often subject to political process in terms of policy and material changes resulting from the legal decisions. Maintaining a rigid division between the two sites of legal and political mobilization, focused on the legislative state, limits our understanding of the two case studies in question. Both the legal and political sites of political action intertwined in terms of the overall outcomes. Furthermore, the degree and type of grassroots mobilization of workers will be critically evaluated in terms of the overall campaign. The three prongs of grassroots, legal and political mobilization will be explored to understand the limits and possibilities of the overall campaigns.

The limits and possibilities of legal action

The many different interpretations of law as a tool of domination and/or resistance will help in the analysis of the limits and possibilities for organizations and unions engaging in legal action. The research will critically engage with many of the theoretical constraints of legal action with regard to the two particular case studies. Some researchers argue that legal action can co-opt struggles by marginalized groups (Gabel, 1982, 1984; Freeman, 1982; Tushnet, 1984; Bartholomew and Hunt, 1990). This research will evaluate the degree to which the associations and unions presented here internalized legal rationality, principles or norms in terms of conceptualizing their own struggles. While viewing this possibility as a serious limitation of legal action, this research recognizes that social movements will not necessarily adopt the ideological perspectives of the courts in their core values and that there is potential to subvert what appears to be "a

monolithic and oppressive legal structure" (Sheddrick, 2004, p. 22). At the same time, social movements will adopt or subvert core legal values to different degrees and extents. This affects the limits and possibilities of engaging in legal action for more transformative change.

Several theorists view the use of legal strategies by social movements as limited due to their unavailability to the most marginalized groups and citizens (Bumiller 1988; Kessler 1987). Legal action is a form of political activity that requires extensive resources in terms of finances and expertise, which is a huge constraint and limitation. The case studies will explore the degree to which these barriers limited the possibilities and outcomes of legal mobilization. Several researchers also assert that legal action can be fragmentary for movement building and emphasizes judicial victory over policy implementation and authentic social change (Klare, 1982; McCann, 1986; Milner, 1986). Nevertheless, Klare noted that labour law is one of the sole forms of law that arises from a progressive background, though he acknowledged that it also channels and contains workers' resistance (2002, p. 3). The research will consider these limitations by placing legal action within the overall political, economic and social context to assess the effect on the workers as a collective in addition to the policy outcomes and social change that resulted from the campaigns.

Many critiques point to the undemocratic nature of law and the fact that social movements have no control over judicial outcomes (Sheldrick, 2004, p. 21). The cases in this thesis illustrate how engaging in law is risky due to that very lack of control over the outcomes and the lack of democracy in determining judicial decisions. Conversely, the case studies also explore how some legal action is not reliant on a judicial victory but the

indirect results of legal action. This tension will be evaluated in terms of the limits and possibilities of legal mobilization to challenge employment status. Several theorists argue that using the law as part of a political strategy involves accepting the basic liberal principles of the legal system and legal thinking (Hutchinson and Petter, 1988, p. 283; Fudge and Glasbeek, 1992, p. 55-59). These cases will explore the extent to which the organizations accepted and internalized the liberal principles of the legal system. The cases are interesting in that the organizations participated in the formalized liberal legal system in order to access a component of the system that most diverges from liberal principles. This research will explore how the campaigns to challenge home-based child care workers' and rural route mail couriers' (RRMC) employment status interacted with the liberal principles underlying the legal system. This research will engage in many of the critiques of legal action, while recognizing that it can be used strategically by social movements to challenge the status quo.

The law as a site of struggle

This thesis adopts a view of law as a central means of social control and domination (McCann, 1991, p. 229). This research acknowledges that law is ideologically biased in support of status quo hierarchies and can act as a key oppressor (Kairys 1982, Kelman 1987, Clarke, 2003). McCann noted that legal conventions tend to limit citizens' options in ways that maintain privilege throughout society (1996, p. 210). Nonetheless, law may be both a force of "domination" and "resistance" to that domination, of conformity and challenge, of continuity and change (McCann, 1996, p. 210). Law is not conceptualized here as monolithic and closed to subversion, challenge and destabilization. Rather, while recognizing the value of operating outside officially

sanctioned activity such as disruptive collective action as asserted by John Clarke (2003, p. 494-498), this research also posits that legal action can help challenge and (re)construct hierarchies and power relations. These processes of resistance and mobilization can be evaluated both for the critical consciousness of the subaltern (Scott, 1990) and for their successful material outcomes. This research will evaluate both the development of a critical legal consciousness of the workers as well as the material consequences of the campaigns. The case studies in this research will explore the limits and possibilities of using legal action, process and discourse to resist and challenge power relations.

In terms of evaluating consequences, McCann noted that many legal studies lack a clear normative, ethical, or ideological position from which to evaluate the legitimacy of actions (1996, p. 218). This thesis will evaluate the limits and possibilities of strategies and tactics to achieve the particular goals of improving material working conditions and gaining increased control and power in the workplace. These particular goals provide the normative framework for assessing the limits and possibilities of legal mobilization in the case studies. To gauge the results and outcomes of the cases studies, this thesis will rely on McCann's analytical categories of the consequences of resistance (1996, p. 221). He noted four consequences: (1) the individual engages in resistance but obtains no immediate material relief or benefit and there is no change in his or her relationship with the dominant group; (2) the individual subject engages in resistance and obtains small scale immediate relief or benefit but there is no change in relationship with the dominant group; (3) the individual subject engages in resistance and obtains small scale immediate relief or benefit as an individual and the cumulative actions of individuals as a group

alters the relationship with the dominant group but not in a coherent way; (4) the subjects in a group engage in resistance and obtain small scale immediate relief and the cumulative actions of individuals as a group changed their social position relative to the dominant group in an intentional, coherent and organized manner (ibid, p. 221). This research will use the last two categories that relate to group legal mobilization as these campaigns were carried out by groups of workers and organizations. This analytical framework can help us position the cases in the thesis in terms of their results. It will provide the normative backing in order to critically evaluate the limits and possibilities of the tactics and strategies utilized.

Integral to this thesis is the distinction between direct and indirect results of legal action. McCann commented that much critical legal studies research only considers the direct result of legal action when the indirect results can prove more powerful (McCann, 1998, p. 81). This analysis conceptualizes the results of legal action in a much more holistic and comprehensive manner in terms of the impact on policy outcomes, movement development and consciousness amongst workers rather than a narrow focus on direct judicial outcomes.

The terms 'strategy' and 'tactic' will be used throughout this thesis to explore the legal mobilization approaches used by the respective unions. 'Strategy' will be used to describe the long-term plan that organizations used to achieve their key objectives through a series of related steps (Lawler, 1990, p. 16). The term 'tactic' describes the key activities undertaken to support a strategy. Therefore, strategies are made up of combinations of tactics (Lawler, 1990, p. 24). Both campaigns developed strategies to

challenge the workers' employment status and undertook a variety of tactics to achieve their goals.

One of the strategies used by the unions in these case studies was a multi-scalar use of international legal principles and frameworks to support domestic campaigns. This research will combine scale theory with legal mobilization theory in order to explore how the multi-scalar tactics affected the tactical opportunities and constraints in the unions' campaigns. Leitner and Sheppard argue that scale is relational, power-laden and contested. Actors can strategically interact with scale to validate or contest dominant power relations (2009, p. 231). Scale refers to a setting where spatial boundaries are delineated for a particular social claim, activity or behaviour (Agnew, 1997, p. 100). These scales interrelate and interact with each other in a relational or multiscalar manner (Mahon & Keil, 2009, p. 8). They are socially (re)produced through social, economic, political and cultural actions (Brenner 2004; Herod and Wright 2002). This research will employ a multi-scalar analysis to explore how the campaigns relied on different scales of legal action to challenge and (re)construct workers' employment status. The multi-scalar approaches will be analyzed with respect to how they affected the limits and possibilities of legal mobilization. The structure and hierarchy of these scales is not fixed but can be understood as a "mosaic of unevenly superimposed and densely interlayered scalar geometries" (Brenner, 2001, p. 606). While these scales are open to challenge and (re)construction, there are "interscalar rule regimes" and hierarchies, which structure possibilities at various scales (Mahon, Keil, 2009, p. 18). In these cases the federal government played the dominant hierarchical role in the case of RRMCs and the Quebec provincial government was the dominant scale in the home-based child care workers'

campaign. The multi-scalar mobilization by the unions altered the possibilities, constraints and discourse of the struggle. The concept of 'scale jumping' is helpful to explore how the unions used scale as a tactical tool. 'Scale jumping' can alter the participants, relationships, and resources to the advantage of social movements (Miller, 2009, p. 54). Expanding scale - in this case from the federal or provincial to the international - will be explored as a tactic to access more resources, allies and public attention to the campaigns. This theory will help illustrate the ways the respective unions employed legal tactics at different scales to pressure the respective governments to alter the workers' employment status.

The status of independent contractor

Rooted in the two case studies is the legal, material and ideological distinction between employees and independent contractors. Both case studies centre on the struggle for a different legal classification so that workers might gain access to social entitlements conferred in an employment relationship. The history and development of the distinction between employee and independent contractor status help place the cases in context.

The terms 'work' and 'employment' are not equivalent in labour and employment legislation. Employment is a subset of the overall category of work, which arose as a legal category in 19th century England to enumerate the rights and obligations that were part of the bilateral labour market contract (Cranford et al., 2005, p. 15). Work is a much broader range of productive activity including work performed by independent contractors and women performing household labour, for example (Fudge & Tucker, 2000, n.p.). In contemporary society, the two terms are often used synonymously, which reflects the dominance and value placed on employment in the labour market and the lack

of recognition of broader productive labour, social reproduction or care work. In effect, this distinction has privileged traditionally male work (employment in the labour market) over that of traditionally female work (domestic labour) (ibid).

Collective bargaining structures are one of the key legal structures which independent contractors are not allowed to access. Independent contractors are subject to competition and the principles of commercial law (Cranford et. al, 2005, p. 37). Competitive markets are a central institution of liberal market economies and collective action by firms or entrepreneurs to influence the market is viewed negatively because it reduces competition. Entrepreneurs are prohibited from combining to restrict competition under common law and anti-combination legislation (Cranford et al., 2005, p. 15). Therefore, independent contractors are not permitted to organize in unions and are excluded from labour legislation. On the other hand, employees can combine in groups through collective bargaining regimes. This is an important distinction between employees and independent contractors because unionization helps mitigate precarious work in that unionized workers are more secure and have higher incomes than non-unionized workers (Anderson, J. et al., p. 314). This is not to mention the additional control and power over the workplace that results from collective bargaining rights.

The actual distinction between employees and independent contractors/self-employed is contested and complex with various jurisdictions putting emphasis on different facets.[10] Fudge argued that the changing nature of employment relationships has put inadequate legal tests under stress (Fudge, 2003, p. 37). Adjudicators have been

[10] In general, elaborate factor tests that evaluate control, subordination, economic dependency and integration into the business are used to make the distinction (Fudge, 2003, p. 41). The courts in Quebec, which use civil law for private law, focus predominantly on legal subordination in determining employment status (Fudge et al., 2002, p. 54).

attempting to respond to the necessities and situation regarding collective bargaining rights in an increasingly complex time. The term dependent contractor, which is used in several jurisdictions, was developed to classify workers who were economically dependent but still considered independent contractors. These workers can bargain collectively but are not covered by employment legislation (Arthurs, 1965; Fudge, Tucker & Vosko, 2002). Part of the conceptual difficulty regarding the employee and independent contractor legal categories is that the distinction and categories do not reflect the nature and reality of work. Fudge suggests that many of the self-employed, especially own-account workers, are much more like employees than they are like entrepreneurs (Fudge, 2003, p. 36). The basis for social protections are linked to the categorization of employee, yet many individuals defined as independent contractors are economically dependent and have little bargaining power to ensure adequate working conditions.

In both of the case studies under review here, the reason workers had difficult working conditions and little control over their work lives was in part due to their status as independent contractors. These case studies bring to light how the current legal categories are insufficient to provide adequate protections for all workers. Throughout the campaigns, the respective unions attempted to make RRMCs or home-based child care workers appear similar to the legal definition of employees. However, both groups of workers have more autonomy in their work than many employees. It is important that we consider how the current legal constructions of employee and independent contractor limited the strategic options open to the unions in terms of accessing greater social entitlements linked to employee status. There have been recent discussions about whether social protections should be linked to the status of 'employee' or whether they should be

linked to paid or unpaid 'work', citizenship or some other conceptual category (Fudge, 2005b; Giles, 2000; Hepple, 2003; Supiot, 2001; Standing, 1999). In the two case studies explored in this thesis, the workers mobilized to (re)construct their employment status and relationship with the state in terms of access to legal protections and regimes.

Methodology and methods

This discussion of methodology will explore the interface between research methods, theory and epistemological underpinnings (Harvey, 1990). The research is from a critical realist perspective, which recognizes that "the world exists independently of our knowledge of it" (Sayer, 1992, p. 5). Underpinning the research is an understanding that social phenomena and relationships are not necessarily directly observable. In fact, there are structures that cannot be observed and "what can be observed may offer a false picture of those phenomena/structures and their effects" (Marsh and Furlong, 2002, p. 30). At the same time, our interpretation of social phenomena affects outcomes. The research will take into account "the external 'reality' and the social construction of that 'reality'" in order to explain relationships between social phenomena (Marsh and Furlong, 2002, p. 31). An interactive and dialectical relationship exists between the 'real' world and discourses that socially construct that 'reality' (Marsh and Furlong, 2002, p. 35). "In this view, there is not objective science that can establish universal truths or can exist independently of the beliefs, values and concepts created to understand the world" (Devine, 2002, p. 200). The goal will not be to establish causation in a positivist sense but to explore the confluence of factors that occurred in the two case studies in order to understand the 'external reality' and how it is constructed. This research will explore the ideological roots of the status quo and workers' movements that challenged and

(re)structured these constructions. The thesis will explore the extent to which legal, political or grassroots mobilization resulted in particular outcomes. The results and cases will be viewed in a holistic sense that explores how the various tactics intersected and challenged or maintained dominant power structures and relations. The outcomes will be explored beyond a dichotomy of positive or negative, through a discussion of limits and possibilities of legal mobilization in two case studies. Methodologically, the analysis will recognize that legal victories do not necessarily result in social and policy change. Smith noted this methodological flaw in many case studies of legal mobilization (2002). Placing legal mobilization within the overall political economic context will allow the research to critically evaluate whether or how various contexts intersect with legal action to achieve or restrict social or policy change in the two case studies.

Case studies

This research will use case studies as the central means of exploring the limits and possibilities of labour unions using legal mobilization to challenge employment status. The case study involves research that "investigates a contemporary phenomenon in depth and within its real-life context," particularly "when the boundaries between phenomenon and context are not clearly evident" (Yin, 1999, p. 18). This method was chosen due to the fact that the research questions require an in-depth exploration of social phenomena in their rich, nuanced and complex contexts. This thesis will use the case studies to provide exploratory, descriptive and explanatory insight into the research (Yin, 1999, p. 7-8). These case studies aim to understand and explore these particular cases rather than to understand other cases. Given that only two cases are being explored in depth, there is no attempt to represent other cases or make broad generalizations to other cases (Stake,

1996, p. 8). At the same time the case studies can be generalizable to theoretical propositions (Yin, 1999, p. 15-16). The intention is to gain a rich analysis of the specificities of these particular campaigns. It is hoped these cases will provide for a rich and nuanced view of how legal tactics can be employed in a multitude of ways and at various sites, as well as how the political and economic context shape the opportunities and constraints available.

There are many differences between the two cases but they share some key similarities that make them valuable to compare. First, the two cases involved groups of workers who were legislatively defined as independent contractors. Second, both cases take place in the para-public sector. Third, in both cases, the respective unions represented other workers in the sector. CUPW represented urban postal workers and both the CSN and CSQ represented centre-based child care workers.

There are significant differences between the two cases, which, as will be argued, affected the campaign choices that were available. First, they take place under different jurisdictions - one in Quebec and the other federal. The labour and employment law is slightly different under each of these jurisdictions. In Quebec, property and private law matters are mostly regulated by the Civil Code, while criminal matters are regulated by the criminal code, which is part of the Common Law tradition. Third, the two cases differ in the time period in which they took place with one occurring from the late 1980s to 2004 and the second case occurring from 1998-2010.

Fourth, the order of events is different. RSMCs were defined by legislation as independent contractors many years before they started to contest that status. Home-based child care workers were defined as independent contractors after they started to

organize in unions. Fifth, though both groups are in the para-public sector, the employers are different structurally and administratively. In the case of Canada Post, a Crown corporation, Parliament plays a regulatory role approving changes to stamp prices and five year plans, however, the corporation has some autonomy from the government in its operations. In Quebec, the early childhood centres and bureau coordinators do not have the same level of autonomy. The government is more involved in the operation and administration of home-based child care. The ORRMC and CUPW were able to pressure Canada Post independently of the government. In the end, it was Canada Post who contracted-in RRMCs.[11] The early childhood centres and bureau coordinators did not play as much of a role in the home-based child care workers' campaign because they did not have the autonomy to make substantive decisions in the sector. Sixth, Canada Post is a massive corporation and the RSMCs could form one bargaining group. This is in contrast to home-based child care workers who were employed by many early childhood centres and, later, bureau coordinators.

Seventh, in terms of union representation, urban postal workers were in one large bargaining unit while centre-based child care workers were organized in many bargaining units with the early childhood centre as employer. CUPW could rely on the bargaining power of urban postal workers to "contract-in" rural and suburban postal workers, that is, use the urban negotiations process to push Canada Post to voluntarily recognize RRMCs as employees represented by CUPW and negotiate their collective agreement. They could do this because the urban postal operations bargaining unit was a large militant part of their own union.

---

[11] Section 13.5 of the *Canada Post Corporation Act* still exists for workers who are defined as 'mail contractors' or independent contractors.

Conclusion

The overarching theoretical and methodological foundation of this thesis will highlight the way the law constructs and dominates but also how it can be employed to (re)construct and challenge relations of power between workers, capital and the state. This thesis will primarily rely on legal mobilization theory to analyze the case studies; however, the broader theoretical framework includes an understanding of the neoliberal context, critical legal theory, social movement theory, scalar theory and the legal classification and status of independent contractors versus employees. This framework provides the necessary conceptual apparatus to explore the limits and possibilities of unions engaging in legal action to challenge employment status.

The analysis will be rooted in critical realist methodology, which reflects an understanding that an independent world exists but that we cannot fully 'know' it. The research will attempt to shed light on the ideological underpinning of social phenomena and relationships that shaped the cases in question. The two cases of RRMC and home-based child care workers struggling for better working conditions and greater control and power in their workplaces will shed light on the limitations and possibilities of legal mobilization.

Chapter 3

March 5th, 1986

Dear Sir,

Inclosed is my cheque for $65.00 Dollars for my membership fee I doubt that it will help me But I think it is a good cause I have served Rout two for 33 years if I finish my contract I will be 90 years old which is not bad for a young fellow.
Roy Earl Becher

(letter to Association of Rural Route Mail Couriers)

Introduction

Workers like Roy Earl Becher recognized that rural route mail couriers (RRMC) needed to band together in a collective to improve their working conditions. Even though he was close to finishing his career as an RRMC, he supported the fledgling Association of Rural Route Mail Couriers (ARRMC), which sought to improve working conditions in the late 1980s. As independent contractors, RRMCs experienced the precariousness of contract renewals, underbidding, low wages and long hours without many of the benefits associated with entrepreneurship. RRMCs were legislatively defined as independent contractors, which made challenging their employment status a daunting and serious task. The ARRMC went up against the government of the day and Canada Post Corporation to challenge couriers' status. They maintained that having access to social protections would improve rural postal workers' lot.

This chapter will explore the campaigns to challenge the independent contractor status of RRMC, now known as rural and suburban mail carriers (RSMC). From 1985 to 1994, the campaigns began with the ARRMC, Canadian Labour Congress (CLC) Local

1801 and the Letter Carriers Union of Canada (LCUC) and continued with the Canadian Union of Postal Workers (CUPW) and the Organization of Rural Route Mail Couriers (ORRMC) from 1995 to 2003. Over nearly twenty years, organizers of these campaigns adopted diverse strategies including legal, grassroots and political mobilization. This chapter will argue that the campaigns were most successful when a diversity of tactics was employed to exacerbate the tensions within various arms of the state. This case illustrates that legal mobilization is most helpful when combined with political mobilization and organizing workers on the ground. Furthermore, there is a level of contingency in the campaigns in that the political, economic and legal terrain and organizational context had a dramatic impact on the tactical options and constraints. This chapter illustrates both the limits of legal mobilization, in that an unfavourable legal decision can restrict campaign options and frustrate and demoralize workers, but it also shows the possibilities of legal mobilization through creative and subversive legal tactics that do not rely on direct results.

The first section of this chapter will explore the working conditions of RRMCs and the dynamics of how and why they were defined as independent contractors. The second section will analyze how the ARRMC made use of legal process throughout their campaign, how they organized and mobilized their membership, and finally, how they mobilized politically. The third section will explore the use of legal, grassroots and political mobilization in the ORRMC and CUPW's campaign to challenge RRMC employment status. This chapter explores the limits and possibilities of legal mobilization tactics and strategies within broader political and grassroots campaigns to challenge the legal construction of RRMCs.

Constructing the independent contractor

The *Canada Post Corporation Act* (CPC Act), enacted in 1981, classified 'mail contractors' as independent contractors rather than dependent contractors or employees.[12][13] RRMCs were considered mail contractors and thus subject to the exclusion.[14]

> "Notwithstanding any provision of Part I of the *Canada Labour Code*, for the purposes of the application of that Part to the Corporation and to officers and employees of the Corporation, a mail contractor is deemed not to be a dependent contractor or an employee within the meaning of those terms in subsection 3(1) of that Act."[15]

By constructing RRMCs as independent contractors, the government prevented them from accessing employment standards legislation in Part I of the *Canada Labour Code* and collective bargaining rights in Part III of the *Canada Labour Code,* as well as health and safety and human rights protections.

RRMCs experienced precarious working conditions. Rural postal workers made on average $24,000 a year prior to being unionized. Many RRMCs were getting paid less than the minimum wage (Interview 1, Bickerton). There were a lot of differences between RRMCs in terms of routes and compensation. The average route was designated as requiring 6 hours per day, however, 12 per cent of routes were assessed at more than 8 hours per day and 10 per cent had fewer than 2.5 hours per day (Bourque & Bickerton, 2004, p.2). Therefore, there were dramatic variations between RRMCs in terms of

---

[12] The provision excluding mail contractors from the labour code was found in Section 13.6 of the *Canada Post Corporation Act* until February 17, 1993 and afterward in Section 13.5 (G. Bickerton, personal communication, February 14, 2011)

[13] Dependent contractors, which are recognized in several Canadian jurisdictions, are permitted to bargain collectively.

[14] Workers other than RSMCs at Canada Post, such as Combined Urban Services and Highway Services workers, are still classified as mail contractors and subject to Section 13.5 of the CPC Act (Interview 10, Bourque).

[15] *Canada Post Corporation Act*, R.S.C. 1985, c. C-10:13(5) [*Canada Post*]

working conditions. RRMCs had to provide their own vehicle and pay for all related expenses including gas. They were responsible for their own relief coverage when they were absent due to illness, parental responsibilities, maternity leave, bereavement leave or vacation. RRMCs were not entitled to workers' compensation benefits unless they were self-insured and if they lost their contract, they did not qualify for employment insurance. Canada Post was under no legal requirement to respect occupational health and safety legislation (Fudge, 2005, p. 56). In terms of gender, seventy-one per cent of rural and suburban postal workers were women (Bourque & Bickerton, 2004, p. 2). Fudge argues these conditions were directly linked to the workers' "legal designation as independent contractors and not employees" (Fudge, 2005, p. 58). Most RRMCs lacked the bargaining power to negotiate with Canada Post. Canada Post is one of the largest employers in Canada with a work force of 57 500 in 2001 (Canada Post Corporation, 2001). Canada Post could tender routes to the lowest bidders on a periodic basis when contracts came up for renewal.[16] RRMCs did have a certain level of autonomy but were economically dependent on Canada Post. Their rewards were not aligned with the effort put into their employment, which left them in a marginalized position.[17]

The rationale for Section 13.6 of the CPC Act can be found in the minutes of the Standing Committee on Miscellaneous Estimates at the time when the postal service was being transformed from a government department to a Crown corporation. André Ouellet, Minister of Consumer and Corporate Affairs and Postmaster General, argued that Canada Post mail contractors should be excluded from the *Canada Labour Code*.

---

[16] The Post Office Act specified that contracts under $10,000 did not need to go up for tender. This served as a strong incentive to keep the routes under the $10,000 mark. However, this amount had been established in 1956 and was no longer an adequate level of compensation for the vast majority of routes (Bourque & Bickerton, 2004, p. 2)

[17] See the Resolution Concerning The Promotion of Self-Employment (ILO 1990).

