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Manufacturing Descent? An Analysis of the Impact of Labour Law on Union Organizing Activities in Ontario

By: Timothy J. Bartkiw, B.A., L.L.B.

Ph.D. Dissertation

**Submitted to the School of Public Policy and Administration, Carleton
University, Ottawa, Ontario in Partial Fulfillment of Requirements for Doctor
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Abstract

This dissertation inquires into the relationship between labour law and union organizing and related dynamics. Following a critical review of alternative theoretical perspectives on the relationship between labour law and union growth, it is argued first that there remains significant space for an institutionalist perspective and second that that this debate is at least partly dependant upon underlying models of union behaviour. Such existing models are then critically assessed, and a model of union organizing behaviour based upon bounded rationality is developed. Following a description of why the province of Ontario comprises a good “case” for examining this question, hypotheses about the relationship between labour law and various indicators of new union organizing are derived and tested through quantitative analysis of data from the Ontario Labour Relations Board. The impact of labour law upon other related phenomena such as “raiding” activities, “Unfair Labour Practice” complaint activity, and “Duty of Fair Representation” complaint activity is also tested in this manner. As an additional test of the model and hypotheses derived, qualitative case studies are performed of the organizing behaviour of two large general unions in Ontario: the Canadian Auto Workers union and the United Food and Commercial Workers union. Much of the quantitative evidence and certain of the qualitative evidence is interpreted as providing qualified support for the importance of the timing of labour law shifts, and of bounded rationality, in explaining union organizing dynamics in Ontario in recent decades. However, certain qualitative evidence contrary to the theoretical framework suggests the competing importance of alternative models of strategic/moral union behaviour. Overall, the evidence is interpreted as providing qualified support to the conclusion that labour law remains a policy instrument with significant capacity to affect aggregate union organizing behaviour over time.

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Chapter 1 – Introduction

This dissertation involves an attempt to shed light on the important phenomenon of union decline. While a long term decline in union density in the United States has been well documented and its causes debated, there now are signs that a general pattern of density decline may recently have begun to take hold in Canada, and in particular within the province of Ontario. Evidence of a recent downward trend in Ontario and Canadian levels of union density, which is discussed below, is clearest with respect to density in the private sector. To improve our understanding of this phenomenon, this dissertation investigates the question of how public policy, in the form of labour laws that influence union growth through the regulation of union organizing and other modes of behaviour, may be causally related to this decline.

For some time, the notion of North American “divergence” seemed to capture the basic pattern in union density levels between Canada and the U.S. Table 1.1 contains a summary of aggregate union density patterns in the U.S. and Canada from 1955-2001 collected from various sources that was recently provided in Godard (2003). A fairly steady decline in union density levels has occurred since the mid-1970’s, with a somewhat lesser rate of decline prior to that time, since around the mid-1950’s. By comparison, depending slightly upon which data series is preferred, Canadian aggregate union density appears to have peaked around 1983-4, and there has been a fairly steady decline in Canadian union density since that time, albeit at a smaller rate of decline than what has been observed in the U.S.

Of course, within Canada, union density levels range between the different provinces. Table 1.2 provides aggregate union density levels, along with union coverage and employee levels, for the province of Ontario from 1976-2002¹.

¹ This data is based upon the most recent estimated revisions of historical CALURA data for 1976-1995, and on LFS data from 1997-2002.

Table 1.1 - Aggregate Union Density Estimates, Selected Years

	United States ^a	Canada		
		HRDC ^b	CALURA ^d	LFS ^g
1955	31.8	33.7	—	—
1960	28.6	32.3	—	—
1965	30.1	29.7	30.8 ^e	—
1970	29.6	33.6	32.6	—
1975	28.9	35.6	31.8	—
1980	23.2	35.7	30.6	—
1981	22.6	35.4	31.0	—
1982	21.9	35.7	31.3	—
1983	20.7	36.4	33.4 ^f	—
1984	20.4	37.2	33.1	—
1985	19.1	36.4	33.1	—
1986	18.3	36.0	32.6	—
1987	17.0	35.2	31.9	—
1988	17.0	35.0	32.0	—
1989	16.4	34.8	32.5	—
1990	16.1	34.8	33.1	—
1991	16.1	34.7	33.4	—
1992	15.8	35.8	33.2	—
1993	15.8	36.0	32.5	—
1994	15.5	36.1	32.1	—
1995	14.9	34.7	32.3	—
1996	14.5	34.3	—	—
1997	14.1	34.5	—	30.8
1998	13.9	32.7 ^c	—	30.3
1999	13.9	32.6	—	29.8
2000	13.5	31.9	—	29.9
2001	13.5	31.3	—	30.0

Source: Godard (2003)

Notes:

a. Pre-1985 from Troy and Shefflin (1985); 1986-1999 from *Statistical Abstract of the United States*; after 1999 from U.S. Bureau of Labor Statistics web page.

b. Pre-1988 from HRDC, *Directory of Labour Organizations in Canada*, various years; 1988 to 2001, from *Workplace Gazette* (HRDC/Labour Canada), vol. 3-4: 36.

c. A change in data collection methods would appear to account for roughly 1.4 percentage points of the drop in 1998 (see fn. 4 of this paper).

d. From Mainville and Olinek, 1999.

e. This figure was obtained in 1966, the first year of the CALURA series.

f. Before 1983, the CALURA survey did not include professional Organizations engaged in collective bargaining. Their subsequent inclusion may help to account for much of the increase in 1983. Yet professional associations engaged in bargaining grew substantially in the 1970s, so the decline in density estimates from 1970 to 1980 may reflect in part their exclusion.

g. See table 3.

This data suggests that aggregate union density levels in Ontario peaked around 1991, followed by a few years of decline and a slight rebound. Crucially, what the data now reveal is that since approximately 1995, there has been a negative trend in union density in Ontario².

Table 1.2 – Aggregate Union Density in Ontario, 1976-2002

Year	Density	Employees Covered	Employees
1976	30.2	1015.4	3366.2
1977	31.0	1056.0	3406.6
1978	30.6	1077.3	3520.6
1979	30.6	1084.6	3544.4
1980	30.2	1109.0	3672.2
1981	29.8	1123.8	3771.2
1982	30.6	1094.3	3576.3
1983	32.3	1219.6	3775.9
1984	32.0	1245.1	3890.8
1985	31.8	1283.4	4035.9
1986	31.6	1323.1	4187.1
1987	31.0	1363.7	4399.1
1988	31.3	1403.7	4484.7
1989	31.2	1427.9	4576.5
1990	32.2	1418.2	4404.3
1991	32.5	1401.7	4312.9
1992	32.3	1369.2	4238.9
1993	32.1	1355.0	4221.2
1994	31.4	1371.4	4367.6
1995	32.1	1410.7	4394.8
1996	N/a	N/a	N/a
1997	29.8	1328.6	4464.6
1998	29.2	1352.9	4627.9
1999	28.1	1344.7	4792.1