> There are a number of reasons. One of the big ones obviously is that the override of the *Canada Labour Code* must continue in this proposed *Canada Post Corporation Act*, because without this override we believe the tendering system that exists presently would be destroyed. The present land mail service contracts that we have are valued at about $90 million. If we were to carry this to the extreme—and I do not want to exaggerate the figure—the possibility of increased expenditures could be doubled or even tripled.
>
> Thirdly, the rural mail contractors represent almost 69 per cent of all land mail service contracts. Approximately 60 percent of these work fewer than four hours per day, therefore, if we were to have these people pressing for unions the next step would be for the union to press for equalization of work and full-time employment with, obviously, the triple effect in terms of escalation of costs. These are just a few of the reasons why I think it would be risky at this time to change this clause. (House of Commons, 41:53-41:54)

In Ouellet's argument it is clear that costs related to employee status were one of the primary reasons for excluding RRMCs from statutory labour and employment protections. Rather than allowing employee status to be determined at administrative and legal sites such as labour tribunals or Human Resources and Skills Development Canada, Parliament legislatively defined the classification and status of these workers. The government of the day used its legislative powers to limit access to statutory labour and employment protections in order to reduce employee-related costs in the para-public sector. They did this by rigidly defining the workers as independent contractors in law, a status which is difficult to contest.

At the time, the postal service was in significant debt. A primary objective of the new Crown corporation was to achieve financial self-sufficiency.[18] At the time, Canada Post had an annual deficit of several hundreds of millions of dollars (Bourque & Bickerton, 2004, p. 3). The government and the Postmaster General used an economic

[18] *Canada Post, supra* note 15 at chapter 5 (2b)

rationale for the construction of these workers as independent contractors. There was a distinct silence on whether the nature of the work undertaken by rural route mail couriers most resembled the legal classification of an independent contractor or an employee.

Many of the workers affected by this section of the *Canada Post Corporation Act* felt a sense of injustice at their legislatively imposed employment status, including Gloria Pew, Secretary Treasurer of the ARRMC. "Well, I didn't think it was fair and I didn't understand really quite understand how it [13.6 of the CPC Act] came about, that this had to be written up to exclude us, specifically like, I don't know, that bothered me" (Interview 5, Pew). Sue Eybel, ARRMC president, stated that they took every avenue they could to challenge the exclusion (Interview 3). This included litigating, lobbying and mobilizing.

The Association of Rural Route Mail Couriers

In 1985, Sue Eybel, a RRMC with 12 years of experience, sent a letter to approximately 100 other couriers in Ontario expressing frustration with Canada Post's failure to reply to her letters requesting additional compensation to cover the cost of gas and vehicle repair, maintenance and insurance (Rural Mail Delivery Service Association, n.d., p.1). Following this letter, a meeting was held at which an association was formed and an executive elected. A former Letter Carriers Union of Canada (LCUC) business agent, Charles Maguire, provided assistance and advice to the association on how to achieve its objectives. The ARRMC was financed by members' dues payments and partially by the LCUC, especially regarding legal costs. The Association sent newsletters to RRMCs in Ontario and later across Canada. In their inaugural newsletter they stated, "The Corporation is really your employer but through devious means attempted to

circumvent his legal and at the very least his moral obligation to individuals who because of this method have been denied the use of the very legislation passed by the legislature at both the Provincial and Federal levels; Unemployment insurance, Canada Pension, compensation contributions to OHIP" (Rural Mail Delivery Service Association, p. 2). The Association disagreed with their independent contractor legal classification; they argued that couriers were employees of Canada Post. They viewed themselves in a different manner than they were constructed in law, by the government and by their employer. In another newsletter, they list the ARRMC's immediate objectives as improving conditions of employment, obtaining protection against accidents, seeking minimum standards of payment for mileage and points of call, seeking additional compensation for householders and high volumes, changing the contract system, developing a system and recourse for solving problems and improving communication and cooperation with other organizations within Canada Post (Association of Rural Route Mail Couriers of Canada, We can win, 3). The association aided in the development of a rights consciousness amongst workers and created community amongst isolated workers who had previously had no forum for discussion, debate and possibilities. Eybel stated that the ARRMC was not trying to unionize initially; they just wanted a fair deal (Interview 3). Pew stated that she considered herself an independent contractor:

> I would have liked to have been an employee but I just considered myself a contractor and I will be honest about one thing, I would have preferred to have, now that doesn't sound good if you're helping someone form a union, but I always thought if we were paid a good salary by Canada Post and instead of benefits like dental benefits and all those things, we were just given a percentage extra on our wages, I would have been happy with that because I like the independence of the contractor. I just didn't like the little bit of pay that we got for what we did. (Interview 5, Pew)

This illustrates some of the difficulty and tensions in the distinction between employee and independent contractor status. Pew liked the autonomy that was part of independent contractor status but did not appreciate the economic conditions associated with that status in RRMC's case. This shows how the legal categorizations of employee and independent contractor status can be limiting and artificial. Furthermore, it illustrates how employee status and unionization can become goals by default due to the limited strategic options.

The ARRMC began working with unions to contest their employment status due to the institutional and financial support provided by the unions. Furthermore, Canada Post refused to negotiate working conditions with individual couriers or the ARRMC (Interview 3, Eybel). Unionization and employee status became the goal in order to access better working conditions and more control in the workplace. As a group, they undertook extensive legal and political mobilization to improve their working conditions.

Legal process

The ARRMC relied on the formal legal process. They litigated their legal classification all the way to Supreme Court. The proceedings did benefit the ARRMC through indirect results such as media coverage; however, the process did not result in substantive changes in their working conditions or alter the power relations with Canada Post or the government. At the time, the legal terrain was not favourable to Charter protection of collective bargaining under freedom of association; the political context was packed with neoliberal reforms and there were many organizational changes occurring with the unions in the postal sector. Furthermore, the ARRMC's capacity to engage in extensive and continuous political and grassroots mobilization was restricted due to their

limited resources as a dues-based organization, which was run by volunteers, with limited financial support from unions. Furthermore, the extreme geographic distances between RRMCs made grassroots mobilization difficult.

The ARRMC relied extensively on the courts to challenge their legislative exclusion from labour and employment legislation. "I think it was the only way we had to go at the time because that was the thing that was holding us back. So if we couldn't get the legislation changed that time, we couldn't really move forward" (Interview 6, Pew). The association first became involved in legal proceedings through the Section 119 application to review the bargaining unit structure at Canada Post Corporation by the Canada Labour Relations Board (CLRB). At the suggestion of Charles Maguire, the Association applied for standing in the review in May 1986 with the argument that its members were entitled to seek bargaining rights under the *Canada Labour Code*. "There were meetings with the other unions and they all agreed to support it, the attempt to gain standing" (Interview 4, Hoogers, CUPW national union representative). Therefore, the ARRMC had the support and backing of the other unions in the sector to have standing in the bargaining unit review.

The CLRB held a hearing in January 1987 to determine several questions: (1) Were RRMCs employees under the *Canada Labour Code*; (2) If yes, did Section 13.6 of the *Canada Post Corporation Act* negate this; (3) If yes, did this violate the *Canadian Charter of Rights and Freedoms.*[19] It was later decided that the Charter issue would be held in abeyance until decisions were made on the first two questions. For the first question of employee status, the employer, Canada Post, was obliged to prove

[19] *Charter*, *supra* note 5 at para. 3.

independent contractor status. In its decision, the CLRB looked at the economic dependence of RRMCs on Canada Post, its level of administrative control, the integration of RRMCs into Canada Post's organizational structure and the legal subordination of the workers. The CLRB determined that RRMCs were, in fact, dependent contractors.[20] This meant that RRMCs would fall under the *Canada Labour Code.* The CLRB next evaluated whether Section 13.6 of the *Canada Post Corporation Act* negated the dependent contractor status. They relied on two technical elements of the CPC Act in their decision – whether the term "transmission of mail" covered the work that RRMCs did, and the French definition of a mail contractor, which stated that couriers perform a "contrat d'entreprise" or contract *for* services versus a "contrat de louage de services" or contract *of* services (ibid, para. 65). The Board ruled there was ambiguity in the definition of 'mail contractor' found in Section 13.6 and that RRMCs were not mail contractors within the meaning of the Act. This interpretation allowed workers to organize in unions and bargain collectively. The CLRB exercised its jurisdiction over the status of RRMCs arguing that Section 13.6 of the CPC Act did not cover the workers. The labour board attempted to limit the application of the legislative exclusion that was part of the CPC Act, and extend collective bargaining rights to the workers.

Canada Post applied for a judicial review of the CLRB decision. The Federal Court of Appeal struck down the CLRB's decision that RRMCs were dependent contractors in December 1987. Judge Hugessen argued that the CLRB made a mistake in deciding that couriers were not mail contractors as there is no ambiguity in the definitions

[20] Dependent contractors, which are recognized under several Canadian jurisdictions (including federally), are permitted to bargain collectively. While in Quebec, the term employee has been interpreted to cover workers who would under other jurisdictions be classified as dependent contractors (Bernstein, Lippel and Lamarche, 2001, p. 130; Fudge, Vosko, 2002, p. 61).

of "mail contractor" or "transmit".[21] The decision criticized the CLRB's failure to admit evidence from the Parliamentary Committee, which explained the government's motivation for Section 13.6. "I am nonetheless of the view that Parliament's intention in enacting subsection 13(6) was to define and limit the jurisdiction of the Board".[22] The decision argued that the issue was jurisdictional in nature in that though the CLRB could determine whether RRMCs were employees, it did not have the jurisdiction to interpret Section 13.6 of the *Canada Post Corporation Act*. Furthermore, the Federal Court refused to consider the constitutionality of Section 13.6 of the Act because there was no evidentiary record on the matter (ibid, para. 39). The Canadian Labour Congress (CLC) Local 1801, which had replaced the ARRMC in 1987, were refused leave to appeal the decision by the Supreme Court in May 1988 (Fudge, 2005, p. 71). Rural route mail couriers were back where they started regarding their employment status. This highlights that legal process is inherently unpredictable. When labour unions or workers associations file rights claims in court, there is no guarantee of a particular outcome, which makes the tactic risky.

The CLRB argued that RRMCs were not included in the definition of 'mail contractor' and refused to include Parliamentary reasoning for the exclusion in the proceedings. It can be argued they did not carry out the norms and position set out by the legislature. Conversely, the Federal Court judges attempted to limit the jurisdiction of the CLRB in determining that it could not interpret Section 13.6 of the CPC Act. They were much more concerned with following the will of Parliament in formulating the exclusion. This case challenges a working definition of law, "that it is a set of norms authoritatively

[21] *Canada Post Corp. v. C.U.P.W.*, 1989, p. 3
[22] *ibid* at p. 2.

pronounced by state institutions - the legislature and the higher courts - and enforced by state officials mandated to employ the state's powers of coercion - bureaucrats, policemen, and lower court judges"[23] (Arthurs, 1996, p. 1). The legislature and different layers of the courts can operate in complex, contradictory and ambiguous ways. Different judicial processes and sites can result in contradictory legal decisions. In this case, different arms of the judiciary came to different decisions regarding the construction and legal status of the workers.

The CLC Local 1801 took the matter one step further by filing a Charter challenge with the Supreme Court. The local applied to the Court Challenges Program to fund the Charter challenge, however, they were denied funding because the complaint was not considered a strong charter test case due to the lack of evidence that the majority of RRMCs were women (K. Ruff to D. Brown, personal communication, March 1, 1990, quoted in Fudge, 2005, supra 56). In their statement of claim, Local 1801 argued that the *Canada Post Corporation Act* "unfairly discriminates against persons employed as rural route mail couriers and denies them equal protection and benefit of the law guaranteed by Section 15.1 of the *Canadian Charter of Rights and Freedoms"* (RRMC of Canada Local 1801 and the Attorney General of Canada, 1989). The claim initially argued that Section 13.5 discriminated against RRMCs and denied them equal protection and benefit of the law under Section 15.1 of the Charter.[24] The Deputy Attorney General of Canada filed a motion to dismiss the action on the ground that the statement of claim did not disclose a reasonable cause of action. The government argued that RRMC's equality rights were not violated because occupational status was not a prohibited ground for discrimination. The

[23] Arthurs argues that labour law is an exception to this working definition of law (1996, p. 1).
[24] Rural Route Mail Carriers of Canada, statement of claim, Federal Court, March 23, 1989.

Federal Court granted the government's motion and gave the local 45 days to amend their statement of claim (Fudge, 2005, p. 73). The couriers' amended statement of claim stated that Section 13.5 was discriminatory on the basis of sex (women versus men) and residency (rural versus urban) (Reason for order and order, 1990). Justice Reed struck down the amended statement of claim stating the claim of discrimination on the basis of sex was "frivolous" and that the claim of discrimination on the basis of residency was an attempt to bring back the unsuccessful claim of discrimination on the basis of occupation.[25] Regarding the sex of RSMCs, the lawyers only had access to Canada Post's numbers, which indicated that the difference in the number of women versus men was not significant enough to make a credible argument that couriers were "predominantly female"[26] (D. E. Brown to S. Eybel, personal communication, n.d.). The court gave Local 1801 10 days to appeal the order. The lawyers in the case did not recommend an appeal of the decision, "Unfortunately, I think that the only remedy available to correct the inequity of S. 13(5) is legislative change" (D. E. Brown to S. Eybel, personal communication, June 6, 1990). Local 1801 did not have the money to pursue further legal action. The level of financial resources and expertise needed to challenge the state and capital in the courts was extensive.

The ARRMC and Local 1801 engaged in the court system to try and have their legislative exclusion from labour and employment standards struck down. The process illustrates how unions and workers have little control over the direct result of legal procedures. The case highlights the extensive resources needed to participate in the legal

[25] Rural Route Mail Carriers of Canada, Local 1801 v. Canada (AG).
[26] In an affidavit filed by Fernand Leblond, Postal Manager with the City of Gloucester, 52.98 per cent of rural route contractors were women and 45.7 per cent were men (Table II Rural Route Contractors). When RSMC joined CUPW in 2004, 71% were women (Bourque & Bickerton, 2004, p. 2).

system, in terms of finances, knowledge and expertise. The burden of proof for legal claims is very high and often workers' associations do not have the evidence at their disposal. The process of translating workers' experiences into information and evidence the courts will accept placed the ARRMC at a disadvantage in the proceedings. This case illustrates how engaging in litigation is inherently risky when the goal is to achieve a judicial victory. While the CLRB decision went in the ARRMC's favour, it was later struck down by the Federal Court. Their Charter challenge was also struck down. The various levels of the court system had different interpretations of their jurisdiction, the facts of the case and the legal construction of RRMCs.[27] This resulted in unpredictable decisions regarding the workers' employment status.

Organizing in unions

The LCUC and CUPW had started signing up RRMCs prior to the legal proceedings with the CLRB. In a letter to RRMCs, the ARRMC recommended that members sign LCUC cards (S. Eybel, letter to RRMC, November 21, 1986). This was due to the association's close relationship with that union. The Canadian Postmasters and Assistants Association (CPAA), which represented rural postmasters and assistants who worked alongside many RRMCs, also recommended signing LCUC cards. By January 16, 1987, the ARRMC stated that 1,600 RRMCs had signed LCUC cards (Association of Rural Route Mail Couriers of Canada, 1987). CUPW had also become involved in helping RRMCs in Elmwood, Ontario. The Country Mail Association of Canada (CMAC) also represented RRMCs in Quebec. The number of different organizations

[27] The board referred to the Preamble of the *Canada Labour Code* in terms of encouraging collective bargaining several times in its decision. It is evident that the CLRB placed emphasis on the Preamble of the Code in its ruling (*Canada Post Corp. v. Assn. of Rural Route Mail Couriers*, 1987 C.L.R.B., [1987], para 6-8, 11, 63 [*ARRMC*]).

involved in the sign up campaign and infighting over who would represent RRMCs prompted the Canadian Labour Congress (CLC) to become involved. "This effort, although with all good intentions, has caused confusion among Rural Route Carriers, as well as a sense of rivalry among the two unions and the Ontario Association (S.G.E. Carr to Postal Union Locals and Regional Offices, personal communication, February 27, 1987). The LCUC, CUPW, ARRMC, CMAC and the CLC agreed that a directly chartered CLC local should be established given the multiple unions involved in organizing (Hoogers, 1987, p. 17). The resulting local was called the Rural Route Mail Carriers of Canada, Local 1801 of the CLC, and a CLC organizer was assigned to help with the sign-up campaign. By December 1987, Local 1801 had signed up over 2,600 members and it applied to the CLRB for certification (Fudge, 2005, p. 71). While the legal action was making its way through the courts, the local was engaged in an extensive grassroots union sign-up campaign.

During this period, the LCUC and CUPW were undergoing a significant struggle to represent an amalgamated urban postal worker bargaining unit as part of the CLRB bargaining unit review, to which the ARRMC had gained standing. The struggle to represent RRMCs was one step in a protracted struggle throughout the CLRB process and afterward. The idea was that having additional RRMC members in the unions' ranks would place them in a more favourable position in the bargaining unit review. After the courts had overturned the CLRB ruling, which had given RRMCs dependent contractor status, the two unions abandoned financing and supporting the RRMC's organizing attempt to focus on their own struggle to represent the amalgamated postal bargaining unit (Fudge, 2005, p. 71). All the energy of the two unions was consumed in fighting

each other to represent both urban letter carriers and workers inside postal installations. "The hostilities that were created at that point meant that there wasn't any time or effort for the effort that was needed to do a real serious campaign" (Interview 4, Hoogers). Once it was clear that a simple legal win was unlikely and that the issue was no longer at play in the bargaining unit review, Local 1801 was left to its own devices. And though it represented 2,600 members, Canada Post was not required by law to recognize or negotiate with Local 1801. The organizational conflict between CUPW and LCUC was significant in terms of Local 1801 having the support to successfully challenge the government and Canada Post.

Political mobilization

Political context

The political context in which this case took place greatly affected the opportunities and constraints available to the organizations. Various governments were in power when the ARRMC, ORRMC and CUPW were contesting Section 13.5 of the *Canada Post Corporation Act*. The Liberal government had introduced the exclusion in 1981 when it transformed the Post Office Department into a Crown corporation. During the mid-to-late 1980s, there were significant changes to the system for awarding Rural Route Mail Courier routes and serious attempts to alter the delivery network. In 1985, Canada Post informed individual RRMCs that it would stop issuing them T4 slips, which had indicated that the couriers were being treated as employees for taxation purposes. In September 1986, Canada Post announced that all contracts, including those under $10,000 (which had previously been excluded from tendering), were going to be put up

for public tender.[28] Furthermore, they were eliminating the residency requirement for holding a contract, which could allow larger transportation companies to bid on and subcontract routes (Fudge, 2005, p. 63). Fighting this change collectively was part of the motivation for signing up RRMCs into Local 1801 (S.G.E. Carr to Postal Union Locals and Regional Offices, personal communication, February 27, 1987). However, Local 1801 was unable to challenge these contract changes. The contract turn-over that resulted from the changes meant that it was difficult for Local 1801 to maintain its membership base (CLC Local 1801, 1990).

At the time of the AARMC and Local 1801's campaign, Brian Mulroney, Progressive Conservative Prime Minister, had introduced a range of neoliberal policies such as the Canada-US Free Trade Agreement, the privatization of many Crown corporations and cuts to the welfare state (Brodie, 1996, p. 387). The struggle and political action coincided with a period in which the Mulroney government was proposing controversial changes to the postal network that involved a huge number of post office closures. Canada Post introduced a controversial new five-year plan to Parliament in November 1986, which involved significant changes to the postal network, under the direction of the Conservative government (CUPW, 2004). Due to opposition, Mulroney sent the plan to a Parliamentary Committee to be debated. A grassroots organization, Rural Dignity, was formed in 1986 to fight the post office closures proposed in the plan (Fudge, 2005, p. 64-65).[29] Eybel sat on the board of Rural Dignity

---

[28] RRMC were forced to deliver the announcement requesting bids on their rural routes to residents (Interview 4, Hoogers)

[29] Rural Dignity was co-founded by Cynthia Patterson and Gilles Raymond and united grassroots activists across the country in fighting post office closures. Rural Dignity organized using tactics such as petitions, resolutions, information mailings, media work, legal challenges and guerilla theatre. The group received some financial support from the Canadian Postmasters and

and supported their efforts to stop the changes to the postal network though she did not think they received much support back from the Rural Dignity for RRMC's struggle (Interview 3). Rural Dignity lost their funding after the Liberal government announced a moratorium on post office closures (Fudge, 2005, p. 75). RRMCs were struggling for employee status at the same time as many organizational, political and work process changes and struggles were occurring in the postal system and beyond. Politically, a government was in power that was undertaking an ideologically neoliberal set of policies. Workers' rights and labour rights were not part of that ideology or vision. The possibilities of challenging the exclusion through political mobilization at this point were limited. "The timing was really bad with the post office and the government but it was our time" (Interview 3, Eybel). Furthermore, with an amalgamation of the bargaining units at Canada Post, there was not a great deal of organizational support for Local 1801. Therefore, the political, economic and organizational contexts did not provide many openings for or support in contesting RRMC's legal construction as independent contractors. This reinforces how important the political, economic and organizational contexts are in terms of shaping campaign possibilities and constraints.

Mobilizing politically

The ARRMC and Local 1801 mobilized politically in addition to pursuing the legal challenges. The ARRMC wrote letters to the Minister responsible for Canada Post, Members of Parliament and executives of Canada Post Corporation. They also encouraged members to get petitions signed and got media attention about their issues at Valentine's Day rodeos. The group presented before Parliamentary committees and took

---

Assistants Association. The organization's main funding was cut in 1994; however, it continues to be active on a volunteer basis (Forsey, 1996, p. 18).

part in job action at one point. Eybel and Gilles Raymond, from Rural Dignity, presented before the Holtman Committee, which was formed to debate the proposed changes to the postal network. They discussed the working conditions of RRMCs and the deterioration of service that would result from the proposed changes to the postal network. The committee recommended that Canada Post hold back on some of the major proposed changes but failed to mention the employment status of RRMCs (Fudge, 2005, p. 64-65). Rural Dignity and the unions mobilizing against the changes were successful in limiting many of the cutbacks to the postal sector; however, RRMCs were unsuccessful at having their employment status addressed.

On Valentines Day 1986, the ARRMC held a demonstration on Parliament Hill and in front of Canada Post headquarters. The RRMCs who participated effectively walked off their jobs for a day (Interview 5, Pew). This required a lot of courage because the workers could lose their contracts for this action. Pew found the job action an empowering experience.

> Out of all of those, I still think that pushing ourselves right in front of Canada Post and standing up and saying here we are and you have to do something with us, I found that had more of an impact. I realize we had to follow through with all the political, legal ends and everything but I really felt that was important... I think that was the exciting part too it was sort of like standing up to the big guy. (Interview 5, Pew).

While the litigation and political lobbying was much more of a technical and administrative process, the job action involved concrete grassroots mobilization. This protest was the only time the Association employed job action.

In 1990, Eybel and Maguire appeared before the Standing Committee on Consumer and Corporate Affairs and Government Operations, which was looking into

the postal system. The two described the impact of the new tendering system on RRMCs and the role of the association in fighting for employee status (Fudge, 2005, p. 74). Eybel also convinced her MP, Bob Speller, to introduce a private members bill to repeal Section 13.6 of the *Canada Post Corporation Act*. The Bill received a first reading in December 1990 but never went any further.[30] The ARRMC and Local 1801 mobilized politically to challenge their employment status and improve their working conditions. In this way, the groups did not rely exclusively on litigation. However, neither political nor legal mobilization was successful in having RRMC's exclusion removed.

The ARRMC and Local 1801 made significant strides in representing the interests of RRMCs. They connected workers in an isolating and isolated profession and pushed their case legally to the highest level. They fought politically for collective recognition. As a grassroots association, they put their issues on Canada Post and the government's radar. However, with the lack of organizational backing and the failure of the private members bill, Local 1801 started to peter out.

> "Then we just sort of I don't know, it just sort of went out of our hands and we were done but like I said, that was okay because now the powers that be were taking over and, and they certainly had the power to push a little harder and get more things done and I always felt that we got the rural route mail couriers to that point" (Interview 5, Pew).

Eybel sent out a newsletter announcing the Local was disbanding in 1994 (Fudge, 2005, p. 74). The following year, CUPW, which now represented the amalgamated postal operations group at Canada Post, began work on a new campaign to achieve employee status for RRMCs.

---

[30] Bill C-346, *An Act to Amend the Canada Post Corporation Act* (Mail Contractors), 34th Parliament, 2d Sess., 1990.

The Organization of Rural Route Mail Couriers and the Canadian Union of Postal Workers

The Canadian Union of Postal Workers (CUPW) and the Organization of Rural Route Mail Couriers (ORRMC) relied on legal process much less than the ARRMC and Local 1801 had. The focus of their campaign was on political and grassroots mobilization. When they did use legal tactics, they illustrated how legal process could be used in a creative and subversive manner with the priority placed on indirect results rather than a direct legal victory. Legal action was used as a secondary tactic to complement political and grassroots mobilization.

CUPW became involved in trying to organize RRMCs in 1995. They approached Sue Eybel, president of the former ARRMC and Local 1801, to ask for her support. In 1996, the CUPW national convention authorized the union leadership to organize RRMCs. After intensive discussion and debate within the union, it was decided to form a separate organization for RRMCs called the Organization of Rural Route Mail Couriers (ORRMC), rather than sign workers up directly into CUPW. In the ensuing sign up campaign, approximately two thirds of couriers joined the ORRMC (Rural and Suburban Mail Couriers' Struggle for Rights, 2001). The union allocated a budget of $250,000 per year for the organization (Bourque & Bickerton, 2004, p.5). The hope was for the workers to eventually join CUPW but it was possible the workers would remain independent or opt for another union. The ORRMC and CUPW undertook legal, political and grassroots mobilization to challenge workers' employment status.

CUPW has a militant philosophy with a history emphasizing collective action, minimizing inequality between members and organizing new members. In the 1970s and 1980s, CUPW was involved in illegal strikes, was the first national union to attain maternity leave for women members, and participated in legal strikes and defied back-to-work legislation, the last resulting in President Jean-Claude Parrot going to jail (Parrot, 2005, p.3). CUPW struggled to ensure part time employees received compensation equal to that of full time employees, that temporary workers had better wages and working conditions, and that the lower-paid coder classification was eliminated. In 1983, the union passed a resolution at the national convention stating that the best way to protect members' wages and working conditions was to improve other workers' wages and working conditions by organizing (Our History, n.d., n.p.). This philosophy and history contributed to CUPW's novel and innovative approach to organizing RRMCs.

Legal process

Although CUPW did not employ litigation to the same extent as the ARRMC, they did employ legal tactics strategically throughout the campaign. Deborah Bourque, former CUPW 3rd National Vice-President and President, stated that legal tactics helped tell the workers' stories:

> "It just made for such a great story in whatever framework you were telling it whether it was you know a fundamental rights framework or an international trade agreement framework, you know, the Canadian legislative framework, it was such a great story on all those different levels" (Interview 10).

This story involved a group of workers who had been legislatively denied access to employment standards and collective bargaining legislation. It involved an international legal framework that supports freedom of association and collective

bargaining. This story involved a comparison between urban and rural postal workers, many of whom perform similar work, yet have dramatically different working conditions. Furthermore, it involved individual workers' stories about the struggles they had endured working as RRMCs. Legal tactics provided a powerful tool through which to tell these stories. In this way, CUPW and the ORRMC were challenging the dominant discourse about the construction of RRMCs as entrepreneurial independent contractors. They were disseminating stories of inequality and marginalization that resulted from the government and Canada Post's exclusion of the workers from labour and employment legislation.

The union requested several legal opinions regarding the possibility of litigating the employment status of RRMCs. In one, the lawyer wrote, "Although, in my opinion, the decision by the Federal Court of Appeal does show some legal weaknesses, it would be utopic to think we could get a different decision if we started the debate over again. In my humble opinion, we should therefore examine other avenues which could allow rural letter carriers the possibility of becoming union members" (G. Nadeau to D. Lafleur, personal communication, May 8, 1995, Trans.). In the letter, he mentioned several options for invalidating the subsection of the CPC Act: (1) Charter challenge argument, (2) voluntary recognition by Canada Post, or (3) legislatively amending the *Canada Post Corporation Act* (ibid). In terms of the first option, Nadeau argued that "the odds of success of rural letter carriers in getting the invalidation of subsection 13.6 of the *Canada Post Corporation Act* are practically non existent" (ibid). Furthermore, if RRMCs were going to argue that there was discrimination on the basis of sex, there was a lack of statistics. "I don't think we thought we had an avenue because of all the court challenges and we didn't know how many women there were so we couldn't file one based on sex.

So we didn't really feel like we had much of a choice" (Interview 2, Steinhoff). Though CUPW did not have official statistics regarding the gender composition of RRMCs, there was anecdotal evidence that the majority were in fact women (D. Bourque to K. Steinhoff & S. Ryan, personal communication, March 21, 2011). The other ground for discrimination would have been occupational status, which was not recognized as a prohibited ground at that time (Bourque, February 1-2, 2001).[31] The possibilities of challenging the exclusion through litigation were very limited at the beginning of the ORRMC and CUPW campaign. Though the union consistently re-evaluated this option, they made the decision not to litigate.

The legal landscape was starting to change with respect to Charter protection of collective bargaining throughout CUPW and the ORRMC's campaign. In 2002, Bourque requested an analysis of whether the Dunmore decision[32] would have an impact on the possibility of a successful court challenge about the constitutionality of Section 13.5 of the *Canada Post Corporation Act* (G. Nadeau, letter to D. Bourque, February 22, 2002). In the Dunmore decision, the Supreme Court had concluded that Ontario legislation depriving agricultural workers of the right to associate violated Section 2.d on freedom of association of the *Canadian Charter of Rights and Freedoms* and was therefore invalid. The decision stated that in these particular circumstances, there was a duty by the Ontario government to adopt legislation allowing agricultural workers to associate.[33] Nadeau argued that the Dunmore decision did offer new opportunities for RRMCs in terms of litigation. Though acknowledging the difficulty of predicting the outcome of Charter

---

[31] The Federal Court had struck down Local 1801's amended statement of claim in their Charter challenge using this line of argumentation in 1990 (Fudge, 2005, p. 74).
[32] *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 SCR.
[33] *ibid.*

challenges, Nadeau stated, "I can however say without hesitation that the Rural Route Mail Couriers are now in a position to submit very serious arguments to support the position that Section 13(5) is unconstitutional and that the judgment in Dunmore will be very useful" (G. Nadeau, letter to D. Bourque, February 22, 2002). Therefore, the option of returning to the courts and attempting to litigate a resolution was always at play for CUPW while other strategies were being employed. This illustrates that the legal terrain is always shifting as a site of struggle. Jurisprudence is constantly altering the limits and possibilities of litigation. This results in litigation being incredibly unpredictable in terms of direct results.

CUPW also relied on legal opinions and interpretations in order to make the case to Canada Post that the corporation could voluntarily recognize rural route mail couriers. The corporation made the argument that Section 13.6 prevented them from contracting-in RRMCs. CUPW forwarded a letter to Canada Post from their lawyer on this topic. "Nothing compels CPC to use contractors to deliver mail in rural areas. The Corporation has full legal authority to decide that this work will be performed by its own employees" (G. Nadeau to D. Bourque, personal communication, July 13, 2001). Therefore, legal analysis was important in emphasizing to Canada Post the possibility of voluntary recognition. Regardless of active use of litigation, this struggle was constructed in law. Canada Post needed to be informed of the range of legal possibilities that were open to them regarding RRMC's employment status.

CUPW also employed administrative sites of legal mobilization by encouraging RRMCs to file employment standards and health and safety complaints. They argued that even if the workers were not covered by Part III of the *Canada Labour Code* on

collective bargaining, they should still be covered by Parts I and II in terms of employment standards and health and safety because they were dependent contractors. In one complaint by an RRMC, Human Resources Development Canada responded that the worker appeared to be self-employed (confidential name, October 19, 1999). "We were winning some, now they were fairly insignificant but nevertheless, you know, it's ensuring some momentum and in terms of causing them [Canada Post] grief" (Interview 1, Bickerton). CUPW was using the various sites of the state to apply pressure on the government and Canada Post to alter the workers' status. This strategy also emphasized the contradictions within these workers' construction as "independent contractors". They were trying to emphasize RRMC's similarity to employees in order to highlight the injustice and contingent nature of the legislatively imposed independent contractor status. They utilized the indeterminate and often contradictory juridical sites that workers, activists and unions can access in various arms of the state.

CUPW also relied on international law through the North American Agreement on Labour Cooperation (NAALC), the labour side accord of the North American Free Trade Agreement (NAFTA). The union filed a complaint through the NAALC, which had been signed by 21 unions and social justice organizations from Canada, the United States and Mexico. The complaint maintained that Canada had breached its obligations under the NAALC to promote, to the maximum extent possible, labour principles such as freedom of association, the right to bargain collectively, prevention of and compensation for occupational injuries and illnesses and the elimination of employment discrimination. The complaint also referred to Canada's obligations under International Labour Organization (ILO) conventions (The Canadian Union of Postal Workers [CUPW], 1998,

p. 2). This tactic highlighted the fact that rural postal workers in both the United States and Mexico were unionized and could bargain collectively. This broadening of scope applied pressure on the federal government and Canada Post to respect international legal norms and conventions. The union was jumping scale and expanding the scope of the debate in order to gain more bargaining power in the struggle. The objectives of relying on the side accord were indirect rather than direct. "It became obvious to us that this was the way of doing two things, one of raising the RSMC, the profile of the campaign and getting you know more involvement of allies and two, also illustrating the futility of these labour side accords because there was a lot of discussion in the labour movement at the time about how much emphasis should be put into trying to work within the framework of the NAALC" (Interview 1, Bickerton). Therefore, CUPW used the complaints process of the labour side accord in a strategic manner with no focus on a direct positive resolution to the complaint. The goals were indirect – raising the profile of the campaign, working with allies and subverting the labour side accord by illustrating its ineffectiveness. The NAALC National Administrative Office (NAO) did not accept CUPW's submission because it did not raise issues regarding "the application or enforcement of the law" as federal courts had determined that the *Canada Post Corporation Act* did not contradict the *Canada Labour Code* or the Charter (I. Garza, letter to D. Bourque, February 1999). However, the NAO agreed to hold a joint US-Canada conference on the right to organize and bargain collectively February 1-2, 2001 in which unions and social justice organizations participated. The complaint allowed the union to develop and strengthen connections with other unions and social justice organizations, not just in Canada but also in the U.S. and Mexico. Furthermore, the union

received national media coverage about the complaint, which raised the profile of the campaign.[34] CUPW used international law in a strategic and subversive manner. Multi-scalar tactics sought to reframe the issue into one of international rights and conventions. The union attempted to extend the reach and spread of the campaign by relying on a larger scale of governance through the NAALC. At the same time, they were trying to subvert that very process.

CUPW representatives also spoke about RRMCs in a variety of international forums including at a tri-partite ILO forum. With high-level Canada Post and international postal administration officials present, CUPW representatives spoke about the case of RRMCs and ensured it was reflected in the minutes of the forum (Interview 10, Bourque). This allowed the union to invoke international labour rights and conventions in a public and high-level forum to embarrass Canada Post and the Canadian government in their treatment of RRMCs. Again, the multi-scalar approach allowed CUPW to invoke internationally recognized rights the Canadian government had signed onto in numerous ILO conventions.

Though legal mobilization was not a central facet of this phase of the campaign to challenge RRMC's employee status, it was used as a pressure point in novel, multi-scalar and innovative ways.

> "The legal strategy was a big part of the campaign but it was, we also understood that there were real limits to how far we could go with the legal aspects of the campaign and that it was, you know, a lot of money, a lot of time, a lot of resources so it had to be sort of supported by other kinds of mobilization. And for the most part, the legal strategies allowed us to have some public debate about the issue, talk to MPs, to sort of raise the issue publicly, that was a big, you know, an offshoot or a bonus of the

[34] See Morton, 1998.

> legal strategy I think, which was probably more important than the actual legal challenges themselves." (Interview 10, Bourque).

CUPW was very cognizant of the limitations of legal action as well as the value of the indirect results of legal mobilization. They used legal strategies to add legitimacy to their campaign, raise its profile amongst members and the public and apply pressure on the government and Canada Post

Political mobilization

CUPW was very active in mobilizing politically throughout the entire campaign. Getting government support not only offered the possibility of striking down Section 13.5 legislatively, but it also applied pressure on Canada Post to resolve the situation. The ORRMC and CUPW maintained a consistent presence amongst MPs through lobbying, demonstrations and petitions. In the CUPW and ORRMC case, there were greater opportunities for political mobilization than there had been when the ARRMC was active. There were no massive changes proposed to the postal service and there was less institutional support for maintaining the exclusion.

CUPW and the ORRMC interjected themselves in many Parliamentary processes and debates. During the 1996 mandate review of Canada Post, CUPW submitted a brief, which detailed RRMC's struggle for employee status and argued that the *Canada Post Corporation Act* should be amended to permit RRMCs to organize in unions (Bourque & Bickerton, 2004, p. 5). Eybel also presented a brief on the terrible working conditions of RRMCs and the problems with the tendering of routes. However, the Review failed to mention the issue in the report (ibid). The ORRMC and CUPW encouraged RRMCs to lobby politicians and postal critics on Parliament Hill or in their ridings. CUPW prepared lobbying kits with tips on finding and lobbying your Member of Parliament (MP),

speaker's notes for meetings with MPs and a background document to give to MPs. On occasion, the executive of the ORRMC would lobby politicians on Parliament Hill for several days straight. "We would always make the case to them [MPs] that there was no operational need for Canada Post to do this" (Interview 10, Bourque). The group also met with the Liberal rural caucus regularly. "I think it's fair to say that most MPs knew a lot more about rural and suburban mail carriers than they knew about many other things" (Interview 2, Steinhoff). A major tactic that involved mail carriers from even the most remote rural area was having petitions signed in their communities. For months at a time, petitions about the status of rural route mail couriers would be read out in the House of Commons (Interview 10, Bourque). The union also provided a draft letter to MPs that RRMCs were encouraged to send.

All the federal lobbying resulted in a Private Member's Bill introduced by New Democratic Party (NDP) MP, Pat Martin, calling for the deletion of Section 13.5 of the CPC Act. The Bill failed by just four votes on April 5, 2000. It was clear that many MPs had become convinced the exclusion should be revoked. Over a decade had passed since the *Canada Post Corporation Act* had been passed. On one side, the NDP and Bloc Québécois were in favour of treating RSMCs like any other dependent contractor. Conversely, the Liberal government and the Conservative and Reform parties argued that the status quo should be maintained as they did not want to jeopardize entrepreneurship, reduce Canada Post's flexibility or increase its costs (Fudge, 2005, p. 84). These are classical neoliberal arguments to maintain the exclusion in that they aim to subject workers to market conditions and prioritize corporate flexibility and costs over labour and employment rights. Despite party positions, the Bill received support from MPs in all

parties. The close political vote shifted the balance of power in CUPW's relationship with Canada Post. It was clear that eliminating Section 13.5 would likely be possible legislatively. As ORRMC President, Alice Boudreau, reported:

> The result of this vote was deemed remarkable by everyone, even those who do not wish us well. The government was surprised and rattled. It is quite unheard of for a private member's bill aiming not to erect an uncontroversial statute but to alter government legislation in an important way - and with budgetary implications - to garner so much all party support (President's Report to the AGM, 2001, p. 2).

The ORRMC also considered the vote to have "shifted fundamentally the dynamic of our struggle with the government of Canada and with Canada Post" (ibid, p. 2). This vote illustrated that CUPW and the ORRMC's political mobilization was having a significant effect in terms of the level of support from MPs. Strategically, CUPW and the ORRMC understood that RRMC's employment status was inherently political. A central strategy of the campaign was to directly take on the body that had passed their exclusion into law. The close political vote gave CUPW and the ORRMC additional bargaining power.

The ORRMC and CUPW worked actively to advance the interests of RRMCs in federal elections. In a 2000 election-planning document, emphasis is placed on doing work at the community level in Liberal, Reform and Progressive Conservative constituencies. Some of the recommended tasks included a letter to municipalities requesting them to pass a resolution, opinion editorials, questions for all-candidates meetings and working with the media (CUPW, Pre-election and election work). The campaign also included protests and rallies. On March 8, 2001, the ORRMC executive wore suffragette-era hats and protested around the Person's monument on Parliament

Hill, with the argument that RRMCs were persons too and should not be excluded from labour and employment legislation (Rural Route And Suburban Mail Couriers Still Fighting To Be Recognized As 'Persons', 2001). They invoked the fight for equality carried out by the 'Famous Five' who struggled so that women would have the right to hold public office. The campaign used rights-oriented language, history, and imagery to add legitimacy to their campaign and highlight the inequality faced by RRMCs. This tactic also invoked women's equality as a central issue in the campaign. By invoking the Famous Five, CUPW and the ORRMC were presenting their struggle as one for women's equality.

Organizing the workers

The ORRMC and CUPW also put immense pressure on Canada Post. At a certain point, CUPW representatives began mentioning RRMC issues at every meeting with Canada Post. If the union was consulting over an issue that affected the urban bargaining unit, union representatives would ask how it affected RRMCs. This was to ensure the corporation understood that this campaign was CUPW's priority and that it resonated throughout the entire union (Interview 10, Bourque). Canada Post was also consulting with the ORRMC at a very high level. This promoted the idea that RRMCs were employees and that the ORRMC had recognition as their bargaining agent.

The union had included a demand in its 1997 urban round of negotiations to contract-in RRMCs but ended up dropping it. In 2000, the ORRMC had gone through the organizational process of developing a program of demands with its members despite not being the legally recognized bargaining agent for the workers. This program of demands was presented to Canada Post in 2000. The union actually met with Canada Post officials

June 18, 2001 informally to discuss the costs associated with the ORRMCs program of demands (Bickerton & Bourque, 2004, p. 9). CUPW was acting like the workers' bargaining agent prior to being legally considered as such. In this way, they also showed a disregard for the way in which the workers were legally constructed. In using this strategy, CUPW and the ORRMC decentred the ideological power of law. This was a part of the union and the ORRMC's strategy to "act as if" they were a legally recognized bargaining agent. In the 2002 round of urban negotiations, the union included another demand to contract-in RRMCs in order to be the legally recognized bargaining agent.

The ORRMC and CUPW decided they should start signing up RRMCs into CUPW in 2002. Even six months before that point, the ORRMC executive had not felt couriers were ready for that step (Interview 10, Bourque). A major organizing campaign was launched and a strong majority of RRMCs signed CUPW union cards (Bickerton & Bourque, 2004, p. 9). The union recognized that having RRMCs express their desire to join CUPW was key to contracting-in the workers through urban postal operations bargaining.

In discussions with Canada Post, CUPW emphasized it was key to contract-in the workers in this round of bargaining.

> And so we had this meeting with Ouellet, where we basically sat down, and we call it the 'you do it the easy way or the hard way' conversation, where we just laid out all the union's strategies and what we'd be doing over the next decade, you know, the legal strategy, the political organizing, the working with the RSMCs [if they did not contract-in RRMCs through bargaining]. And we just said there's an opportunity here at bargaining which is the easy way to do this, where we actually sit down and bargain wages and working conditions, because if we go through this campaign and spend the millions of dollars of resources, well, you know, our position's going to be a lot harder after going through that than it is now. And Ouellet got it. (Interview 10, Bourque).

Canada Post was on one hand arguing that CUPW did not have the right to negotiate for RRMCs while on the other hand actually carrying out discussions with CUPW on that matter. Canada Post filed a bad faith bargaining complaint with the Canada Industrial Relations Board because CUPW was trying to force the corporation to bargain for RRMC working conditions during urban postal worker negotiations (Interview 10, Bourque). Despite the complaint, Canada Post and CUPW were carrying out preliminary negotiations. In this way, both the union and Canada Post were disregarding labour relations law and structures, which involved only bargaining for workers in the urban operations bargaining unit. CUPW and the ORRMC's campaign up to this point had shifted the possibilities of this round of urban operations negotiations to allow the reconstruction of RRMC's employment status.

The two parties came to a tentative agreement July 27, 2003, which included contracting-in rural and suburban mail carriers (RSMC). "I think taking it into bargaining was a really important piece and I think the strength of it, a very powerful piece of it was the fact that 43,000 postal workers had the right to strike and I think that was pretty instrumental" (Interview 10, Bourque). In the end, CUPW ended up bypassing the government of the day and focusing on their para-public employer, Canada Post, in order to (re)structure RSMC's legal construction, rights and power. CUPW had a great deal of bargaining power given that the urban postal operations bargaining unit had the right to strike as part of their collective bargaining. Not only did they have bargaining power, but they had also engaged in years of political, legal and grassroots mobilization. This campaign work had already altered the limits and possibilities that could occur at this particular juncture.

Members in the urban postal operations unit ratified the contract with 65.4 per cent voting in favour and RSMCs ratified their agreement with 86.8 per cent voting in favour (Postal Workers Ratify two Landmark Collective Agreements, 2003). The RSMC collective agreement specified that on January 1, 2004, RSMCs would become unionized employees of Canada Post. The contract had an eight-year term with a re-opener for negotiations every two years.[35] Under the agreement, Canada Post agreed to contribute $29 million in the first year, and an additional $15 million each year afterward to finance improvements in wages, benefits and working conditions. Employees received a wage increase of $225 for each daily hour for which their route was designated and were covered under the Canada Post Pension Plan immediately. Furthermore, the collective agreement established that RSMCs would be covered under Employment Insurance legislation, workers' compensation plans, the Canada Pension Plan or Quebec Pension Plan, the health and safety provisions of the *Canada Labour Code* and would be given protection from harassment under the *Canadian Human Rights Act*. Furthermore, workers would have access to paid statutory holidays, two weeks of paid vacation, basic bereavement leave and unpaid parental leaves (What will it mean to be a unionized employee, 2003).

Apart from contracting-in 6 000 RSMCs, the urban agreement included wage increases of 12.5 per cent over four years, extended job security protection to an additional 4 500 workers and contracted-in mail pick-up and parcel delivery. The urban contract included additional funding for health and safety pilot projects and training as

[35] The re-openers do not include the right to strike but go to arbitration if the parties do not agree. The 8-year RSMC collective agreement expires December 31, 2011. This round of negotiations will be the first with the right to strike (What will it mean to be a unionized employee, 2003).

well as improved human rights protections. The most controversial aspect of the agreement was that severance pay would be eliminated for urban postal workers. Regular employees had the option of either having their accumulated severance pay paid out up to December 31, 2003 or to receive it upon their retirement. At the same time, longevity pay was added. Members who had completed 28 years of service would receive a wage increase of one per cent as of January 31, 2007 (What's in the tentative agreement, 2003, p. 2). The value of severance pay in the year prior to the contract was $28 636 367; however, the overall labour costs of the new agreement in its 4th year was $309 813 339 more than the year prior to the new contract. Lynn Bue, CUPW's Chief Negotiator and 1st National Vice-President, viewed this money as representing significant improvements in postal workers' wages and working conditions. This increase in labour costs did not include the increased cost of positions created through contracted-in parcels (Bue, 2003).

The urban operations agreement was quite controversial within CUPW. Some union activists maintained that the union had accepted a concession since workers had lost their future entitlement to severance pay. Some members believed the union should have either gone on strike to maintain severance pay and contract-in couriers or have continued with the political strategy to eliminate Section 13.5 of the *Canada Post Corporation Act* (Interview 1, Bickerton). "I think it's one of those things that has been hard for the organization and it's cost the organization a lot and the individual member a lot, but I think it's one of those things that over the long term, and as we look back on things like this historically, it's one of the real turning points, and one of the things that will make CUPW stronger and more effective." (Interview 10, Bourque). Fudge argues that this case illustrates that any changes to the entitlements of existing members in order

to improve working conditions for precarious workers can easily be characterized as unwarranted concessions (Fudge, 1995, p. 93-94). However, contracting-in RSMC increased CUPW's union density in the postal sector and within Canada Post significantly, it gave significant new rights, power and improvements in working conditions to 6,000 precarious workers in the postal sector and it illustrated how unions can challenge workers' legislative exclusion from employment standards and collective bargaining regimes in innovative and creative ways. It also showed the huge amount of resources and institutional support that is required to effectively challenge legislatively imposed independent contractor status. This case demonstrated the many strategic political, legal and corporate sites at which the challenge needed to be pursued in order to gain enough power and legitimacy to (re)construct the worker's legal status. In terms of legal mobilization, the CUPW and ORRMC case illustrates how legal tactics can complement political and grassroots mobilization. This case shows how legal mobilization can be used exclusively for indirect results. At its most radical, this case study illustrates how law and legal process can be used to subvert and challenge the very ideological and discursive power of those very same processes.

Chapter 4

> *And it's not acceptable that the girls who do the work and put their hearts into it should live through that, about things that have nothing to do with the work they do with the children.*
> (Interview 7, Carbonneau, Trans.)

Introduction

Marlène Carbonneau, home-based child care worker and later Fédération des intervenantes en petite enfance du Québec (FIPEQ) union representative, organized for years to unionize home-based child care workers and later to challenge their independent contractor employment status. She did not accept the long hours, poor pay and few rights that home-based child care workers experienced. However, she entered the contestation against their legislative exclusion from employment and labour legislation with little hope. Carbonneau did not believe home-based child care workers had the collective power to take on the government (Interview 7). The Centrale des syndicats du Québec (CSQ) and the Confédération des syndicats nationaux (CSN) relied extensively on legal mobilization to challenge *An Act to amend the Act respecting childcare centres and childcare services* (Law 8),[36] which legislatively defined home-based child care workers as independent contractors. They filed an International Labour Organization (ILO) complaint and a *Canadian Charter of Rights and Freedoms* challenge arguing that the law was discriminatory and violated the right to freedom of association. This chapter will consider the limits and possibilities of the legal mobilization used in the campaign to challenge Law 8. The unions combined legal action with political and grassroots mobilization. The combined points of pressure at multiple scales shifted the balance of

[36] *Loi sur les CPE, supra* note 8 at c. 13.

power between labour and the state. This chapter will explore the limits and possibilities of legal mobilization in altering the terrain of struggle over employment status. It will also evaluate the role of the constantly shifting regulatory terrain for the child care sector on campaign options and constraints.

The first part of the chapter, *Organizing in unions*, will focus on the unions' initial attempts to organize home-based child care workers in unions. This will include a discussion of the political, grassroots and legal mobilization that accompanied the organizing campaign. The second part of the chapter, *Constructing and challenging the independent contractor*, will detail the unions' responses to Law 8, which legislatively defined the workers as independent contractors. It will explore the political, grassroots and legal mobilization that were central to challenging the legal construction of home-based child care workers. The final section will discuss the compromise between the government and labour, which resulted in a new classification for the workers.

Background

Quebec has the only provincially-funded child care system in Canada. In 1997, the *Loi sur le ministère de la Famille et de l'Enfance et modifiant la Loi sur les services de garde à l'enfance*[37] was put in place. This law introduced subsidized child care spaces with parents paying $5 per day to home-based child care workers and the government paying the remaining portion.[38] This law delegated to early childhood centres the power to apply regulatory measures that home-based child care workers were required to

[37] Loi sur le ministère de la Famille et de l'Enfance et modifiant la Loi sur les services de garde à l'enfance, L.Q. 1997, c. 58.
[38] The cost of child care to parents increased to $7 per day in 2004 (Breton and Bérubé, 2003)

follow.[39] For parents to access the subsidized spaces, children had to be placed under the care of a home-based child care worker who was recognized by an early childhood centre. Centres are for infants and children from 0-4 years old and home-based child care is for infants and children from 0-12 years old. The spaces were phased in starting in September 1997 for four year-olds and completed in the Fall of 2000 for children from 0-12 years of age (Tougas, n.d., n.p.).

Home-based child care workers were engaged in precarious work. Independent contractor status excluded these workers from basic social protections such as labour and employment legislation resulting in poor wages and working conditions. The CSQ estimated that home-based child care workers received less than $5.00 per hour and worked approximately 62 hours per week (CSQ, 2002, p. 1). Home-based child care providers received no paid vacation, sick leave or parental leave. At least 95 per cent of the workers were women.[40] Home-based child care workers worked in the care industry, which is an especially stereotypically gendered form of employment.

Organizing in unions

(De)constructing the independent contractor status

Both the CSQ and CSN were approached by home-based child care workers regarding their working conditions. There was a debate within FIPEQ, which is a component of the CSQ, about the inclusion and status of these workers. FIPEQ already represented child care workers in early childhood centres.

---

[39] Règlement sur les centres de la petite enfance, L.R.Q., c. C-8.2, r. 2.
[40] *CSN, supra* note 6 para 138.

> It was clear to me that we had gotten started; the people working in facilities, the people working in home settings, we were becoming ... the new legislation brought us into the same family, with the same board of directors and the same education program to apply. (Interview 6, Tonnelier, president of FIPEQ, Trans.).

The CSQ created regional Association des intervenantes en milieu familiale (ADIM), which were part of FIPEQ, with executives to provide for the democratic life of the organization by organizing education, responding to the needs of members, defending members and providing information about the law and regulations in the sector (ibid). When FIPEQ became involved, employment status was not the major issue. In fact, Tonnelier thought the workers were independent contractors. The Federation's position was that they should work for the benefit of all child care workers regardless of whether they were based in centres or in homes (Interview 6, Tonnerlier). FIPEQ eventually came to the conclusion that the workers were employees, especially as they had started realizing the limits of their capacity to represent home-based child care workers without being their legal bargaining agent (Interview 6, Tonnelier). "We have always represented childcare providers; besides, the reason we went the unionization route was that we realized we couldn't do it the way we would have liked and we couldn't do it the right way either." (Interview 7, Carbonneau, Trans.). For FIPEQ, the decision to opt for unionization seemed to result from the limitations of independent contractor status in terms of rights, protections and the capacity to bargain. The Fédération de la santé et des services sociaux (FSSS), which is part of the CSN, had internal debates and came to the conclusion that having autonomy at work and the status of employee were not contradictory. They argued that many professionals have autonomy at work but are still employees (Interview 9, Évangéliste).

Many home-based child care workers considered themselves independent contractors when FIPEQ and the CSN became involved in the sector. At the time, many home-based child care workers had misgivings about the presence of unions in their sector as they wanted to maintain their autonomy. Even Carbonneau, FIPEQ union representative and early activist, commented that she was worried unionization would result in a loss of autonomy over her work. She stated that she eventually came to the conclusion that unionization could not make things any worse than they already were (Interview 7, Carbonneau). As the child care law[41], regulations[42] and directives[43] started being developed and implemented, workers started to question their employment status given that their work was becoming increasingly regulated. "Look, whatever happened, I wasn't going to be independent any more; so if I was going to go for something, why not go for employee benefits?" (Interview 7, Carbonneau, Trans.). Workers began expressing interest in organizing in a union and testing their employment status through the labour board.[44] After the initial labour board decisions were made that home-based child care workers were in fact employees, many more workers joined the respective unions.[45] At the same time, L'Association des éducatrices et éducateurs en milieu familial du Québec, an organization representing some home-based child care workers, had consistently campaigned to maintain home-based child care workers' independent contractor status

---

[41] In 1997, the *Loi sur le ministère de la Famille et de l'Enfance et modifiant la Loi sur les services de garde a l'enfance* put in place the publicly funded child care system (L.Q. 1997). This law modified *la Loi sur les centres de la petite enfance et autres services de garde à l'enfance* (L.R.Q., c. C-8.2.). This law was replaced December 16, 2005 by la Loi sur les services de garde éducatifs à l'enfance (L.R.Q., S-4.1.1.).

[42] Regulations for the sector are laid out in the *Règlement sur les services de garde éducatifs à l'enfance* (L.R.Q., c. [s-4.1.1, r.2]). The regulations relate to health and safety of children, pedagogical support and training of staff.

[43] Directives from the government involve more detail on how the law and regulations are to be implemented and applied (Interview 8, Tremblay).

[44] See ADIM, Au APE, 2002; ADIM, La syndicalisation, 2002; ADIM, Les responsables, 2002; ADIM, L'ADIM-Estrie, 2002; ADIM, Éclosion, 2002)

[45] *ibid*

(AEMFQ, n.d.). Therefore, conceptualizations of home-based child care workers' legal status went through significant alterations both for the unions involved and many of the workers; however, this happened in a contested, contradictory and uneven manner. Part of this shift with FIPEQ reflected a pragmatic understanding that collective bargaining rights would allow for greater control and power over working conditions.

Political mobilization

Home-based child care workers and labour centrals were involved in political mobilization prior to challenging the workers' independent contractor status. In the fall of 1998, the CSN and the CSQ pressed the government to negotiate salaries for child care workers at a central table. Centre-based child care workers and support workers unionized with FSSS-CSN went on strike in April 1999. They mobilized with child care workers unionized by FIPEQ to push the government for improvements in their working conditions, remuneration, pay equity and a retirement plan (Tougas, 2002, p. 24-25). Non-unionized home-based child care workers supported these demands. The group mobilized with two strike days (April 1st and 8th, 1999), two protests in Montreal and Quebec with over 4,000 people, the occupation of the Minister of Finance's office and the threat of an unlimited strike. This compelled the Minister of the Family and Childhood to put in place a tri-partite consultative committee with representatives from the administrative council of early childhood centres, the unions and the Minister. This consultation table was mandated to develop recommendations on salaries, retirement plans, pay equity and the financing of early childhood centres (Tougas, 2002, p. 24-25). Working conditions for early childhood centre workers began to improve dramatically through collective bargaining and the consultation. Workers got vacation, overtime,

preventative pregnancy leave, extended maternity leave, sick leave, salary increases and eventually a pension plan.[46] While FIPEQ was at the table representing centre-based child care workers, they pushed for a discussion table on home-based child care work. They were successful in having a separate consultation table created (Interview 6, Tonnelier).

At the consultative table for home-based child care workers, the CSQ and CSN argued that home-based child care workers should receive an increase in remuneration and have working conditions equal to those of early childhood centre workers. They also tried to bring up the wages of the least-paid home-based child care workers.[47] There was a lot of variation between the salaries of home-based child care workers at this time because there were different rates paid based on the age of the child as the subsidized child care spaces were being phased in. The Minister invested $37 million in home-based child care compared to $144 million in early childhood centres despite the same number of children in both sectors. This money ended up going to the least-paid home-based child care workers to equalize salaries.[48]

They also agreed that the government would initiate a working group in 2000 to look at other aspects of home-based child care workers' working conditions. In various sub-committees, FIPEQ proposed a grievance arbitration system to deal with the power imbalance between early childhood centres and home-based child care workers and contested unilateral changes to health and safety guides and education programs (Les ADIM et la Table, 2001). This discussion table lasted approximately one year and fell

---

[46] *CSN, supra* note 6 at para 165.
[47] *CSN, supra* note 6 at para 174.
[48] *CSN, supra* note 6 at para 175.

apart because the Minister wanted to resolve problems from the government's end without addressing home-based child care workers' working conditions as the unions wanted (Interview 6, Tonnelier).

FIPEQ also filed a petition with the Quebec National Assembly with more than 9 000 signatures demanding the government engage in a real negotiation process to improve the working conditions of home-based child care workers. This was after the forum on home-based child care was no longer meeting and applications for union certification had been filed (ADIM, June 2, 2002). The labour centrals maintained pressure on the government to negotiate even when they were moving forward with union organizing. FIPEQ was acting as the workers' bargaining agent event though they were not legally recognized as such. However, there were definite limits to negotiating with the government outside the collective bargaining system.

Legal process

FIPEQ took on cases of workers who needed representation prior to challenging home-based child care workers' independent contractor status. Tonnelier stated that the federation realized at a certain point that home-based child care workers who had their recognition suspended or revoked had no recourse. Being classified as independent contractors, the workers did not have access to the *Commission des relations du travail* (CRT) to resolve work disputes but had to take cases through the formal legal process. The union took several cases of workers who had their recognition revoked to the Superior Court to put pressure on the government to develop a more accessible dispute resolution process. FIPEQ argued that workers should not have to contest disputes in such a rigorous and intimidating court like the Superior Court. The federation received a

compromise from the government that home-based child care workers who had their recognition revoked or suspended could bring their cases to Quebec's quasi-judicial tribunals. Tonnelier stated that advocating on behalf of these workers helped to place the FIPEQ politically as the home-based child care workers' representative or 'bargaining agent' with the Minister (Interview 6). As such, they received legitimacy in discussions with the government but had little bargaining power to negotiate agreements that responded to workers' complaints. After years of trying to work with the government to improve the working conditions of home-based child care workers as independent contractors, workers and labour centrals began challenging the workers' employment status by applying for union certification and filing administrative complaints.

The unions took advantage of various sites to make the case that home-based child care workers were employees. FIPEQ encouraged home-based child care workers to file health and safety and employment standards complaints. Over a hundred home-based child care workers filed complaints in 2002 at the same time as applications for union certification were in play.[49] Tonnelier stated that the complaints on minimum wage, supplementary hours not paid, maternity leave, preventative withdrawal from work for pregnant workers and holiday pay were meant to ensure minimum standards were met but also to put pressure on the government (Interview 6).

In terms of union organizing, a first application for union certification was filed with the *Commission des relations du Travail* (CRT) by the CSQ June 5, 2001 for home-based child care workers recognized by the Rose des Vents early childhood centre. A second and third application was filed in July and September 2001 for workers

[49] *CSN, supra* note 6 at para 202

recognized by the Marie Quat'Poches Inc. and l'Arche de Noé early childhood centres. The Attorney-General of Quebec intervened in the case to argue that the workers were independent contractors.[50] In the decision, Judge Vignola considered how home-based child care workers' recognition by an early childhood centre could be obtained, suspended and revoked. The judge noted that the law dealing with child care specified the qualifications necessary to obtain recognition, the technical and professional support workers needed and the control and surveillance of home-based child care workers.[51] The judge stated that it is primarily the aspect of control or direction that distinguishes an employee from an entrepreneur.[52]

> All aspects of childcare providers' work are monitored by the Childcare centre: the schedule or the hours of business, which are set out in the permit application and are checked; the number of children; the qualifications and character of the childcare provider and her assistant, if any; the number of snacks and meals and what they consist of; the educational content; the tools such as toys and games.[53]

Judge Vignola ruled that home-based child care workers recognized by an early childhood centre were employees of that centre.[54] In a similar decision, Judge Garant concurred that home-based child care workers represented by the CSN were employees of the early childhood centre on March 5, 2002.[55]

---

[50] Alliance des intervenantes en milieu familial, Laval, Laurentides, Lanaudière (CSQ) c. Centre de la petite enfance Marie Quat'Poches inc., 2002, CM-1010-3182, CM-1010-4121, CM-1010-5509 [2002], para 1-5 [*ADIM*].
[51] *ibid* at para 18.
[52] *ibid* at para 84.
[53] *ibid* at para 88, Trans.
[54] *ibid* at para 122.
[55] *CSN, supra* note 6 at para 35.

The early childhood centres and the Attorney General filed for an appeal of the decisions. In May 2003, Judge Handman[56] confirmed both the Vignola and Garant decisions[57] at the Tribunal du travail. The early childhood centres and the Attorney General filed a request for a judicial review of the decisions with the Superior Court of Quebec. The CRT met with the parties after the Handman decision to decide how to approach the remaining applications for union certification. It was decided that a list of early childhood centres where the facts were similar to those in the previous cases would be created and the jurisprudence from the cases would be applied. By June 2003, the CSQ had filed 57 applications for union certification and represented 780 home-based child care workers (Le projet de loi no 8, 2003, p. 6). The CSN represented approximately 500 home-based child care workers through 25 applications for union certification by the time Law 8 took effect.[58] The workers had followed the normal course in challenging their employment status. The labour boards (re)constructed the workers as employees with access to employment standards and collective bargaining legislation.

Law 8, which retroactively classified home-based child care workers as independent contractors, was adopted December 17, 2003. The Attorney General argued that classifying the relationship between the home-based child care worker and the early childhood centre as employee-employer distorted the intention of the legislator and that the workers have always grouped in associations formed outside the labour code to

---

[56] *Centre de la petite enfance la Ribouldingue c. Syndicat des éducatrices et des éducateurs en milieu familial de la région de Québec-CSN*, 2003, No 200-28-000016-029, 200-28-000017-027 [2003] [*CPE Ribouldingue*].

[57] *Syndicat des éducatrices et éducateurs en milieu familial de la région de Québec –CSN et Centre de la petite enfance La Ribouldingue* CM AQ-1005-1915; *ADIM, supra* note 50.

[58] *CSN, supra* note 6 at para. 33.

improve their working conditions.[59] The judicial review with the Superior Court and demands for union certification were suspended.[60] All existing union certifications were rendered null and void. Amongst the certified unions, some had begun the process of negotiating a collective agreement for the workers. These processes came to a halt immediately after the law passed. Furthermore, the employment standards complaints that had been filed by approximately 100 home-based child care workers were suspended.[61] The unions had been successfully challenging home-based child care workers' legal classification through applications for union certification. Law 8 halted that (re)construction by enacting a more rigidly defined independent contractor status for home-based child care workers.

Constructing and challenging the independent contractor

The unions mobilized against Bill 8 with protests, petitions and lobbying Members of the National Assembly (MNAs). They made submissions and spoke at consultations on Bill 8 in September, 2003.[62] They mobilized allies including having the support of the Fédération des femmes du Québec and the social justice group, Au bas de l'échelle (ADIM, La Fédération, 2003). Fourteen professors at various universities in Quebec wrote an open letter criticizing the Bill (ADIM, Les projets de loi, 2003). However, at that point the Charest government was introducing many pieces of regressive legislation, of which Law 8 was only one part. One similar piece of legislation,

---

[59] *CSN, supra* note 6 at para 60.a, 60.b.
[60] *CSN, supra* note 6 at para 200.
[61] *CSN, supra* note 6 at para 202.
[62] The Association des éducatrices et éducateurs en milieu familial du Québec (AEMFQ) were in support of Law 8 because they saw it as the beginning of their recognition as a profession. They hoped to see increased autonomy and independence in their work as a reflection of the independent contractor status (AEMFQ, 2003)

which was contested through similar processes as Law 8, was Law 7,[63] which defined "intermediary resources" and "family-type resources", who help people with disabilities, as independent contractors.[64] Social justice organizations and the labour movement were on the streets mobilizing against the package of legislation but were not successful in preventing its introduction into law.[65]

The law retroactively labeled all home-based child care workers as independent contractors.[66] Specifically Law 8 stated:

> A recognized home childcare provider is, with respect to the services the person provides as such to parents, a provider of services within the meaning of the Civil Code.
>
> Notwithstanding any provision inconsistent herewith, the recognized home childcare provider, when acting within the home childcare operation, is deemed not to be in the employ of or an employee of the childcare centre permit holder that has recognized the childcare provider. The same applies to the adult assisting and any person in the employ of the childcare provider.[67]

The law also put in place a mechanism which allowed the Minister to come to agreements with 'representative associations', which had to represent at least 350 workers, on the exercise of home-based child care. [68] These agreements were at the discretion of the Minister as associations did not have any real bargaining power.[69]

---

[63] *Loi sur les CPE, supra* note 8 at c. 12.
[64] *CSN, supra* note 6 at para 11-12.
[65] See ADIM, Journée d'étude, 2003; ADIM, Manifestation, 2003;
[66] *Loi sur les CPE, supra* note 8 at chapter C-8.2.
[67] *An Act to Amend the Act Respecting Childcare Centres and Childcare Services*, L.R.Q. 2003, chapter C- 8.1.
[68] *Loi sur les CPE, supra* note 8 at C- 73.5.
[69] ILO. Reports of the Committee on Freedom of Association. 340th Report of the Committee on Freedom of Association. GB .295/8/1. 295th Session. Geneva, March 2006. para. 392 [*ILO Report*].

All the momentum that had been gathering amongst home-based child care workers stopped when the law was adopted. Both Tonnelier and Carbonneau say it completely demobilized activists and workers alike. "You're facing a government law. What are you going to do? That's it, that's all. You're not going to go any farther." (Interview 7, Carbonneau, Trans.). The majority of members left the ADIMs. The affected workers did not have much hope in being able to contest the law.

Legal mobilization

The CSN decided immediately to contest the law judicially. They decided to litigate in the Quebec Superior Court rather than the CRT in order to take on the law directly. The lawsuit challenged both Law 8 and Law 7.[70] The multiple labour centrals involved with the two groups of workers - CSN, CSQ and Centrale des syndicats démocratiques (CSD) - worked together to challenge the laws. By pooling their resources and having just one case, there was a greater chance of success. However, there were different philosophies around the role of legal action amongst the labour centrals at the beginning. The CSQ believed more in organizing on the ground rather than legal fights (Interview 9, Évangéliste). The director of legal services at the CSQ at the time thought that the file should be resolved directly with the government. The thought was that a legal challenge could either result in a legal resolution to the issue or would help gain leverage in discussions with the government on a political resolution to the problem (Interview 8, Tremblay). The CSQ placed legal action firmly within the political sphere and recognized the importance of grassroots mobilization. At that point the CSQ did not think they had many options aside from legal action.

---

[70] Intermediary resources and family-type resources who were affected by Law 7 were represented by the CSN and CSD. The CSN represented workers affected by both Law 7 and 8.

> Personally, that's what kept me hanging on: saying, OK, we'll salvage what we can and then we'll wait for ... we'll wait to go to court. There wasn't really anything else we could do. And we hoped there wouldn't be endless delays, either. But it took a long time; we waited for something like four years. (Interview 6, Tonnelier, Trans.).

The CSN had a more pro-legal action position. They saw the value of legal action alongside organizing on the ground. They saw no contradiction between the two strategies.

> In this case, it was pretty fundamental because the fight was about the direct relationship of power. That kind of fight is tough even in more traditional settings, being in a constant state of mobilization like in the union movement in Europe; and it's political because there's no way for you to challenge your employer, the law doesn't allow that. So in this case the legal aspect was pretty important. (Interview 9, Évangéliste, Trans.).

Therefore, the labour centrals had slightly different orientations around legal action but the same goal of challenging the legislation (Interview 9, Évangéliste). Eventually, all labour centrals agreed to pursue a Charter challenge and a complaint with the International Labour Organization's (ILO) Freedom of Association Committee. They worked together for the duration of the legal challenge.

International law

The unions took advantage of legal mechanisms at various scales including at the international level. The CSN filed a complaint with the International Labour Organization's Freedom of Association Committee on December 19, 2003. The CSD, CSQ and FTQ filed a complaint against Laws 7 and 8 shortly afterward on February 10, 2004, which was amalgamated with the previous complaint.

The ILO committee released a decision in favour of home-based child care workers and the labour centrals. The report stated, "The workers in this complaint should

therefore be able to enjoy the provisions of the Labour Code as other workers in Quebec, or enjoy genuinely equivalent rights."[71] The decision noted that revoking existing union certifications through legislation is against the principles of freedom of association. In addition, the committee argued that the consultation mechanism in the law offered much less than workers could access through the labour code. This multi-scalar tactic allowed the unions to broaden the debate to include international frameworks, conventions and legal norms around the right to collective bargaining. Jumping scale was a tactic to keep the issue in the workers' and public eye and shift the discourse around the issue based on international legal rights and principles.

The ILO decision had some direct and indirect impacts. It shamed the government internationally and nationally. Carbonneau noted that the decision was useful in discussions with home-based child care workers because she could say, even the ILO says this law is against the constitution and is discriminatory toward women (Interview 7). Furthermore, it renewed interest in the struggle against Law 8. Tremblay noted it was a way to talk with home-based child care workers about what was happening with the campaign and reinforced that the struggle was continuing and progressing. (Interview 8). Évangéliste remarked that the decision prompted several law professors to write an article in a major newspaper about the decision. In fact, the unions received extensive media coverage of the decision.[72] It was an occasion to get together and hold a press conference where the presidents of the labour centrals called on the government to respect international agreements and the decision of the ILO (Interview 9, Évangéliste). The ILO

[71] *ILO Report, supra* note 69 at para. 423.
[72] The ILO decision was covered in many major Quebec newspapers including Le Devoir, La Presse and Le Droit. See coverage in the following news articles: Bélanger 2006; Montminy, 2006; Péloquin, 2006; Cauchy, 2006.

decision added moral and ethical weight to the arguments and position of the labour centrals by jumping scale to international legal principles onto which the Canadian government had signed. Therefore, the ILO decision had an impact on how the struggle was discursively constructed and understood. Furthermore, the ILO committee decision was quoted extensively by Judge Grenier in her decision that Law 8 was unconstitutional.[73] Therefore, the multi-scalar tactic clearly had important discursive and material impacts on the campaign. Though the ILO decision was not enforceable, many indirect results arose from the complaint including mobilization, publicity and discursive shifts.

The Superior Court case

The labour centrals filed a Charter challenge with the Superior Court of Quebec. They argued the law violated the right to freedom of association under Section 2.d of the Charter and was discriminatory on the ground of sex under Section 15.1 and the analogous ground of having the professional status of home-based care workers. After several years and approximately 50 court dates, Judge Danielle Grenier issued a decision in favour of home-based child care workers and the labour centrals, which repealed Law 8, on October 31, 2008. In the decision, the judge looked at whether the law was an attack on the right to a collective negotiations process protected by Section 2.d of the *Canadian Charter of Rights and Freedoms* and Article 3 of the *Quebec Charter of Human Rights and Freedoms*. If so, the judge evaluated whether the law substantially

[73] *CSN, supra,* note 6 at para 302-309.

hindered the right of home-based child care workers to associate and participate in a group to collectively negotiate fundamental questions linked to their workplace.[74]

The legal terrain regarding Charter protection of collective bargaining under freedom of association had been changing in the years prior to Grenier's decision. After a series of Supreme Court decisions that had failed to protect collective bargaining or strikes as part of freedom of association rights under the Charter,[75] several decisions had showed a change in course.[76] The judge looked at the impact of the *Dunmore* decision on the right to freedom of association including the determination of what constituted interference in the "collective aspect" of an activity, the requirement to give liberty of association a contextual interpretation and the recognition that Section 2.d of the Charter could impose positive obligations on the government.[77] The decision also took account of the *Health Services* decision,[78] in which the Supreme Court struck down a piece of legislation in British Columbia that allowed contracting-out and layoffs by invalidating collective agreement provisions that contravened the legislation. This decision asserted that Section 2.d of the Charter included the right of employees to belong to a union in order to negotiate working conditions with their employer. In *Health Services*, the Supreme Court underlined that freedom of association and collective action are fundamental values of Canadian society and in the context of labour relations, freedom of

---

[74] *CSN, supra* note 6 at para 213.
[75] *Public Service Employee Relations Act* (Alberta), [1987] 1 S.C.R. 313, 38 D.L.R. (4th) 161 [Alberta Reference cited to S.C.R.]; *PSAC v. Canada*, [1987] 1 S.C.R. 424, 38 D.L.R. (4th) 249 [PSAC cited to S.C.R.]; *RWDSU v. Saskatchewan*, [1987] 1 S.C.R. 460, 38 D.L.R. (4th) 277 [RWDSU]
[76] *Dunmore, supra* note 32; *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27.
[77] *Confédération des syndicats nationaux c. Québec (Procureur général)*, 2008 QCCS 5076, [2008], para 216.
[78] *Health Services and Support-Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, 2007 SCC 27 [*Health Services*].

association is expressed through collective bargaining. Grenier noted that the limits on the right to negotiate collectively are that as it is a process, there is no guarantee of specific results or the right to demand a particular model of labour relations or negotiations. In addition, an attack must be substantial, "so substantial that it interferes not only with the attainment of the union members' objectives (which is not protected), but with the very process that enables them to pursue these objectives by engaging in meaningful negotiations with the employer."[79] Therefore, the jurisprudence played a significant role in the limits and possibilities of this decision. The Dunmore and Health Services decisions opened up new possibilities in terms of Judge Grenier's analysis with regard to home-based child care workers.

The Grenier decision noted the protective legislation and rights from which home-based child care workers are excluded by being defined as independent contractors: *Act respecting labour standards*, preventative withdrawal from work for pregnant women,[80] *Act respecting parental insurance*, *Act respecting occupational health and safety* and the *pay equity Act*.[81] The judge remarked that it is the status of employee in our society that provides access to social protection.[82]

The decision took stock of international law and the ILO complaint by the unions. Judge Grenier acknowledged the international instruments Canada has ratified such as the International Covenant on Economic, Social and Cultural Rights, International Covenant

---

[79] *ibid* at para. 91.
[80] Under the *Act respecting occupational health and safety,* pregnant or breastfeeding employees can access a preventative withdrawal from work if their employment involves dangers for themselves, the fetus or the breastfeeding infant. Home-based child care workers who work with a number of children and are exposed to a higher level of infectious disease than the general population can now access this program under their new contract (ADIM, Le retrait préventatif).
[81] *CSN, supra* note 6 at para 248-251.
[82] *CSN, supra* note 6 at para 271.

on Civil and Political Rights and Convention 87 on Freedom of Association and Protection of the Right to Organise. The judge noted that these instruments should serve as guides when interpreting internal rights, especially the Charter.[83] This illustrates the importance of multi-scalar legal tactics in domestic litigation. When domestic law violates international conventions and principles, it can be valuable to jump scale and expand the framing and scope of the issue.

Judge Grenier noted that the consultation mechanism in the law is illusory and without real significance except for the government.[84] The judge concluded that the attack on freedom of association guaranteed by Section 2.d of the Charter in this case was substantial in the sense of *Health Services.*[85]

As for the right to equality found under Section 15.1 of the Charter and Article 10 of the Quebec Charter, the judge again took into account the international instruments Canada has ratified with regard to women's equality including the Convention on the Elimination of all forms of Discrimination against Women. In Canada, the person who alleges a Section 15.1 violation under the Charter must prove (1) the difference in treatment under a law; (2) that it is founded on an enumerated and analogous ground; and (3) that it is discriminatory. The judge found that a distinction was made between home-based child care workers and other workers because the work accomplished was identified with the feminine sphere.[86] Another distinction was created between those who undertake care work in their homes and those who work in public, semi-public or private institutions. This distinction was founded on their professional status of home-care

---

[83] *CSN, supra* note 6 at para 312.
[84] *CSN, supra* note 6 at para 290.
[85] *CSN, supra* note 6 at para 314.
[86] *CSN, supra* note 6 at para 363.

workers. She found there was a difference in treatment based on the feminine characteristics of the work and accentuated by stereotypes and prejudice to which it has historically been victim.[87]

> [The bills] were passed to avoid having work at home – perceived as being an extension of women's traditional, unpaid family responsibilities and domestic duties – become unionized. The message is clear: childcare providers, intermediate resources and family type resources are not treated the same as other workers because the work they do is care, provided by women, at home.[88]

The final question was whether real discrimination was occurring as a result of the laws. The judge argued that denying home-based child care workers collective bargaining rights could only make the workers more vulnerable, which was an attack on their dignity.[89]

The judge next asked whether Law 8 met a real and urgent objective. Judge Grenier argued there was no rational link between the objective and the "draconian" measures imposed to attain it. The final question asked whether the law hindered guaranteed rights to the least degree possible. Again, the judge decided that it was impossible to conclude the government had met its obligation to minimize the attack on workers.

On October 31, 2008, Judge Grenier ruled that Law 8 was unconstitutional, invalid and inoperative because it violated Section 2.d of the *Canadian Charter of Rights and Freedoms*, Article 3 of the *Quebec Charter of Human Rights and Freedoms*, and Section 15.1 of the Charter.[90] [91] The Grenier decision was a major success for the labour

---

[87] *CSN, supra* note 6 at para 363, 370.
[88] *CSN, supra* note 6 at para 372.
[89] *CSN, supra* note 6 at para 386
[90] *CSN, supra* note 6 at p. 107

centrals. The decision not only showed that the law violated the Charter on the ground of freedom of association but also on the ground of discrimination based on sex and the analogous ground of home-care work. This was the first time in Canada that professional status had been recognized as an analogous ground for discrimination (Interview 9, Évangéliste). In litigating, the labour centrals were looking for the direct result of a decision striking down the law from Judge Grenier. All parties involved considered this decision the best they could have hoped to receive (Interview 8, Tremblay; Interview 9, Évangéliste). This case illustrates how legal mobilization can be powerful for its direct results. It had the material result of striking down the law. The decision also shifted the ideological and discursive understanding of the issue. Legal decisions can bring to light injustices and alter the status quo power relations and hierarchies in substantive ways. This decision dramatically altered the terrain of struggle for the respective labour centrals by bringing to light the rights violations and discrimination perpetrated by the government. It placed the unions in a strong position going forward in their struggle with the government.

Union organizing

After the decision, the CSN and CSQ began filing applications for union certification. The CSQ recognized they were in a grey zone judicially and wanted to occupy that space. They did not know whether the Charest government would file an appeal of the Grenier decision. In the summer of 2007, months before the Grenier decision was handed down, the CSQ began preparing for mass union certifications immediately after the decision. Union organizing campaigns were launched in several

[91] Judge Grenier also repealed Law 7, which defined RI/RTF's as independent contractors (*CSN, supra* note 6 at p. 107).

locations. If the government filed an appeal, it would make the case even more abhorrent. Carbonneau commented that the Attorney-General always said it was only a minority of home-based child care workers who wanted to unionize. The mass organizing campaign was aimed at showing the government that this was false and that a majority of workers wanted to organize (Interview 7, Carbonneau). "Those choices we made were political. Really, it was about giving ourselves the best chance" (Interview 6, Tonnelier, Trans.). This reflected the CSQ's philosophy, which emphasized grassroots mobilization. The action also arose from an understanding of the limitations of and political nature of legal action.

The CSQ started from scratch in the organizing campaign despite the suspended applications for union certification. This was because the *Educational Childcare Act*,[92] which had passed December 16, 2005, had altered the administrative structure in the sector and employers would now be considered bureau coordinators, with a much larger jurisdiction than early childhood centres had had. Achieving a majority in the new conditions meant signing up a lot more workers. By February 5, 2009, a little over three months after the Grenier decision, the CSQ had filed 96 applications for union certification covering more than 10,000 home-based child care workers. This covered 64 per cent of workers in the sector (Pagé, 2009, p. 18). Tremblay links this mass of union certifications to all the ADIM's work with home-based child care workers over the years (Interview 8). The labour central had been working with and servicing home-based child care workers for close to a decade when the decision came down. Furthermore, they had started organizing months prior to the release of the Grenier decision. As of February,

[92] Bill 124, *Educational Childcare Act*, 1st session, 37th Leg., R.S.Q., chapter S-4.1.1 [*Educational*]

2011, the CSN represents approximately 2,000 home-based child care workers and the CSQ represents more than 13,000 workers (Cameron, 2011). Shortly following the Grenier decision, the vast majority of home-based child care workers had signed union cards. The huge number of home-based child care workers who signed union cards and the speed at which they did so reflected a firm base of worker mobilization and support for the unions. This grassroots mobilization inevitably affected the government's decision not to file an appeal. It also placed the labour centrals in a strong negotiating position with the government over the workers' legal status and rights.

FIPEQ also encouraged its members to use administrative complaints procedures to apply pressure on the Charest government following the Grenier decision. In a bulletin, the federation encouraged workers to file complaints on minimum wage, public holiday pay, vacation pay and overtime pay (Normes du travail, 2008). Tonnelier estimated that 8,000-10,000 employment standards complaints were made. The commission dealing with employment standards had to create a separate list of home-based child care worker complaints because there were so many (Interview 6, Tonnelier). The mass certification and employment standards complaint strategy was used to pressure the government not to file an appeal of the Grenier decision and to send the message that they could not continue with their old tactics. Tonnelier noted that the Minister of the Family did not expect the wave of movement and action amongst home-based child care workers (Interview 6). The CSQ was incredibly active in mobilizing members and pressuring the government in many different ways. They did not rely solely on the Grenier decision in challenging the legal construction of home-based child care workers.

Mobilizing the membership

While the litigation took place, the labour centrals recognized that they needed to engage, mobilize and service their members. Both the CSN and CSQ had organizations in place to offer services to workers even though they were not legally recognized as their bargaining agent. If workers had health and safety issues, suspensions or revocations of recognition, the respective unions would take the case and help represent the member (Interview 7, Carbonneau; Interview 6, Tonnelier; Interview 8, Tremblay; Interview 9, Évangéliste). This aided in building their organizations and their membership. It also laid the groundwork for the future organizing campaign and union. It reinforced a shift from individual to collective struggle.

The labour centrals also used key events in the litigation, political process and other events to mobilize members with demonstrations. For example, the CSQ held a demonstration on March 8th, 2004, International Women's Day, to focus attention on the plight of home-based child care workers and emphasize the gender component of their exclusion from employment standards and collective bargaining.[93] They organized events on the anniversary of the law being adopted and the anniversary of the Charest government being elected (Loi 8 modifiant, 2004; Bien triste anniversaire, 2004). The CSQ organized a conference on the 10 year anniversary of their organization, ADIM, with guest speakers from Laval University, the CSQ and CSD and the Union of Artists speaking about options for workers excluded from the labour code (Colloque ADIM 2007, 2007). Therefore, FIPEQ maintained a high level of grassroots mobilization

[93] See ADIM, Journée internationale des femmes, 2004; ADIM, Avenir du réseau, 2005.

throughout the legal campaign, which resulted in a strong membership base when the Grenier decision was handed down.

Political mobilization

Mobilizing throughout the litigation

Part of Law 8 allowed for representative associations of home-based child care workers, which could conclude agreements directly with the Minister. Both the CSQ and the CSN refused to participate in this structure given their opposition to Law 8. "We said to each other: we can't come under that law on the one hand and challenge it on the other hand, so we're not asking for it" (Interview 7, Carbonneau, Trans.). This effectively shut them out of any consultative role with the government regarding changes in the sector. Throughout the litigation, the unions made a conscious decision not to consult with the government. At the same time, they tried to keep workers informed of changes in the sector that the government was implementing.

FIPEQ mobilized extensively around the new law in the sector, the *Educational Childcare Act,*[94] which had shifted responsibility for home-based child care workers from early childhood centres to bureau coordinators. For example, ADIM Montreal held an assembly to discuss Bill 124 and adopt an action plan (Avis aux médias, 2005). Carbonneau argued that the law was a way for the government to counter their judicial contestation because all the union accreditations that were suspended before the CRT named the early childhood centre as the employer (Interview 7). It also changed the landscape in terms of the employee-employer relationship because bureau coordinators were responsible for a larger number of home-based child care workers than had

[94] *Educational, supra* note 92 at S-4.1.1

previously been the case. Therefore, FIPEQ was able to keep workers involved in and rebuild the ADIM structures after Law 8 by mobilizing and informing members of changes in the child care system.

The government also introduced new instructions, called instruction 5, that home-based child workers had to sign several months before the Grenier decision was released. The instructions dealt with child care spaces, changes to working hours and compensation. Workers viewed the instructions as a loss of their autonomy. Carbonneau argued that these new instructions fueled the union organizing campaign because workers thought if they were to lose their autonomy, they might as well organize in a union (Interview 7). The timing of this release likely had an impact on the huge number and speed at which workers signed union cards following the Grenier decision.

After the Grenier decision

After the Grenier decision was handed down, the labour centrals lobbied and pressured the Charest government not to appeal the decision. The timing worked to their benefit as the decision was released at the beginning of an election campaign and both the Parti Québécois and Québec Solidaire expressed support for home-based child care workers and committed, if elected, not to appeal the decision of the Superior Court. The President of the CSN contacted Jean Charest, the Premier, to request that an appeal not be filed and to discuss how to improve the status and working conditions of home-based child care workers (Interview 9, Évangéliste). Carbonneau explained how she and a group of home-based child care workers approached Charest during the election campaign and asked him publicly about his intentions regarding an appeal (Interview 7). The labour centrals were successful in lobbying the Charest government not to file an

appeal of the Grenier decision. Again, the labour centrals recognized the political nature of legal struggle. They understood that legal processes could drag on and on if the government chose to appeal the decision. The election campaign provided an environment where more pressure could be applied on the Charest government to accept the Grenier decision.

After Charest was re-elected, two separate discussion tables were created with the government, one with the CSN, and another with the CSQ, to discuss the way forward. The government was proposing a new law, Bill 51,[95] which would construct a separate labour relations system for home-based child care workers. Labour would have had a stronger position in the negotiations with the government if the CSQ and CSN had negotiated at the same table. Though the two labour centrals united for the legal struggle, they divided in negotiations with the government over Bill 51[96] and in negotiating the respective collective agreements. "Nobody analyzed it, but clearly it can't ... it won't help because you always end up in front of the government as two competing organizations, instead of being two cooperating organizations. The government knows all about that, it can see that, and it's very good at exacerbating tension." (Interview 8, Tremblay, Trans.). This tension was because the two labour centrals were in competition over organizing home-based child care workers in their respective ranks. Clearly, a common negotiating table would have strengthened the position of labour in discussions over the content of Bill 51.

---

[95] Bill 51, *An Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, and amending various legislative provisions*, 1 Sess, 39th Leg, Quebec, 2009, ch 36 [Bill 51].
[96] *ibid* at ch 36.

The labour centrals worked to influence the content of the new law and lobbied successfully for a commission to review the law. After months of discussion and debate, the labour centrals decided to support the law, which was adopted June 18, 2008. "The choice that was made at that point was a very pragmatic one." (Interview 9, Évangéliste, Trans.). The law gave home-based child care workers collective bargaining rights with the government rather than the bureau coordinators, however, workers were still considered independent contractors. The law included many sections of the labour code, including the right to strike. In the end, Évangéliste contended that the important thing was that the content of the workers' rights were recognized regardless of what the workers were called (Interview 9). Under the new law, though the workers are not covered by employment legislation, they are covered by labour legislation. Collective bargaining tends to bring workers above minimum standards, so the content of the law holds promise. At the same time, 'what the workers are called' is important in that it defines the rights and social protections afforded to them. If anything, this compromise highlights the inadequacy of linking employment standards legislation to employment.

The CSQ made the choice to support the new law as well. They asked themselves whether the workers who had joined ADIM in such high numbers could wait another five or six years without any changes in working conditions because the labour central would have had to challenge the law in the Supreme Court (Interview 6, Tonnelier). "I'm quite comfortable with the compromise position we took. Personally, I defended that position long before we did that." (Interview 8, Tremblay, Trans.). Tremblay, who interviewed many home-based child care workers for the early CRT applications for union certification, argued that many of the workers considered themselves independent

contractors and worked very independently. He asserted there was no guarantee they would have been able to prove that all home-based child care workers were employees with the new cases before the CRT. The CSQ had gained employee status prior to Law 8 with their best cases at the CRT. With the dramatic changes in the administrative structure of the child care sector due to the *Educational Childcare Act*,[97] there was no guarantee the workers would be able to prove employee status. Home-based child care workers were now supervised by bureau coordinators who were responsible for approximately 80-120 home-based child care workers, rather than early childhood centres, which had been responsible for approximately 5-8 workers (Interview 8, Tremblay). Given bureau coordinators' larger jurisdiction, it was likely that the supervision and control had altered significantly since the early CRT cases. Less supervision and control by bureau coordinators would make home-based child care workers appear more like independent contractors. Furthermore, the government and Attorney-General were contesting each new application for union certification. In each case, the union would have had to prove that the relationship was that of employee-employer (Interview 9, Évangéliste). Both unions decided to accept the compromise of Bill 51. This decision reflects the indeterminate and ambiguous nature of employee versus independent contractor status as legal categories. The Quebec government ended up creating a new labour relations structure with a 'hybrid' status through which independent contractor home-based child care workers were able to organize in unions.[98] The government clearly wanted the workers excluded from employment standards, human rights, pay equity and occupational health and safety legislation. This entire

---

[97] *Educational, supra* note 92 at S-4.1.1.

[98] This status is similar to that of 'dependent contractors' in other jurisdictions who have the right to organize in unions but are not covered by employment legislation.

struggle highlights the need to re-conceptualize and restructure the employee-independent contractor dichotomy in terms of employment and labour regulations to recognize that many workers with autonomy are also economically dependent and require social protections to minimize their reliance on markets in terms of dictating working conditions.

The labour centrals bargained their first collective agreements within this new law recently. Both the CSN and CSQ came to an agreement in principle with the government in late 2010. ADIM-CSQ members voted 95 per cent in favour of the agreement and CSN members voted 99 per cent in favour of ratifying their agreement. It's clear the vast majority of unionized home-based child care workers were in favour of the collective agreements. The contracts last three years and government funding moves from $19.00 to $25.44 per child, per day. This amount will increase each year of the agreement to reach $27.43. The agreements include eight paid statutory holidays and two weeks of paid vacation. The government will provide a premium of 4.9 per cent that workers will be responsible for investing in a pension plan themselves. The contracts will also put in place and provide extra money for a group insurance plan, for which the workers have the choice to pay premiums. A $2 million per year training fund is also being created for home-based child care workers (Cameron, 2010). Therefore, the contract represents significant financial gains for workers.

At the same time, there are some critics and critiques of the compromise. In an article in *Le Devoir* newspaper, a group of home-based child care workers express their discontent that after 10 years of struggle, they are still considered independent contractors (Gervais, 2010).

> "She [France Perras], an applicant in Confédération des syndicats nationaux c. Québec (Procureur général), 2008 QCCS 5076] couldn't accept that she had had employee status painted in glowing colours for her – which would have given her the right to coverage under a whole range of legislation, for example on pay equity and occupational safety and health – and that she ended up with self employed status, enshrined in Quebec's Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements." (Gervais, 2010)

The CRT confirmed that they had received around 30 complaints under Article 20 of Law 51 from home-based child care workers that their association or union had acted in bad faith by lying to them (Gervais, 2010). The article states that the union has already submitted a request for a dismissal. Some workers are obviously dissatisfied with their legal classification under the new law. Even Marlène Carbonneau, who helped negotiate the ADIM collective agreement, has been frustrated by some aspects of Law 51. She pointed out that they could not negotiate much in terms of normative clauses related to bureau coordinators because they are only negotiating with the government (Interview 7, Carbonneau). In a scenario where bureau coordinators are the effective employers who supervise workers and the government is the funder, negotiating solely with the government is less than ideal.[99] However, negotiating solely with bureau coordinators without the government would also be inadequate. Given that the contracts are negotiated with the government, they deal primarily with monetary issues. However, the CSQ did negotiate a high-level tri-partite committee with the union, the government and bureau coordinator representatives, to discuss issues. The law specifies that home-based child

[99] This difficulty is linked to "conceptualizing employment as a personal and bilateral contract between two unitary and bounded entities" (Fudge, 2006, para. 3). Canadian labour law does not envision contracts between three parties - the worker, the government as funder, and the bureau coordinator as supervisor - as would be more appropriate in this case. In France, maternal aides have a tri-partite contract between the government, a committee of parents and the union, which is an interesting model (Interview 9, Évangéliste).

care workers receive the monetary equivalent to the employment legislation to which they are excluded based on their independent contractor status. Workers receive the monetary equivalent to that which is paid under the *Act respecting labour standards* and under the *National Holiday Act*. They also receive financial compensation to offset the difference between the premium for a self-employed worker and an employee under the *Act respecting parental insurance* and the *Act respecting the Quebec Pension Plan*. Furthermore, the law specifies that home-based child care workers will receive financial compensation for coverage under the *Act respecting industrial accidents and occupational diseases* and the *Act respecting the Régie de l'assurance maladie du Québec* [health insurance].[100] Despite her criticism of the law, Carbonneau acknowledged the gains home-based child care workers have made.

> Never in my life would I have believed that a childcare provider would have three weeks paid vacation, plus eight statutory holidays. I would never have believed that a childcare provider would be eligible for coverage with the Commission de la santé et de la sécurité du travail (CSST) [Quebec's occupational safety and health board] or a pension plan. Never in all the battles I myself have fought since '99 would I have thought that one day that would happen. Personally, I think what we've got isn't perfect, but I'm satisfied with what we've got because I know where we started from. (Interview 7, Carbonneau, Trans.).

There is a range of views of the compromise the labour centrals made in terms of accepting independent contractor status for home-based child care workers. At the same time, the high levels of contract ratification indicate that members overwhelmingly support the agreement. The first collective agreements in the sector will begin to improve the working conditions for home-based child care workers.

---

[100] *Representation, supra* note 7 at c. 32

The CSQ and CSN reached a compromise with the government of the day over the construction and rights afforded to home-based child care workers. In fact, a new labour relations structure was constructed for home-based child care workers that maintains their independent contractor status but gives them collective bargaining rights. The CSQ and CSN had bargaining power resulting from the masses of workers who had signed union cards, the abundance of employment standards complaints and a legal decision that was extremely critical of the government. The labour centrals were able to negotiate the content of Bill 51 with the government to achieve a compromise they could accept. This case was resolved in a very different manner to that of RSMCs who were contracted-in as part of the urban postal operations bargaining unit collective bargaining process. The CSN and CSQ reached a compromise with the Charest government while CUPW reached a compromise with Canada Post, their para-public employer. In both cases, the respective unions made use of their particular circumstances, contexts, opportunities and constraints. The results were slightly different in that home-based child care workers are unionized independent contractors while RSMCs are unionized employees. Both challenged the manner in which the workers were constructed legally using a variety of formal, multi-scalar and creative legal tactics. Their legal, political and grassroots campaigns restructured the rights and status of the workers, which has resulted in significant improvements in working conditions and power at work.

Chapter 5

The campaigns to challenge the employment status of rural and suburban mail carriers (RSMC) and home-based child care workers provided many opportunities to compare and contrast the ways in which legal mobilization was used by labour unions. The cases provided insight into the limits and possibilities of using legal mobilization as a campaign tactic to challenge both employers and the State. This chapter will begin by evaluating the results and consequences of the campaigns through a framework assessing the material relief or benefit to affected workers and the impact on the relationship between the workers and the dominant group. This discussion will explore both the direct and indirect results of legal action. The chapter will also discuss the multiple sites at which the legal mobilization campaigns were carried out and how legal action is inevitably a political activity that must be placed in its political context. Furthermore, a key component of the campaigns was the stress placed on mobilizing members together with legal tactics. The role of grassroots mobilization in contributing to the success of the campaigns will be explored along with the potentially demobilizing aspects of legal action. Finally, there will be a discussion of the (re)construction of these workers' employment discursively and ideologically and the role and power of legal mobilization in this process. The campaigns attempted to reinforce the moral legitimacy of RSMC and home-based child care workers' struggle for employee status. The unions and workers invoked a language of labour rights, freedom of association and gender equality to strengthen their position relative to the state and/or employers. The chapter will close with some final thoughts and future avenues for research.

Understanding the consequences of mobilization

Conceptually, it is important to have a normative framework within which to analyze the consequences of the campaigns. In this research, the campaigns are being evaluated in terms of whether they achieved an immediate relief or benefit for the individual or group and whether they altered the relationship with the dominant group in an unintended or intentional manner (McCann, 1996, p. 221). Material relief or benefit will be determined through improvements in working conditions for affected workers and the relationship with the dominant group will be explored by assessing how power relations between the workers or unions, the state and/or in the case of RSMCs, Canada Post, shifted and altered. One clear indication of a shift in power relations is through access to a collective bargaining regime where workers and the union have bargaining power in negotiations with the government and/or employer.

Consequences of campaigns in terms of material relief or benefit for affected workers and relationship with dominant group

Groups	Material relief or benefit	Relationship with the dominant group
Association of Rural Route Mail Carriers (ARRMC) & Canadian Labour Congress (CLC) Local 1801	The litigation was unsuccessful. RRMC's working conditions did not change.	The campaign had a minimal impact on the balance of power between RRMCs and the government or Canada Post.

Groups	Material relief or benefit	Relationship with the dominant group
Organization of Rural Route Mail Couriers (ORRMC) & Canadian Union of Postal Workers (CUPW)	As a result of contracting-in RSMCs and negotiating a collective agreement, working conditions have begun to improve.	The campaign shifted the balance of power between Canada Post, the government and RSMCs. It altered RSMC's construction from independent contractors to employees within the labour relations system.
Confédération des syndicats nationaux (CSN) & Centrale des syndicats du Québec (CSQ)	Home-based child care workers can now organize in unions. Collective agreements have provided for improvements in working conditions.	The campaign shifted the balance of power between the unions and the Charest government enough to achieve a compromise. Each labour central can now bargain a sectoral collective agreement. However, workers are still defined as independent contractors.

Both the ORRMC and CUPW and CSN and CSQ campaigns achieved material relief and benefit for workers and altered the relationship with the state and/or the employer. In both cases, the respective workers can now negotiate a collective agreement. Neither of the cases shows a complete restructuring of relations with the dominant group or a fundamental alteration in capitalist relations of power or production. At the same time, the workers can now access processes such as collective bargaining, which serve to maintain checks and balances on the power of employers and give real bargaining power to workers. There was an initial shift in power relations in that the unions were able to (re)construct the workers' status. However, through collective bargaining, power relations remain altered in that workers and unions have an

enforceable contract and periodic collective bargaining. Workers in the two case studies achieved contracts with substantial increases in material benefits and greater bargaining power over their working conditions; however, the two did so in different ways. The RSMC reached this status through being contracted-in as part of the urban postal worker bargaining unit negotiations while home-based child care workers reached a compromise with the government of the day, which involved the creation of a new and specific labour relations regime that maintains their independent contractor status. The two cases used legal mobilization to very different degrees. The CSN and CSQ and the ARRMC relied on litigation as a primary and central component of their strategy. However, the ARRMC had the decision in their favour struck down by the Federal Court. The ARRMC did not achieve material benefits and did not alter their relationship with Canada Post or the government in any substantive way. However, they laid the groundwork for future collective struggles. CUPW and the ORRMC made use of legal action as a peripheral tactic to a more holistic approach. The variety of results of legal action and ways in which it was used illustrates the contingent and indeterminate nature of legal action as a campaign tactic.

One aspect of McCann's categorization looks at whether an alteration of the relationship with the dominant group occurred in an intended and coherent way or whether it was unintentional and unorganized. This research shows that in complex campaigns contesting the position of the state and/or employers, the results are rarely intentional, coherent or organized. It is difficult to imagine intentional and coherent consequences in campaigns when multiple parties are involved and unexpected political and legal changes occur. It is unlikely in most struggles for social justice that the results

of the campaign are entirely intentional, coherent or organized. Part of the indeterminate and mixed nature of much legal mobilization is that objectives, success and results shift as the campaign continues. The opportunities and constraints shift given the overall context, positions and tactical choices made. The results in the two cases were not what was initially expected. The CSN and CSQ had initially been mobilizing for the workers' employee status. No one knew what would happen when Law 8 was struck down (Interview 6, Tonnelier). However, the labour centrals tried to augment their bargaining strength as much as possible during this period in order to have more control over the outcome (Interview 6, Tonnelier). CUPW and the ORRMC did not know which tactic and strategy would be successful - whether having the legislation changed by Parliament, having the workers contracted-in by Canada Post or even whether they would resort to litigation to seek a resolution from the courts. For example, the union sought a legal opinion about the changes in Charter legislation in 2002 after the Dunmore decision.[101] They still had the possibility of litigating the case. The key point is that the unions consistently re-evaluated their options and goals.

The concept of success for the unions also shifted over time and was viewed in different ways by people within the organizations. Frédérique Tremblay, CSQ union representative, stated that for his organization, success was based on increasing the membership of the labour central and improving the working conditions of workers. For Tremblay, another way of measuring success was to see all the women who have participated in and benefited from the campaign and the links of solidarity that have been created.

---

[101] *Dunmore, supra* note 32.

> You're not going to see it on the front page of the paper, but a lot of employers were really abusive. But they're not so abusive now. They're scared. Employers know that women [home-based child care workers] can defend themselves: it's not true any more that women don't know anything, that they don't know about anything, that they don't know about their rights. That's not true any more now. And that's another way of measuring success. (Interview 8, Tremblay, Trans.).

Regarding that same campaign, Tonnelier stated that their objective was to improve the working conditions of home-based child care workers and they are now living that reality (Interview 6). As for the RSMC campaign, Bickerton noted that their concept of success shifted throughout the struggle. "We would have defined it differently earlier, we would have said getting rid of 13.5 [Section 13.5 of the *Canada Post Corporation Act*] and having the right to collective bargaining but employee status was success" (Interview 1, Bickerton). Gloria Pew, an early ARRMC activist who still works as a rural courier, considers their campaign a success in the long term given that she is now an employee. She views the activity of the ARRMC as having laid the groundwork for the future ORRMC and CUPW campaign (Interview 5, Pew). The underlying premise of this research is that these campaigns were ultimately successful in improving working conditions and changing the relationship between the workers and unions and the state and/or employer. At the same time, it is clear that success was not a static term, but shifted given the opportunities and constraints of the terrain of struggle.

McCann posits that the indirect results of legal mobilization are often as important as the direct results (McCann, 1994, p. 10). The indirect effects of legal action can include catalyzing movement-building efforts, generating public support for new rights claims or providing pressure to amplify other political tactics (McCann, 1991, p. 230). This distinction between direct and indirect results will be used to acknowledge the range

of outcomes that can arise from campaigns. In terms of direct results, the two cases show one where litigation had direct success and another which was ultimately unsuccessful in achieving a verdict in favour of the workers. The ARRMC received a decision in their favour from the Canada Labour Relations Board, which was subsequently overturned by the Federal Court. The Supreme Court refused leave to appeal, so the Federal Court decision stood. After spending time and financial resources on the legal fight, the ARRMC did not receive the direct result they desired. Though there were some indirect benefits such as increased media coverage of their issues and the development of a rights-consciousness amongst the workers, the primary goal was for the courts to alter their employment status. According to Pew, the litigation did not have positive results. "Well, it didn't really get us anywhere [the court system]. We felt very deflated after the Supreme Court" (Interview 5, Pew). The ARRMC and CSN and CSQ campaigns showed the greatest reliance on the direct results of litigation in the form of a verdict in their favour. This reliance inherently holds the most strategic risk, as labour actors have limited control over the decisions. This risk can be minimized by having favourable jurisprudence and a strong case, but it cannot be entirely eliminated. The judicial system can entirely reinterpret a topic depending on the case and the timing. As Zemans states, "The point is that courts are essentially reactive institutions, so rules "change as they are applied" in response to claims made" (1983, p. 691). There is never a guarantee of a particular outcome, yet it takes particular cases to open or close the door in terms of jurisprudence. The CSQ and CSN were litigating in an entirely different judicial climate than that in which the ARRMC was operating.[102] However, a favourable decision can

[102] In 2001, the *Dunmore* decision was released, which placed positive obligations on the Ontario government to put in place a collective bargaining structure for agricultural workers because they

have a dramatic and powerful indirect effect. The home-based child care workers' decision illustrated the ideological and discursive potential of law. The decision brought to light many ideological underpinnings of the legislation and bolstered the position of the labour centrals in negotiating a compromise with the government. Applying to the courts for direct results is always a risky and uneven process but as the home-based child care workers' case shows, a successful outcome can have a level of ideological and material power. The opposite is also true; a decision against unions or workers can shift the discursive framing to the detriment of their struggle or it can demobilize struggle and campaigning.

The ORRMC and CUPW used legal strategies purely for their indirect results of publicizing the issue with the media, politicians and the public. In filing a North American Agreement on Labour Cooperation (NAALC) complaint, CUPW had no expectation of receiving a decision in their favour. The entire purpose was to achieve the indirect benefits of legal tactics. In this case, the ORRMC and CUPW did not rely on the outcome of the legal process at all. This removed some of the substantial risks of relying on the results of legal action. The fact that, as a result of the complaint, a conference on the right to organize and bargain collectively was held, was an added bonus. This strategy helped build support and connections with allies, connect with the public, build rights consciousness with RSMCs and amplified their demands both politically with Parliament and with Canada Post. It expanded their claim beyond a domestic legislative framework to one of international rights and conventions. Not only did this tactic not rely on the

---

were considered 'vulnerable' (*Dunmore, supra* note 32). The *Health Services* decision stated that the procedural right to collective bargaining is protected under s. 2(d) of the *Charter* (*Health Services, supra* note 78).

direct results of the complaint, but it aimed to subvert the NAALC complaints procedure as well. An objective of this tactic was to illustrate the futility of these labour side accords because at the time there was discussion in the labour movement about their usefulness (Interview 1, Bickerton). This example highlights how legal tactics can in fact be used to undermine the legal system. There are different degrees to which unions can participate in and 'buy into' the values of the legal system when using legal tactics. This case involves the most minimal participation and buy-in regarding the principles underwriting the legal process, in this case the NAALC complaint procedure. CUPW attempted to subvert the ideological power of judicial processes linked to free trade agreements. Furthermore, they achieved many indirect results of legal mobilization without any reliance on the direct outcome of the complaint.

Multiple sites of pressure

All the organizations contesting the exclusionary legislation recognized that they could not rely explicitly on one tactic or strategy. They did not rely explicitly on political or legal mobilization but combined the two. They also consistently worked with affected members to inform, organize and mobilize. And within each of these sites, they employed various means to push their campaigns forward. Some sites used were in the administrative state through employment standards complaints filed with government agencies. Both RSMCs and home-based child care workers filed employment standards complaints as a campaign tactic. Applying pressure at diverse sites allowed the unions to exacerbate tensions through contradictory positions and processes within the overall state. The administrative state could respond to contestation in a different manner than the Parliamentary state, para-public employer or the courts. The CSQ tried to fill the

regulatory vacuum created after Law 8 was struck down by encouraging workers to file employment standards complaints and by filing applications for union certification. They also encouraged workers to file complaints when they were organizing workers prior to Law 8 being passed (Interview 6, Tonnelier). CUPW employed employment standards complaints as a tactic to highlight the inequality and tensions implicit in RRMC's independent contractor status (Interview 1, Bickerton). The two groups employed this tactic in slightly different ways. While home-based child care workers filed these complaints during a legal void when their classification was unclear, the RSMC filed complaints while being constructed as "independent contractors" and excluded from labour and employment legislation. However, both approaches put pressure on the government of the day and/or Canada Post as the para-public employer.

Intertwining legal and political mobilization

Legal mobilization, when used by social movements, is often for the purpose of achieving political change. Pursuing litigation without tackling the legislative and administrative structures and decision-makers will often fail. There is an indeterminate and complex relationship between the multiple arms of the state. Furthermore, legal cases can go back and forth between the courts and the legislature as can be seen with the Dunmore case. After the clause of the *Ontario Labour Relations Act*, which excluded the agricultural workers from collective bargaining, was struck down, it was followed up with another law regulating the workers' employment.[103] The United Food and Commercial Workers (UFCW) union filed another lawsuit on the new law (UFCW, n.d.). It is expected that a new decision on this case will come down from the Supreme Court

[103] Agricultural Employees Protection Act, 2002, S.O. [2002], C. 16

soon.[104] This example illustrates how disputes can transfer between the courts and governments, each in turn, negotiating the margins of the conflict. Ultimately, the lengthy litigations have given no amelioration in working conditions or greater power and control to agricultural workers in Ontario. Mario Évangéliste, CSN lawyer, stated they needed to successfully convince the courts of discrimination in addition to freedom of association in the case of home-based child care workers in order to avoid being "Dunmoriser", which would involve the government making a minor modification to its law resulting in an additional court battle (Interview 9, Évangéliste). This illustrates that litigation is often an inherently political process, which requires both political and legal mobilization. In the home-based child care worker and RRMC cases the respective governments bypassed traditional means of determining employment status[105] and overrode the *Canada Labour Code* and the Quebec labour code. The government was integrally involved in these cases, given that the respective governments legislatively interjected themselves in the determination of the affected workers' employment status. In these cases, tackling legal mobilization without political mobilization would have limited the possibilities of (re)structuring the workers' employment status.

These cases aimed at achieving a judicial solution to a political problem. In the case of home-based child care workers, even a judicial victory resulted in a political compromise in terms of the contested changes. The CSQ and CSN received the most positive possible legal outcome with a decision recognizing that Law 8 was passed to

---

[104] It was noted at the thesis defence that the *Fraser* decision was released April 29, 2011. The decision found that the *Agricultural Employees' Protection Act, 2002,* was constitutional (Ontario (Attorney General) v. Fraser, 2011 SCC 20)

[105] Government programs or agencies such as Canada or Quebec Pension Plan, Employment Insurance or the Canada Revenue Agency and tribunals or courts determine employment status depending on the situation and claim being made.

prevent unionization and was an attack on freedom of association. The decision also recognized that the law was based on gender stereotypes due to the labour being "care" work[106] and completed in the home. The labour centrals were successful in practically every argument they put forward in the Charter challenge. Yet the unions still faced negotiations with the government in the creation of a new law, which maintained the workers' independent contractor status. Even with a judicial victory and over 10,000 workers having signed union cards, the government insisted on a separate labour relations regime for home-based child care workers. This suggests that judicial victories are limited in terms of their policy and legislative outcomes. Charter challenges remove political issues from the legislative realm; however, the outcome is often ultimately decided in the legislative sphere. Though Law 8 was struck down by the Superior Court of Quebec, the government still had the power to construct a new law. At the same time, the power the labour centrals had gained through the validating and legitimating ruling from Judge Grenier and the mass mobilization on the ground affected the outcome of the new law. However, it was still a negotiated compromise with some limitations.[107] This case illustrates the degree to which legal decisions must be placed within their political context. Judicial victory can be limited in terms of concrete policy and legislative outcomes. The CSQ's philosophy around legal action resulted in a dynamic and multi-faceted political, grassroots and legal mobilization campaign.

---

[106] The male breadwinner model where the household was financially dependent on the male wage earner or 'breadwinner' and social reproduction work was carried out primarily by women became the norm at the end of WWII, though it never represented the norm for all families (McIntosh, 1978, Vosko, 2000). Women assumed primary responsibility for the care of elders, the very young and the sick and injured. With many women now participating in the paid labour force, access to paid child care has become increasingly important (Mahon, 2002, p. 2-3). Care illustrates how linkages between the family, state and society are gendered (Daly & Rake, 2003, p. 49). Daly and Rake note that the wages are low and there is little regulation, training or career infrastructure for out-of-school child care provision (2003, p. 57).

[107] See discussion of Bill 51 in Chapter 4 (p. 103-106)

The ORRMC and CUPW put their campaign emphasis on political mobilization. They saw the limits of legal mobilization and viewed a direct legislative contestation of Section 13.5 as a better strategy than litigation. Though they did not have Section 13.5 eliminated through the private member's bill, the close political vote shifted the terrain for RSMCs. Canada Post recognized that the legislative exclusion was bound to end at some point. Both the RSMC and home-based child care worker case studies placed an emphasis on political mobilization but placed different levels of priority on legal action.

Grassroots mobilization

Legal mobilization theory situates litigation in a broader mobilization campaign. One key part of this involves mobilizing the affected workers. Without workers who organize and push for changes, litigation can lose much of its impact. In these two cases, the contentious issue was over access to employment and labour protections. Unions were involved in this struggle with the intention of signing up members and bargaining collectively. It would be a hollow victory to achieve a legal success allowing workers to organize without any real previous mobilization of those very same workers. All the unions and associations understood that it increased their bargaining power to have workers onside and mobilized as part of the campaign. The ARRMC campaign involved the least grassroots mobilization. Eybel noted that most workers did not have much to do with the litigation. "They'd go about their jobs and we'd send newsletters about what was going on" (Interview 3, Eybel). At one point, a collection of RRMCs walked off their jobs and protested on Parliament Hill and in front of Canada Post Corporation. Later, they signed up 2 600 RRMCs into CLC Local 1801 (Fudge, 2005, p. 71). However, given the geographical distance between RRMCs, the precarious nature of their jobs, and the

lack of campaign resources, it was difficult to maintain a high level of mobilization. At the same time, they produced a newsletter, which was sent out to all Ontario RRMCs and later across the country (Interview 3, Eybel). This helped build a rights and collective consciousness amongst the workers. This campaigning became much broader during the CUPW and ORRMC campaign when workers were signed up en masse first into the ORRMC and later into CUPW. However, the rural nature of RRMC's jobs still meant that grassroots mobilization was difficult. Individual tactics such as petition signing and letter writing attempted to work around these constraints. At the same time, the institutional structure of the ORRMC with regionally elected representatives helped connect a national campaign with workers in various regions and develop workers' leadership (Interview 10, Bourque). CUPW also mobilized urban postal operations employees extensively. Getting their support was central to having the bargaining power to contract-in RSMCs.

In the second case, the CSN and CSQ filed the Charter challenge at a point when workers were extremely demobilized after the Charest government had passed Law 8 (Interview 7, Carbonneau). The litigation did not in itself begin to mobilize workers again. Alliances des intervenantes en milieu familial (ADIM) actively tried to re-mobilize workers by supporting them in conflicts with employers, informing and mobilizing them around changes in the sector, holding regular demonstrations, meetings and conferences. The regional ADIM structure helped support and mobilize workers and develop leadership on the ground. Litigation did not in itself act as a mobilizing force. In fact, workers would lose sight of the litigation at certain points (Interview 6, Tonnelier). It was a strategic choice that the organizations made to focus on mobilizing workers in addition

to litigation. This facet of the campaign was instrumental in achieving changes in working conditions and developing union activists.

Participating in the legal system requires a great deal of technical expertise, knowledge and financial resources. The explicit process of being involved in litigation was not generally a mobilizing or participatory experience for affected members. Often, the affected members did not have a deep level of involvement in the litigation.

> We used the complainants, the legal counsel, as our instruments. We made use of them to make our legal points, our legal arguments. But they were well aware of what was happening. We explained why we were doing that, what the arguments were, but they didn't have much input into the strategies. (Interview 8, Tremblay, Trans.).

Litigation is inevitably a technical exercise requiring a great deal of legal expertise which can make it exclusionary, demobilizing and lawyer-focused. The ARRMC was not very involved in the legal proceedings either. As Eybel stated, "Sometimes we didn't really quite know what was going on [with the legal proceedings] because like I said, they'd be having their back room deals and you'd hear about it later. But what can you do when they've already made the deal" (Interview 3). Pew stated that she does not remember being involved in discussions and decisions about the arguments for the legal proceedings. "It often felt like we were just there. We weren't really in control as much" (Interview 5, Pew). Workers' experiences and knowledge are not generally acknowledged or validated in formal legal proceedings. At the same time, legal mobilization theory conceptualizes the litigation or legal action as one part of a broader campaign. Tremblay noted that events in the litigation provided the basis for organizing home-based child care workers in demonstrations (Interview 8, Tremblay). Therefore, the

actual legal proceeding is not a mobilizing process but events linked to the proceedings can provide the basis for mobilization and discussion of workers' rights.

One key reason why legal tactics should be considered carefully is due to their technical nature and the money required to use them. They are not in themselves mobilizing and have high barriers to participation. The ARRMC, LCUC, Local 1801, CUPW, CSN and CSQ provided institutional and financial support to the legal struggle. It is a tactic that unions can use given their strong financial standing; however, it is not a path necessarily open to workers on their own. The power in these cases was based on the collective strength of workers. Even when individual complaints were filed in these cases, such as the administrative employment standards complaints, they were used as a collective tactic to pressure the government. The organizational support, financing and knowledge were key in critically challenging and using the legal process strategically. The situation was different for the ARRMC as they had some support from Charles Maguire and LCUC but lacked the firm institutional knowledge and financial capacity on their own as an organization. Eybel, ARRMC President, noted, "I don't think we could have done anything differently, especially not knowing a great deal about everything we were doing" (Interview 3). The level of technical expertise to get to the court system and negotiate a case is extensive and the financial resources necessary to pursue legal action pose a significant barrier.

The (re)construction of legal discourse

Legal mobilization can be significant in (re)constructing the discourse and ideology around an issue. In fact, an indirect result of legal mobilization can be (re)constructing and challenging dominant discourses and ultimately ideology. This shift

in the legal discourse and ideology can be instrumental in altering the balance of power between labour, employer(s) and the state. The unions in the two cases were involved in a discursive and ideological struggle over the interrelationship of the state, employers and workers in terms of protections from the market. Specifically, there was a discursive struggle over how these workers should be legally constructed and the rights associated with that construction. Legal decisions often reinforce the existing power relations; however, on occasion they challenge them. The law's claims to truth, while contested, make it powerful when invoked. Claiming legal rights has power in itself; however, legal decisions have significant power to (re)shape discourse and ideology in that they are the result of legal process and are made by a judge who is considered impartial and independent. Legal decisions have moral and ethical force in that the legal process is perceived as inherently impartial and just. Some of the legal decisions and international judicial sites at which the unions mobilized started to challenge the hegemonic discourse that these workers were entrepreneurs and should be subject to market conditions.

The Grenier decision, which invalidated Law 8, brought to light many of the powerful anti-union and gendered ideologies that underpinned the legislation. Judge Grenier was scathing in her decision about the government's motivation for the law and casual disregard of fundamental rights and freedoms. The decision argued that the law was a substantial attack on freedom of association (Section 2.d of the Charter) and that it was discriminatory on two fronts (Section 15.1 of the Charter): one, that the affected workers performed care work which is identified with the feminine sphere and two, that the work was performed in the home or the private sphere rather than in a child care

centre in the public sphere.[108] Having an independent arbiter bring to light the gender and anti-union ideologies on which the law was premised was powerful discursively and ideologically. The influence of this decision was multiplied by the fact that it not only recognized the law was an attack on freedom of association but also that it was discriminatory on two fronts. The three levels on which the law was struck down made it especially strong on a moral and ethical front. This decision shows how chinks can be found within the legal system to alter power relations and challenge dominant ideologies. The Grenier decision challenged and limited the actions of the government by striking down Law 8. The decision resulted in extensive media coverage and forced the government to critically evaluate and revise its practices. The decision altered the discursive and ideological terrain of struggle. This resulted in additional leverage and power for the CSQ and CSN in negotiations with the government.

In both cases, the organizations also invoked international legal principles and instruments to highlight the injustice of the cases. Bourque argued that multi-scalar legal frameworks provided a valuable channel for framing the stories of affected workers (Interview 10, Bourque). This allowed CUPW and the ORRMC to construct a powerful counter-hegemonic discourse using unconventional tools and processes. CUPW and the ORRMC filed a complaint under the NAFTA labour side accord using language and principles from the International Labour Organization (ILO) Conventions and the preamble of the actual side accord. They emphasized internationally recognized rights to

[108] *CSN, supra* note 6 at para 364.

freedom of association, collective bargaining, prevention and compensation for occupational injuries and illnesses and the elimination of employment discrimination.[109]

> "I think again it broadened sort of the legal framework that gave our arguments legitimacy, like under international law, we were able to argue that these workers' rights were being denied. We were able to show that in other countries like the United States and Mexico that workers did have the same rights as urban workers, so I think it just sort of bolstered all our arguments about why the legal framework that prevented them from being employees was wrong" (Interview 10, Bourque).

These processes and decisions provide a powerful tool to challenge the hegemonic discourse. They provide a means to tell workers' stories and amplify them on a global stage. Furthermore, the language of rights and legal process give a level of legitimacy to the struggle. Again, these rights-based arguments hold a moral, ethical and legitimizing force in that they are internationally recognized standards to which the Canadian state has agreed. This power exists despite losing the NAALC complaint. Rights-based language and legal instruments can offer powerful language and tools to use strategically in a campaign.

The CSN and CSQ, for their parts, filed an ILO complaint with the Freedom of Association Committee. They received a decision in their favour, which reinforced the workers' right to a genuine collective bargaining system and employment standards equal to other workers. Again these international processes and rights discourse can have a legitimizing effect on domestic struggles. They also raise the profile of the campaign with the workers, politicians and the public. These decisions and the international validation of the unions' positions challenged the discourse presented by the Charest government

---

[109] The Canadian Union of Postal Workers. (1998). *Public Communication On Labor Law Matters Arising in Canada Before the National Administrative Office of the United States Under the North American Agreement on Labor Cooperation (NAALC): Violations of NAALC Labor Principles and Obligations in the Case of Canadian Rural Route Mail Couriers.*

around Law 8. They helped (re)construct the discourse and shift the balance of power toward workers and the respective unions. The fact that Judge Grenier relied on this decision in her own ruling illustrates the power and influence of international decisions, protocols and rights discourse. These kinds of strategies aided in shifting the discourse and ideology underpinning the construction of the workers.

One of the critiques of litigation and Charter challenges is that they reinforce the liberal individual rights paradigm. These legal mobilization campaigns bring this assertion into question. These struggles went against traditional liberal principles of individual rights through seeking access to collective bargaining coverage. It could be argued they fundamentally challenged the liberal and individualistic premise upon which the legal system is based. Recognition and struggle for collective rights and protection from the market move against processes of "individualization" and "market citizenship" that are increasingly prevalent (Beck, 2002; Fudge, 2005b; Brodie, 1996b; Crouch, Elder, Tambini, 2001). In both cases, the workers were fighting for the right to collectively bargain with their employers rather than maintain individual contracts. They were challenging the notion that they should not be able to access social protections. In challenging their construction as independent contractors and fighting for collective bargaining rights, the campaigns served to undermine the hegemonic ideology and consciousness of entrepreneurship, and individual rights and freedoms.

Legal consciousness

The workers were not only challenging their legal categorization and status, they were also reconstructing their understanding of their rights and relation to other workers through their legal consciousness. In both cases, workers who had previously thought of

their work, contracts and struggles in individual terms began to be conscious of their struggle as part of a broader collective. Through the ARRMC, CMAC,[110] ORRMC and CUPW, RSMCs for the first time were developing links of solidarity with other workers, sharing their stories and collectively fighting for their rights.

> I thought it was important just for the sake of bringing people together, like having a connection, and I mean I think it was the first time that rural route mail couriers ever felt there was a connection with other people. You know we were always so isolated; I'm in this little post office, they're in that little post office, British Colombia has their little offices, and no one was connected, and now they had a chance to become connected to all these other rural couriers and everybody had their stories and now you could talk to someone about them and, you know, tell them what your problems were (Interview 5, Pew).

The geographical distances between RSMCs were a significant barrier to forming connections with other workers. There had been no geographical or organizational basis for developing a collective consciousness of their struggle. It was the work of the ARRMC, CMAC, Local 1801, ORRMC and CUPW that began to document the status of RRMCs, formulate demands for changes and maintain communication about the struggle for employee status. They were moving from an individual struggle and consciousness to more of a collective struggle and consciousness; though this shift has occurred in uneven and disparate ways. "There was a challenge in terms of how they saw each other working together as a collective to even understand that they had collective strength because they were so used to drawing on their individual strength as negotiators, you know to try and get increases in their compensation" (Interview 10, Bourque). It was a dramatic change in

[110] The Country Mail Association of Canada (CMAC) was an organization of RRMC in Quebec. Sue Eybel and Charles Maguire were invited to attend one of their meetings. The two organizations ended up being merged in the CLC Local 1801. (Interview 3, Eybel; Fudge, 2005).

perspective for the workers, one that would likely not have occurred if working conditions had been better.

Similarly, home-based child care workers for the first time were organizing in groups and sharing their stories, issues and demands. The workers worked in their homes and were isolated from other workers. Since the unions have become involved and through the struggle against Law 8, this isolation and individualization has been challenged. It has been a slow process to challenge home-based child care workers' construction and working conditions as many workers accepted their status and work without question. "These women were convinced, or at least some of them were convinced that, OK, it was all right to have nothing because I have the privilege of being with my children" (Interview 6, Tonnelier, Trans.). It was important to challenge this viewpoint in order to have home-based child care workers' work valued and to seek better working conditions and recognition of their profession (Interview 6, Tonnelier). Tonnelier noted that it has been a slow transition to move from the mentality of an independent entrepreneur to that of a union member. In fact, early in the campaign ADIM members chose to name their organization an association because they did not want to use the term 'union' (Interview 6, Tonnelier). Throughout the campaign, a dramatic shift occurred in how many of the workers conceptualized themselves, their work, their rights and their relationship with other workers. This shift in consciousness was key to mobilizing workers in the campaign. More and more RSMCs and home-based child care workers have a new collective understanding of their struggle.

Conclusion

These cases explore both the limits and possibilities of labour unions engaging in legal mobilization. Though the law is an oppressive force in society, it can also be useful in challenging the dominant power structures when used in a strategic manner. The unions used a diversity of legal tactics alongside political and grassroots mobilization tactics to challenge the government and the employers. In a context where labour has much less power than capital and the state, the labour unions employed a rich variety of strategies to (re)structure power relations ranging from the formal Charter challenge to administrative complaints to international processes and complaints. The legal tactics were diverse in that some operated inside the formal legal structures and others subverted and challenged legal process altogether. The cases illustrated that it is possible to exploit the contradictions between different arms of the state to challenge the status quo. They also highlighted how legal action at the international scale can support domestic campaign activities. The cases show how in certain campaigns and contexts, legal mobilization can help to improve the material situation of workers and/or shift the relationship with the dominant group. Many of the discussions of legal mobilization explore only one type of legal action such as litigation; however, these cases show the diversity of sites, scales and ways in which unions and social movements can use legal tactics as primary or supplemental components of campaigns. Using multiple sites and scales can strengthen the unions' and workers' position relative to that of the state and/or their employer.

Legal mobilization has the power to shift the balance of power in substantive ways. The power of rights-based legal discourse and claims in challenging the hegemonic

discourse and ideology is not to be underestimated. The difficult working conditions facing RSMCs and home-based child care workers were powerful stories that could challenge the dominant discourse. Furthermore, CUPW and the ORRMC's use of the NAALC procedure showed how legal action can subvert broader processes and instruments such as the labour side accord of NAFTA. This illustrates how social movements can engage in legal action to undermine faith and trust in the value and use of labour side accords. In this case, CUPW challenged the hegemonic ideology that the NAALC was capable or effective in dealing with workers' rights.

These cases also illustrate the contingent nature and inherent limits of legal mobilization, especially involving the lack of control over the verdict and the ultimate political nature of the issues. The ARRMC were witness to the unpredictable nature of litigation with one CLRB verdict in their favour, which was subsequently struck down by the Federal Court. They attempted a Charter challenge in the Supreme Court but had their complaint thrown out. Engaging in litigation did not bring about much in terms of direct results and brought about only minimal indirect results for RRMCs. At the same time, litigation resulted in a favourable decision for home-based child care workers. However, even a favourable decision can result in the issue being shifted back to the political domain. In reality, though, the choice to litigate is often made when workers and unions perceive a lack of alternatives.

The two cases highlight how legal action without accompanying political and grassroots mobilization is limited. Legal action is best carried out on a firm bed of worker mobilization. To varying degrees, all the cases involved political and grassroots mobilization in addition to legal mobilization. The CSQ and CSN had attempted to

mobilize workers through demonstrations, conferences and workplace support. They had effectively operated as a union for the affected workers to the degree they were able to do so without official union certification. Furthermore, the CSQ began re-signing up workers prior to the Grenier decision being released. The union applied pressure on the government to ensure first, that they wouldn't apply for a judicial review of the decision and second, that they could negotiate a legal and regulatory structure for the workers that they could accept. The ORRMC and CUPW also had a strategy to "act as if" they were the legally recognized bargaining agent for RRMCs. In their campaign, political and grassroots mobilization was the campaign priority rather than legal mobilization. If anything, legal action complemented and played a backseat to other strategies. In both campaigns, formal union accreditation was not necessary to fulfill many of the roles of a union including supporting workers in complaints against employers and providing information and a basis for organizing around changes in the sector.

These cases illustrate that it is important to challenge one-sided and oversimplified perspectives of social movements engaging with the law. Social movements and labour unions can engage in the law in innumerable ways including by subverting its very essence and liberal ideologies. To understand whether legal mobilization is a useful strategy, it is necessary to look at the particulars of each case. This research also illustrates some limitations in legal mobilization theory in terms of exploring the dynamics of how law and legal process can be subverted. In CUPW's NAALC complaint, the goal was at once indirect and subversive. It would be helpful to develop some tools and theory to explore more fully how labour unions and social

movements can engage in legal process in order to subvert and undermine those very same processes. This tactic illustrates the most radical use of law in the case studies.

The two cases show different results in terms of the employment classification of the work with home-based child care workers classified as independent contractors and RSMCs classified as employees. In both cases, the unions were attempting to make the workers look as similar to employees as possible in order to access labour and employment protections. At the same time, many of the workers are drawn to their jobs because of the higher level of autonomy than in other sectors. The case of home-based child care workers is quite novel in that the workers are still defined as independent contractors but now they have access to collective bargaining regimes while RSMCs are full employees. While home-based child care workers can access the financial aspects of collective bargaining regimes, they lack many of the non-financial aspects. The cases highlight the ineffectiveness of structures and categories that are the basis of labour law. With increasing numbers of workers classified as independent contractors engaged in precarious employment, it is clear that tying social protections to employee status is no longer appropriate or responsible. A broader project of social change would challenge and undermine the very categories and structure used to allocate the social protections.

Further avenues for research

This research prompts many further questions that would be valuable to explore in future research. The two case studies provide rich material for understanding legal consciousness, as many affected workers went through a dramatic shift in how they viewed themselves and their rights at work in relation to other workers, their employer and the state. The challenge to 'individualization' and 'market citizenship' that was

implicit in many of the workers' shifts from an individual to a collective consciousness of their work and struggles would be valuable to explore. Furthermore, the home-based child care workers case would be interesting to explore through the theoretical framework of feminist legal theory as the litigation resulted in a very progressive decision. This research could provide some valuable insight into the role of the courts in terms of women's material work life as well as the dichotomy between the public and private spheres, and possibilities for ameliorating gender inequalities.

These cases open up plenty of avenues for additional research into the interactions between the arms of the state. This research constantly impressed the importance of understanding the inter-relationships between tribunals, courts, administrative, legislative arms of the state, labour and capital when legal action is being employed. These cases would be illuminating to explore at a higher level of theoretical abstraction in terms of the relationships of domination and resistance and structure and agency between the state, capital and labour.

Conclusion

It is valuable to look at successful campaigns to challenge the government and employers to improve working conditions. In an environment where work is undergoing dramatic changes in relation to global processes of economic, political and social change, it is heartening to see how workers and unions can effectively challenge the status quo. These campaigns challenged the right of the government to limit RSMC and home-based child care workers' access to social protections and collective bargaining. The campaigns resulted in the evasion or repeal of the offending pieces of legislation. In total, eighteen thousand workers now have access to collective bargaining structures. It is important not

to minimize the importance of and material changes that can result from these fundamental shifts in terms of power and control in the workplace. Furthermore, these struggles prepared the ground for further transformative change in that collective identities and legal consciousnesses have been developed amongst many affected workers. Workers can now pool their bargaining power to achieve collective goals and better their working conditions.

The cases show how legal mobilization, when combined with political and grassroots mobilization, can be an effective tool in challenging employers and the government. They illustrate some of the risks and possibilities associated with engaging with the formal legal system as well as more inventive legal tactics that are possible at multiple sites and scales. The research emphasizes the contingent and multi-faceted nature of legal tactics that unions can employ. These cases suggest that legal action, when combined with grassroots and political mobilization, can substantively shift power relations between workers, the state and capital. These campaigns resulted in significant improvements in working conditions and control and power in the workplace for both RSMCs and home-based child care workers through a (re)construction of their legal status.

References

Primary Sources

Les ADIM et la Table de concertation (2001, février). *Info-FIPEQ*. Retrieved from www.csq.qc.net/sites/1676/documents/qui/info0102.pdf.

Association des éducatrices et éducateurs en milieu familial du Québec inc. (n.d.) *La vision de l'AÉMFQ*. Retrieved from http://www.aemfq.com/Pages/VieAssociative/Vision.html.

Association des éducatrices et éducateurs en milieu familial du Québec inc. (2003, September 8). *Projet de loi 8 sur les services de garde à l'enfance*. Retrieved from www.aemfq.com/en/downloads/Comm%20loi%208.pdf

Association des intervenantes en milieu familial (CSQ). (n.d.). *Le retrait préventif* [Brochure].

Association des intervenantes en milieu familial (CSQ). (2002, May 22). *Éclosion syndicale CSQ en Montérégie*. Retrieved from http://adim.csq.qc.net/nouvelles.asp?action=lire&id=1&page=26.

Association des intervenantes en milieu familial (CSQ). (2002, June 2). *En appui aux intervenantes en milieu familial : une pétition de plus de 9 000 noms destinée à l'Assemblée nationale*. Retrieved from http://adim.csq.qc.net/ nouvelles.asp?action=lire&id=4&page=26.

Association des intervenantes en milieu familial (CSQ). (2002, June 3). *L'ADIM-Estrie poursuit la syndicalisation*. Retrieved from http://adim.csq.qc.net/ nouvelles.asp?action=lire&id=5&page=26.

Association des intervenantes en milieu familial (CSQ). (2002, June 6). *Les responsables reconnues par le CPE Gros Bec décident de se syndiquer*. Retrieved from http://adim.csq.qc.net/nouvelles.asp?action=lire&id=6&page=26.

Association des intervenantes en milieu familial (CSQ). (2002, June 25). *La syndicalisation des services de garde en milieu familial se poursuit sur le Plateau Mont-Royal*. Retrieved from http://adim.csq.qc.net/nouvelles.asp?action=lire&id=8&page=25

Association des intervenantes en milieu familial (CSQ). (2002, September 25). *Au CPE L'Arc-en-ciel, les intervenantes en milieu familial veulent aussi se syndiquer à la CSQ*. Retrieved from http://adim.csq.qc.net/nouvelles.asp?action=lire&id=14&page=25.

Association des intervenantes en milieu familial (CSQ). (2003, June 27). *Manifestation sur la colline parlementaire*. Retrieved from adim.csq.qc.net/ nouvelles.asp?action=lire&id=60&page=21.

Association des intervenantes en milieu familial (CSQ). (2003, October 22). *Les projets de loi 7 et 8 : Un dangereux précédent*. Retrieved from adim.csq.qc.net/nouvelles.asp?action=lire&id=73&page=19.

Association des intervenantes en milieu familial (CSQ). (2003, November 28). *Journée d'étude de l'ADIM de Montréal: 230 services de garde fermés et minifestation dans les rues du centre-ville*. Retrieved from adim.csq.qc.net/ nouvelles.asp? action=lire&id=82&page=18.

Association des intervenantes en milieu familial (CSQ). (2003, December 1). *La Fédération des femmes du Québec et le group Au bas de l'échelle dénoncent le projet de loi 8*. Retrieved from adim.csq.qc.net/nouvelles.asp? action=lire&id=83&page=18.

Association des intervenantes en milieu familial (CSQ). (2004, March 8). *Loi 8 modifiant la Loi sur les CPE : Un anniversaire bien triste pour les femmes*. Retrieved from Retrieved from adim.csq.qc.net/nouvelles.asp?action=lire&id=105&page=16.

Association des intervenantes en milieu familial (CSQ). (2004, April 14). *Bien triste anniversaire*. Retrieved from http://adim.csq.qc.net/nouvelles.asp? action=lire&id=91&page=17.

Association des intervenantes en milieu familial (CSQ). (2004, December 18). *Loi 8 modifiant la Loi sur les CPE : Un anniversaire bien triste pour les femmes - Une lutte qui se poursuit à la CSQ*. Retrieved from http://adim.csq.qc.net/ nouvelles.asp?action=lire&id=105&page=16

Association des intervenantes en milieu familial (CSQ). (2005, March 6). *Avenir du réseau des CPE et de ses travailleuses et travailleurs: La CSQ interpelle la ministre Carole Théberge*. Retrieved from adim.csq.qc.net/nouvelles.asp? action=lire&id=112&page=15.

Association des intervenantes en milieu familial (CSQ). (2007). *Colloque ADIM 2007 : 10 ans ensemble - Soufflons les bougies, Gardons la flamme !* Le samedi 31 mars 2007 [Brochure]

Association des intervenantes en milieu familial (CSQ). (2008, November 12). *Normes du travail: Des droits de travailleuses salariées à exercer maintenant* [Brochure]

Association of Rural Route Mail Couriers of Canada. (n.d.) *How it all began.* Rural Mail Delivery Service Association. [newsletter].

Association of Rural Route Mail Couriers of Canada. (n.d.) *We can win.* Rural Mail Delivery Association publication. [newsletter].

Association of Rural Route Mail Couriers of Canada. (1987). Rural Mail Delivery Service Association. [newsletter].

Bélanger, M. (2006, April 20). Les responsables d'hébergement veulent leur statut de salarié. *Le Droit*. Retrieved from Eureka.cc.

Bourque, D. (2001, Feb. 1-2). *Denial of Basic Rights – The Situation of Rural and Suburban Mail Couriers*. Address at the Workshop on the Right to Organize and Bargain Collectively in Canada and the United States. Toronto, ON.

Bourque, D. and G. Bickerton. (2004). *Stepping Out of the Legal Framework: Organizing rural route couriers*. Presentation at the Political Economy section of the annual meetings of the Canadian Political Science Association, Winnipeg.

Breton, P. and N. Bérubé. (2003, 14 November). Des garderies à 7$ dès janvier. *La Presse*.

Bue, L. (2003, August 28). Financial Perspective on the Tentative Agreement. *Negotiations* No. 49. Retrieved from the Canadian Union of Postal Workers website: www.cupw.ca/index.cfm/ci_id/5370/la_id/1

Cameron, D. (2010, December 5). Services de garde en milieu familial: une première convention collective est signée. *La Presse*. Retrieved from http:// www.cyberpresse.ca/actualites/quebec-canada/education/ 201012/05/01-4349332-services-de-garde-en-milieu-familial-une- premiere-convention-collective-est-signee.php

The Canadian Labour Congress Local 1801. Rural Route Mail Couriers of Canada, CLC Local 1801, October 1, 1990, [newsletter].

The Canadian Union of Postal Workers. (n.d.) *Our History*. Accessed March 10, 2010. Retrieved from http://www.cupw.ca/1/3/0/1/index1.shtml.

The Canadian Union of Postal Workers. (2001, Jan. 23). *Rural and Suburban Mail Couriers' Struggle for Rights: A Short History*. Retrieved from http:// www.cupw.ca/index.cfm/ci_id/5458/la_id/1.htm

Canada NewsWire. (2000, July 28). *Who is Running Canada Post: Minister and President Give Contradictory Messages*. Retrieved from Proquest Jan. 21, 2011.

Canada NewsWire. (2005, Nov. 4). *Avis aux médias - Projet de loi no 124 sur les services de garde éducatifs à l'enfance - Les responsables de service de garde en milieu familial de Montréal passent à l'action.* Alliance des intervenantes en milieu familial (ADIM-CSQ).

Canada Post Corporation, *Annual Report*. Retrieved from www.canadapost.ca/ about/ annual_report/vision.html

The Canadian Union of Postal Workers (2001, March 8). *Rural Route And Suburban Mail Couriers Still Fighting To Be Recognized As 'Persons'*. Media Release. Retrieved from http://www.cupw.ca/index.cfm/ci_id/5461/la_id/1

The Canadian Union of Postal Workers. (2003, August). What's in the tentative agreement? *Perspective*. Volume 31, Number 4.

The Canadian Union of Postal Workers. (2003, August). What will it mean to be a unionized employee? *Perspective*. Volume 31, Number 4.

The Canadian Union of Postal Workers. (2003, September 29). *Postal Workers Ratify two Landmark Collective Agreements*. Retrieved from http:// www.cupw.ca/ index.cfm/ ci_id/5395/la_id/1.

The Canadian Union of Postal Workers. (2004, August 20). *Politics of the Post.* Retrieved from http://www.cupw.ca/index.cfm/ci_id/5253/la_id/1

The Canadian Union of Postal Workers. (n.d.). *Pre-election and election work.*

Cauchy, C. (2006, March 31). Le Bureau international du travail blâme Québec. *Le Devoir*. Retrieved from Eureka.cc.

CSD, CSQ, FTQ. (2004) *Plainte B.I.T.*

La Central des syndicats du Québec. (2003, September). *Le projet de loi no 8 : un projet anticonstitutionel, injuste et discriminatoire.*

Forsey, H. (2006, Spring). Looking Beyond the Back Fence: Reclaiming Rural Dignity. *Herizons, 10* (2) p. 18.

Gervais, L.-M. (2010, October 15). Services de garde en milieu familial - Croisade pour un meilleur statut de travail. *Le Devoir*. Retrieved from Eureka.cc.

Hoogers, Evert. (1987). *Review of the Bargaining Units in Canada Post Corporation before the CLRB Part II.* Canadian Union of Postal Workers.

House of Commons. Minutes of Proceedings and Evidence of the Standing Committee on Miscellaneous Estimates Respecting: Bill C-42, the Canada Post Corporation Act Including: The Second Report to the House. First Session of the Thirty-second Parliament, Thursday, December 18, 1980.

ILO 1990. *Resolution Concerning The Promotion of Self-Employment.* Geneva: International Labour Conference, 77th Session, Provisional Report 34.

Morton, P. (1998, December 2). North American postal workers unite to file complaint against Canada Post. *National Post.* Retrieved from proquest.

Organization for Economic Co-operation and Development. (2000). Partial Renaissance of Self-Employment. *OECD Employment Outlook.*

Organization of Rural Route Mail Couriers. (2001, March 9-11). *President's report to the AGM March 9 to 11, 2011.* Appendix C.

Pagé, L. (2009, Hiver). *Une victoire historique.* Nouvelles CSQ. La Central des syndicats du Québec. pp. 15-18.

Parrot, J.-C. (2005). *My Union, My Life: Jean-Claude Parrot and the Canadian Union of Postal Workers.* Halifax: Fernwood Publishing.

Péloquin, T. (2006, March 31). Droit du Travail. *La Presse.* Retrieved from Eureka.cc

Reason for order and order before Madame Justine Reed. RRMC of Canada Local 1801, Sue Eybel, Kimberley Vansickle, Gloria Pew, Helen Eddlestone, Nicole Lalancette, Joan Smith and Ron Faye and the Attorney General of Canada. (Supreme Court of Canada 1990). Court File no T-549-89.

RRMC of Canada Local 1801, Sue Eybel, Kimberley Vansickle, Gloria Pew, Helen Eddlestone, Nicole Lalancette, Joan Smith and Ron Faye and the Attorney

General of Canada. Statement of Claim. (Federal Court of Canada 1989). Court File no T-549-89.

Standing Committee on Consumer and Corporate Affairs and Government Operations, Postal Services in the 1990s. *Turner Committee Report*, 1990.

Task Force on Labour Relations (1968). *Canadian Labour Relations: Report of the Task Force on Labour Relations*. Ottawa: Privy Council Office.

United Food and Commercial Workers (UFCW), n.d. *History of Agricultural Workers in Canada*. Retrieved from http://www.ufcw.ca/index.php?option=com_content&view=article&id=2012&Itemid=250&lang=en

Secondary Sources

Agnew, J. (1997). The dramaturgy of horizons: Geographic scale in the "reconstruction of Italy" by the new Italian political parties, 1992-95. *Political Geography 16*, 99-122.

Anderson, J., Beaton, J., & Laxer, K. (2006). The Union Dimension: Mitigating Precarious Employment?. *Precarious Employment: Understanding Labour Market Insecurity in Canada.* L.F. Vosko (Ed.) Montreal, QC: McGill-Queen's University Press. 301-317.

Arthurs, H.W. (1965). The Dependent Contractor: A Study of the Legal Problems of Countervailing Power. *University of Toronto Law Journal, 16*, 89-117.

Arthurs, H.W. (1996). Labour Law Without the State. *The University of Toronto Law Journal, 46* (1). Winter. 1-45.

Beck, U & Beck-Gernsheim, E. (2002). *Individualization: Institutionalized Individualism and its Social and Political Consequences*. London: Sage Publications Ltd.

Bendel, M. (1982). *The Dependent Contractor: An Unnecessary and Flawed Development in Canadian Labour Law.* University of Toronto Law Journal, *32*, 374-411.

Bernstein, S. Lippel, K., Tucker, E. & Vosko, L. (2006). Precarious Employment and the Law's Flaws: Identifying Regulatory Failure and Securing Effective Protection for Workers. In L.F. Vosko (Ed.), *Precarious Employment: Understanding Labour Market Insecurity in Canada* (pp. 203-220). Montreal, QC: McGill-Queen's University Press.

Bernstein, S. Lippel, K. & Lamarche, L. (2001). *Women and Homework: the Canadian Legislative Framework* . Ottawa: Status of Women Canada.

Boyd, S. (1999). Family, Law and Sexuality: Feminist Engagements. *Social and Legal Studies 8*, 369-390.

Brenner, N. (2001). The limits to scale? Methodological reflections on scalar structuration. *Progress in Human Geography 25* (4), 591-614.

Brenner, N. (2004). *New state spaces: Urban governance and the rescaling of statehood.* Oxford: Oxford University Press.

Brodie, J. (1996 a). New State Forms, New Political Spaces. In R. Boyer & D. Drache (Eds.), *States Against Markets: The Limits of Globalization* (pp. 383-398). London: Routledge.

Brodie, J. (1996 b). Restructuring and the New Citizenship. In I. Bakker (Ed.), *Rethinking Restructuring: Gender and Change in Canada* (pp. 126–140). Toronto: University of Toronto Press.

Bumiller, K. (1992). *The Civil Rights Society: The Social Construction of Victims.* Baltimore: The Johns Hopkins University Press.

Chunn, D. & Lacombe, D. (2000). Introduction. In D. Chunn & D. Lacombe (Eds.), *Law as a Gendering Practice* (pp. 2-17). Toronto: OUP.

Cranford, C., Fudge, J., Tucker, E., & Vosko, L.F. (2005). Introduction. In Cranford, C., J. Fudge, E. Tucker, & L.F. Vosko (Eds.), *Self-employed workers organize: law, policy, and unions* (pp. 3-28). Montreal & Kingston: McGill-Queen's University Press.

Cranford, C., Vosko, L.F., & Zukewich, N. (2003). Precarious Employment in the Canadian Labour Market: A Statistical Portrait. *Just Labour 3* (Fall). 6-22.

Crouch, C., Eder, K., & Tambini, D. (Eds.) (2001). Introduction. *Citizenship, markets, and the state* (pp. 1-20). Oxford: Oxford University Press.

Dale, A. (1986). Social Class and the Self-Employed. *Sociology 20* (3), 430-434.

Daly, M. & K. Rake. (2003). *Gender and the welfare state: care, work and welfare in Europe and the USA*. Cambridge: Polity Press & Blackwell Publishing Ltd.

Deakin, S. (2001). The Contract of Employment: A Study in Legal Evolution. *Historical Studies in Industrial Relations, 11*, 1-36.

Delage, B. (2002). *Results from the Survey of Self-Employment in Canada.* Hull, AC: Human Resources Development Canada.

Devine, F. (2002). Qualitative Methods. In D. Marsh & G. Stoker (Eds.), *Theory and Methods in Political Science* (pp. 197-215). New York, NY: Palgrave Macmillan.

Elias, P. (2000). *Status in Employment: A world survey of practices and problems.* Bulletin of Labour Statistics, 1, XI-XIX. Retrieved from the International Labour Organization website: http://www.ilo.org/global/statistics-and-databases/WCMS_087890/lang--en/index.htm

England, G., Christie, I., & Christie, M. (1998). *Employment Law In Canada* (3rd Ed.). Toronto: Butterworths.

Fudge, J. & Glasbeek, H. (1992). The Politics of Rights: a Politics With Little Class. *Social & Legal Studies, 1*, 45-70.

Fudge, J. & Tucker, E. (2000). Law, industrial relations and the state: pluralism or fragmentation? The twentieth century employment law regime in Canada. *Labour,* Fall (46), 251-306

Fudge, J. & Tucker, E. (2001). *Labour before the law: The regulation of workers' collective Action in Canada, 1900-1948.* Don Mills, ON: Oxford University Press.

Fudge, J., Tucker, E., & Vosko, L. (2002, October 25). *The Legal Concept of Employment: Marginalizing Workers.* Prepared for the Law Commission of Canada.

Fudge, J. (2003). Labour Protection for Self-Employed Workers. *Just Labour, 3* (Fall). 36-45.

Fudge, J. (2005 a). Deemed to be Entrepreneurs: Rural Route Mail Couriers and Canada Post. In Cranford, C., J. Fudge, E. Tucker, & L.F. Vosko (Eds.), *Self-employed workers organize: law, policy, and unions* (pp. 56-95). Montreal & Kingston: McGill-Queen's University Press.

Fudge, J. (2005b). After Industrial Citizenship: Market Citizenship or Citizenship at Work? *Relations industrielles / Industrial Relations 61* (4), 631-656.

Fudge, J. (2006). Fragmenting Work and Fragmenting Organizations: The Contract of Employment and the Scope of Labour Regulation. *Osgoode Hall Law Journal 44.* 609-648.

Gabel, P. (1982). Reification and Legal Reasoning. In P. Beirne & R. Quinney (Eds.), *Marxism and the Law* (pp. 262-278). New York: Wiley.

Gagnon, R. P. (1999). *The Droit du Travail du Québec* (4th ed.). Cowansville, Québec: Editions Y. Blais.

Giles, A. (2000). Industrial Rights: A Neglected Facet of Citizenship Theory. *Economic and Industrial Democracy, 15,* 211-226.

Gramsci, A. (1971). *Selections from the Prison Notebooks of Antonio Gramsci.* Q. Hoare & G.N. Smith (Eds. & Trans.). New York: International Publishers.

Hakim, C. (1989). New Recruits to Self-Employment in the 1980s. *Employment Gazette, 97,* 286-297.

Hall, S. (1988). The Toad in the Garden: Thatcherism among the Theorists. In C. Nelson & L. Grossberg (Eds.), *Marxism and the Interpretation of Culture* (pp. 35-74). Urbana, IL: University of Illinois Press.

Harvey, L. (1990). *Critical Social Research.* London: Unwin Hyman.

Hennessy, R. (1993). Women's lives/feminist knowledge: feminist standpoint as ideology critique. *Hypatia 8* (1). Retrieved December 3, 2009 from Academic OneFile.

Hepple, B. (2003). Four Approaches to the Modernisation of Individual Employment Rights. In R. Blanpain & M. Weiss (Eds.), *Changing Industrial Relations and Modernisation of Labour Law: Liber Amicorum in Honour of Professor Marco Biagi* (pp. 181-190). The Hague: Kluwer

Herrod, A. & Wright, M. (2002). Introduction: Theorizing scale. In A. Herod & M. Wright (Eds.), *Geographies of power: Placing scale* (pp. 1-14). Malden, MA: Blackwell.

Hoare, Q., & G.N.Smith (Eds.). Selections from the Prison Notebooks of Antonio Gramsci. Explanatory notes. New York: International Publishers.

Hunt, A. (1990). Rights and Social Movements: Counter-Hegemonic Strategies. *Journal of Law and Society 17*, 309-28.

Hutchinson, A.C., & Petter, A. (1988). Private Rights/Public Wrongs: The Liberal Lie of the Charter. *The University of Toronto Law Journal, 38* (3), 278-297.

International Labour Organization. (2000). *World Labour Report 2000: Income Security and Social Protection in a Changing World. Geneva*, International Labour Office.

Jensen, J. (2009). Rolling Out or Backtracking on Quebec's Child Care System? Ideology Matters. In M. G. Cohen & J. Pulkingham (Eds.), *Public policy for women: the state, income security and labour market issues* (pp. 49-70). Toronto: University of Toronto Press.

Jurik, N.C. (1998). Getting Away and Getting By: The Experiences of Self-Employed Homeworkers. *Work and Occupations, 25* (1), 7-35.

Kairys, D. (Ed.). (1982). *The Politics of Law: A Progressive Critique*. New York: Pantheon.

Kelman, M. (1987). *A Guide to Critical Legal Studies*. Cambridge, MA: Harvard University Press.

Kessler, M. (1987). *Legal Services for the Poor: A Comparative and Contemporary Analysis of Interorganizational Politics*. Westport, Conn.: Greenwood Press.

Klare, K. (1982). Critical theory and labor relations law. In D. Kairys (Ed.), *The Politics of Law: A Progressive Critique* (pp. 65-88). New York: Pantheon.

Klare, K. (2002). The Horizons of Transformative Labour and Employment Law. In J. Conaghan, R.M. Fischl, & K. Klare (Eds.), *Labour law in an era of globalization* (pp. 3-30). Oxford: Oxford University Press.

Lamphere, L., Zacilla, P., Gonsalves, F. & Evans, P. (1993). *Sunbelt Working Mothers: Reconciling Family and Factory*. Ithaca: Cornell University Press.

Langille, B.A. (2002). Labour policy in Canada – New Platform, New Paradigm. *Canadian Public Policy, 28*, 133-142.

Lawler, J.L. (1990). *Unionization and Deunionization: Strategy, Tactics, and Outcomes*. Columbia, SC: University of South Carolina.

Leighton, P. and A. Felstead (Eds.). (1992). *The New Entrepreneurs: Self-Employment and Small Business in Europe*. London: Kogan Page.

Leitner, H., & Sheppard, E. The Spatiality of Contentious Politics: More than a Politics of Scale. In R. Mahon & R. Keil (Eds.), *Leviathan Undone? Towards a Political Economy of Scale* (pp. 231-246). Vancouver, BC: UBC Press.

McCann, M.W. (1986). *Taking reform seriously: Perspectives on public interest liberalism.* Ithaca, NY: Cornell University Press.

McCann, M. W. (1991). Legal Mobilization and Social Reform Movements: Notes on Theory and its Application. *Studies in Law, Politics and Society, 11*, 225-254.

McCann, M. (1994). *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization.* London: The University of Chicago Press Ltd.

McCann, M.W. (1996). Law and everyday forms of resistance: A socio-political assessment. *Studies in Law, Politics and Society, 15*, 207-236.

McCann, M.W. (1998). How does law matter for social movements. In B. Garth & A. Sarat (Eds.), *How Does Law Matter?* (pp. 76-108). Evanston, Illinois: Northwestern University Press.

Mahon, R. (2002). Gender and Welfare State Restructuring: Through the Lens of Child Care. In S. Michel & R. Mahon (Eds.), *Child care policy at the crossroads: gender and welfare state restructuring* (pp. 1-30). New York, NY: Routledge.

Miliband, R. (1990). Counter Hegemonic Struggles. In R. Miliband & L. Panitch (Eds.), *The Retreat of the Intellectuals: Socialist Register* (pp. 346-365). London.

Miller, B. (2009). Is Scale a Chaotic Concept? Notes on Processes of Scale Production. In R. Keil & R. Mahon (Eds.), *Leviathan Undone: Towards a Political Economy of Scale* (pp. 51-66). Vancouver, BC: UBC Press.

Milner, N. (1986). The Dilemmas of Legal Mobilization: Ideologies and Strategies of Mental Patient Liberation Groups. *Law & Policy, 8* (1), 105-129.

Morera, E. (1990). Gramsci and Democracy. *Canadian Journal of Political Science, 23*, 23-37.

Panitch, L., & Swartz, D. (1988). *The Assault on Trade Union Freedoms: From Consent to Coercion Revisited.* Toronto: Garamond Press.

Scott, J. (1990). *Domination and the Arts of Resistance: Hidden Transcripts.* New Haven: Yale University Press.

Sheldrick, B. (2004). *Perils and Possibilities: Social Movements and the Law.* Halifax: Fernwood Press.

Smart, C. (1989). *Feminism and the power of law.* Routledge: London.

Smith, M. (2002). Ghosts of the Judicial Committee of the Privy Council: Group Politics and Charter Litigation in Canadian Political Science. *Canadian Journal of Political Science, 35* (1), 3-29.

Stake, R.E. (1995). *The Art of Case Study Research.* Thousand Oaks, CA: SAGE Publications Inc.

Standing, G. (1999). *Global Labour Flexibility: Seeking Distributive Justice*. Houndsmill, Basingstoke: MacMillan Press.

Stoker, G. & Marsh, D. Introduction. In D. Marsh & G. Stoker (Eds.), *Theory and Methods in Political Science* (pp. 197-215). New York, NY: Palgrave Macmillan.

Supiot, A. (2001). *Beyond Employment: Changes in Work and the Future of Labour Law in Europe*. Oxford: Oxford University Press.

Tougas, J. (2002, Mars). *La restructuration des services éducatifs et de garde à l'enfance au Québec : Les cinq premières années*. Toronto: Childcare Resource & Research Unit, Centre for Urban & Community Studies, University of Toronto.

Tougas, J. (n.d.). *Child Care in Québec: Where There's a Will, There's a Way*. From Child Care Advocacy Association of Canada website: www.acpsge.ca/PDF/research/QUE_CHILDCARE.pdf

Tufts, S. (1998). Community Unionism in Canada and Labor's (Re)organization of Space. *Antipode 30* (3). 227-250

Vosko, L.F. (2006). Precarious Employment: Towards an Improved Understanding of Labour Market Insecurity. In L. F. Vosko (Ed.), *Precarious employment: understanding labour market insecurity in Canada* (pp. 3-42). Montreal: McGill-Queen's University Press.

Williams, R. (1976). *Keywords: A Vocabulary of Culture and Society*. London: Fontana.

Yin, R. K. (2009). *Case Study Research: Design and Methods*. 4th Edition. Thousand Oaks, CA: SAGE Inc.

Zavella, P. (1997). Reflections on Diversity among Chicanas. In M. Romero, P. Hondagneu-Sotelo & V. Ortiz (Eds.), *Challenging Fronteras: Structuring Latina and Latino Lives in the U.S* (pp.187-194). New York & London: Routledge.

Appendix A - Interview participants

Interview Number	Name	Organization	Interview Date
Interview 1 *	Geoff Bickerton	Canadian Union of Postal Workers (CUPW) Director of Research	November 12, 2010
Interview 2 *	Katherine Steinhoff	CUPW Research and Communications Specialist	November 12, 2010
Interview 3 **	Sue Eybel	Association of Rural Route Mail Couriers (ARRMC) President	November 17, 2010
Interview 4	Evert Hoogers	CUPW National Union Representative	November 19, 2010
Interview 5	Gloria Pew	ARRMC Treasurer	December 6, 2010
Interview 6	Sylvie Tonnelier	Fédération des intervenantes en petite enfance du Québec (FIPEQ) President	December 14, 2010
Interview 7	Marlène Carbonneau	ADIM Estrie President, FIPEQ union representative & ADIM collective agreement negotiator	December 14, 2010
Interview 8	Frédéric Tremblay	CSQ union representative	December 14, 2010

Interview Number	Name	Organization	Interview Date
Interview 9	Mario Évangéliste	CSN lawyer	December 15, 2010
Interview 10	Deborah Bourque	CUPW 3rd National Vice President, CUPW National President (post-2002)	January 23, 2011

* Interview 1 and 2 took place at the same time.

** Notes were taken during this interview rather than a digital recording.

Appendix B - Letter of information to interview participants

Sarah Ryan
Institute of Political Economy
A818 Loeb Bldg.
Carleton University
1125 Colonel By Drive
Ottawa, Canada K1S 5B6
Tel: (613) 520-7414
Fax: (613) 520-2154

Dear Sir or Madam,

I am a student in Political Economy with the Faculty of public affairs at Carleton University. I am conducting research on the limits and possibilities of using the legal mobilization strategies and tactics as means of mobilizing workers around precarious working conditions, entitled The Limits and Possibilities of Social, Legal and Political Mobilization: Challenging Employee Status. Specifically, the thesis will focus on how the Canadian Union of Postal Workers (CUPW) and the Confédération des syndicats nationaux (CSN) and Centrale des syndicats du québec (CSQ) advocated and mobilized for rural and suburban mail carriers and home-based child care workers to be considered employees rather than contractors. This research is under the supervision of Rosemary Warskett in the Department of Law.

I would like to interview you for my research because I understand you were involved in this advocacy effort. Interviews would last approximately 60 minutes. If possible, I would like to make an audio recording of the interview.

It is possible that you will feel uncomfortable discussing aspects of the campaign. In the interview, you do not have to speak about any experiences you do not wish to discuss. You may be concerned that others will be able to identify you from the study. To

minimize this risk, the interview will maintain your anonymity to all but me unless you give consent otherwise. Your name and any identifiable personal information will not be included in the final report. I will ensure that all recordings and transcripts of the interview are kept in a locked cabinet. The data will be kept until I have completed my research project(s) in April 2011. Afterward, the data will be destroyed.

During the interview, you may decline to answer any questions. You may withdraw from the study until November 2010. Should you decide to withdraw, all interview material will be destroyed.

I will provide coffee or tea and snacks during the interview. If you choose, I can provide you with a copy of the final report.

This project has been reviewed and received ethics clearance by the Carleton University Research Ethics Committee. If you have any questions or concerns about your involvement in this study, please contact the ethics committee chair:

Professor Antonio Gualtieri, Chair
Carleton University Research Ethics Committee
Office of Research Services
Carleton University
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6
Tel: (613) 520-2517
E-mail: ethics@carleton.ca

You may contact me:
Sarah Ryan
Institute of Political Economy
sryan1@carleton.connect.ca
(613) 520-7414
Or you may contact my research supervisor:
Rosemary Warskett
Department of Law
rosemary_warskett@carleton.ca

(613) 520-2600x8096

_____	_____
Researcher	Supervisor ROSEMARY WARSKETT

I, _____ have read the above letter and understand that I am participating in a research project and I voluntarily agree to participate.

_____

Signature

Appendix C - Interview guide

Background

1. How did you become involved with the campaign to change the status of the affected workers from "independent contractor" to "employee"?
2. What was your role in the campaign and what is your relationship with the union?
3. How long were you involved in the campaign?
4. What was the organizational decision-making structure for the campaign
5. How did rural and suburban postal workers respond when CUPW became involved?
6. How are Responsable de Service de Garde en milieu familiale (RSG) being grouped in locals? Are RSGs grouped through les Centres de la petite enfance or regionally?Who do they negotiate with?

Framing

7. Did the affected workers consider themselves "employees" or "independent contractors"? How did affected workers become mobilized about their working conditions?
8. What was the response of the union and workers when law 8 came into effect?
9. Why did the workers and the union decide to mobilize to challenge the "independent contractor" status of the workers?
10. How was the decision made to challenge "independent contractor" status? Were there any individuals who disagreed with challenging "independent contractor" status?
11. How did the affected workers feel about challenging their "independent contractor" status?
12. Did affected workers think they had a "right" to employment and labour protections?

Strategy and Tactics

13. What did the workers and union do to challenge the "independent contractor" status of the workers?
14. What did the workers and CUPW do to challenge the "independent contractor" status of the workers?
15. How was legal mobilization [as in using the courts and labour tribunals] used during the campaign? How was political mobilization [as in lobbying for legislative reform] used during the campaign? How was social mobilization [as in building support from allies, the public and involving workers and members in the union] used during the campaign?
16. How did you decide which strategies and tactics to use in challenging 13.5?
17. What was the role of legal mobilization versus political and social mobilization?

18. How was legal mobilization used during the campaign? How was political mobilization used during the campaign? How was social mobilization used during the campaign?
19. How was the decision made to challenge law 8? Were there any individuals who
20. disagreed with challenging law 8 in the courts?
21. Why did CUPW decide not to litigate this issue with a Charter challenge?
22. How did you & others respond when the CLRB decided you were employees?
23. What did you others respond when the Federal Court struck down that decision?
24. Why was the Federal Court's decision not challenged in the courts?
25. How important was legal mobilization versus political and social mobilization?
26. How did you decide which strategies and tactics to use in challenging the law?
27. How did the strategies and tactics you used mobilize the affected workers? Were any tactics better at mobilizing the affected workers?
28. How did rural route mail couriers respond to the Association's fight in the labour tribunals and courts?
29. How much of an influence did the Association have on other unions in the proceedings?
30. What was the role of health and safety, employment standards and Canada Revenue Agency complaints in the campaign?
31. You passed along a legal opinion about whether Canada Post could make RRMC employees. Why did you do this? Was CPC arguing that they legally weren't permitted to do so?
32. What do you think the outcome would have been if you had been successful in striking down 13.5 in a parliamentary vote versus bringing in the RSMC through collective bargaining?
33. How involved were the affected workers in defining the strategy and tactics of the campaign?
34. How involved were rural route mail couriers and the Association in defining the strategy and tactics of the campaign?
35. The CLC started organizing Rural Route Mail Couriers in a local. Why did this start and stop?
36. Did you work with allies in the campaign? If so, how?

Political, economic and legal context

37. How important were changes in the legal landscape to your legal mobilization strategy?
38. How do you think the political, economic and legal contexts shaped the campaign?

39. Would you choose different strategies and tactics now if you were engaging in the same kind of campaign?

Direct and indirect consequences

40. Looking back on your campaign, what do you think you did well and what could you improve on?
41. How useful do you think working with the tribunals and courts were in the struggle for better working conditions? What are the downfalls of using the courts?
42. How did your relationship to the law change through this campaign?
43. How did the campaign affect rural route mail couriers awareness of their rights?
44. Would you say the campaign was successful? If so, why? How did you define success for this campaign?
45. How did the campaign impact the workers/ union as a whole?
46. What impact did legal mobilization have on engaging workers as activists and union members?
47. How did the campaign affect your organization's relationship with allies and the public? What tactics helped most in building relationships with allied organizations and groups? Did any tactics alienate your allies and the public?
48. How did this campaign fit into the union's broader struggles as a labour movement?
49. Who were the key organizers of the legal mobilization campaign that I should speak with? How can I get in touch with them?

Appendix D - Translation

Translations done by Carol Edgar, B.A. (Hons.), C. Trans. (Canada, French-English)

Chapitre 4

« Puis c'est pas acceptable que des filles qui font la job puis qui la font avec cœur puissent vivre des choses comme ça pour des affaires qui n'ont aucun lien avec le travail qu'elles font auprès des enfants. »

(Entrevue 7, Carbonneau)

.....

« Pour moi, c'était clair qu'on est parti; les gens des installations, les gens du milieu familial, on devenait ... la nouvelle loi nous amenait à être la même famille, c'estàdire le même conseil d'administration, le même programme éducatif à appliquer. »

(Entrevue 6, Tonnelier, président de la Fédération des intervenantes en petite enfance du Québec (FIPEQ))

.....

« On a toujours représenté les responsables; puis d'ailleurs, si on s'est tourné vers la syndicalisation, c'est qu'on se rendait compte qu'on ne pouvait pas le faire comme on aurait voulu, qu'on peut pas le faire comme il faut non plus. »

(Entrevue 7, Carbonneau)

.....

« Regarde, je serais plus autonome de toute façon; donc, tant qu'a faire, pourquoi pas aller chercher les avantages d'un salarié? »

(Entrevue 7, Carbonneau)

.....

« Tous les aspects du travail de la responsable du service de garde font l'objet d'un contrôle du Centre de la petite enfance : l'horaire ou les heures d'ouverture sont fixés dans la demande de reconnaissance et sont vérifiés; le nombre d'enfants; les qualifications et la moralité de la responsable du service de garde et de son aide, le cas échéant; le nombre de collations, les repas et leur contenu; le contenu éducatif; les outils tels que les jouets et les jeux. »

(Alliance des intervenantes en milieu familial, Laval, Laurentides, Lanaudière (CSQ) c. Centre de la petite enfance Marie Quat'Poches inc., Centre de la petite enfance La Rose des vents, Centre de la petite enfance l'Arche de Noé inc. et Procureur général du Québec (6 février 2002), CM10103182, CM10104121, CM10105509, para 88)

.....

« Tu fais face à une loi du gouvernement. Qu'estce que tu veux faire, là? C'est fini, là. Tu peux pas aller plus loin, là. »

(Entrevue 7, Carbonneau)

.....

« Moi, c'est ça qui ma tenu : dire bon ben, on va sauver les meubles et puis on va attendre que ... qu'on passe en procès, là. Pas vraiment autre chose à faire, puis en espérant que ça allait pas être des délais non plus, à plus finir. Mais ç'était long, c'était comme quatre ans d'attente, là. »

(Entrevue 6, Tonnelier) - p. 15

.....

« Ici, c'était assez fondamentale parce que c'était mener des batailles sur le rapport de force directe, c'est difficile à mener des batailles comme ça, même dans des milieux plus traditionnels, être en mobilisation permanente du type du syndicalisme européen, puis politique, parce que t'as pas moyen de faire ta contestation auprès de ton employeur, la législation ne te permets pas. Donc l'aspect juridique prenait un rôle assez important dans le dossier. »

(Entrevue 9, Évangéliste) - p. 15

.....

« Elles [les lois modificatives] ont été adoptées pour éviter que le travail à domicile[,] perçu comme une extension des tâches domestiques et des responsabilités familiales traditionnelles et non rémunérées des femmes, puisse faire l'objet de syndicalisation. Le message est clair. On n'accorde pas aux RSG [personnes responsables d'un service de garde en milieu familial] et RI [ressources intermédiaires]/RTF [ressources de type familial] le même traitement qu'aux autres travailleurs parce que le travail accompli en est un de care, exécuté par des femmes, à domicile. »

(Confédération des syndicats nationaux c. Québec (Procureur général),
2008 QCCS 5076, para 372) - p. 21

.....

« Ça c'est des choix politiques qu'on a fait, là. C'était vraiment de se donner la meilleure chance. »

(Entrevue 6, Tonnelier) - p. 24

.....

« On se disait : on ne peut pas entrer dans cette loilà d'un coté, puis contester cette loilà de l'autre coté; donc, on le demande pas. »

(Entrevue 7, Carbonneau) - p. 26

.....

« Il y a personne qui a fait l'analyse de ça mais c'est clair que ça peut pas, ça peut pas aider parce que tu te retrouves constamment devant le gouvernement à être deux organisations en compétition au lieu d'être deux organisations en collaboration. Puis le gouvernement sait très bien ça, et il le voit très bien, et il réussit très bien à exacerber les tensions. »

(Entrevue 8, Tremblay) - p. 28

.....

« Le choix qui a été fait à ce momentlà est un choix très pragmatique. »

(Entrevue 9, Évangéliste) - p. 29

.....

« Moi je suis très à l'aise avec la position du compromis qu'on a fait. Moi je défendais cette positionlà très longtemps avant que on le fasse. »

(Entrevue 8, Tremblay) - p. 30

.....

« Elle [France Perras, une demanderesse dans l'affaire Confédération des syndicats nationaux c. Québec (Procureur général), 2008 QCCS 5076] n'a pas digéré qu'on lui ait fait miroiter un statut de salarié, qui lui aurait donné le droit d'être couverte par une panoplie de lois comme celle sur l'équité salariale ou encore sur la santé et la sécurité au travail, et qu'elle se retrouve finalement avec un statut de travailleuse autonome, enchâssée dans la Loi sur la représentation de certaines personnes responsables d'un service de garde en milieu familial et sur le régime de négociation d'une entente collective les concernant. »

(Gervais, L.M. « Services de garde en milieu familial - Croisade pour un meilleur statut de travail ». Le Devoir. Le 15 octobre 2010. Article lu sur Eureka.cc.) - p. 32

.....

« Jamais dans ma vie j'aurais pu croire qu'une RSG aurait trois semaines de vacances payée, puis huit fériés. Jamais j'aurais pu croire qu'une RSG aurait le droit à la CSST [Commission de la santé et de la sécurité du travail] ou une régime de retraite. Jamais dans toutes mes batailles que j'ai faites depuis '99 j'aurais pu penser ca, un jour, moi. Personnellement, c'est pas la perfection ce qu'on a, mais moi, je suis satisfait de ce qu'on a parce que je sais d'ou on part. »

(Entrevue 7, Carbonneau) -p. 33

.....

Chapitre 5

« Tu verras pas, là, dans le journal en première page mais il y avait beaucoup d'employeurs très abusifs. Mais ils le sont moins. Ils ont peur. Les employeurs savent que les femmes peuvent se défendre, que c'est plus vrai qu'elles connaissent rien, qu'elles savent rien, qu'elles savent pas leur droits, c'est plus ça, là. Ça aussi c'est une façon de mesurer le succès. »

(Entrevue 8, Tremblay) - p. 5

.....

« Nous avons instrumentalisé les plaignants, les avocats. On les utilisait pour faire valoir notre ... nos arguments juridiques. Mais elles étaient très au courant de ce qui se passait. On a expliqué pourquoi on le faisait, c'est quoi les arguments, mais elles ont pas eu un très grand input au niveau des stratégies. »

(Entrevue 8, Tremblay) - p. 15

.....

« Elles étaient convaincues, ou en tout cas il y a une partie qui était convaincue, que ben c'était correct de rien avoir parce que j'ai le privilège d'être avec mes enfants. »

(Entrevue 6, Tonnelier) - p.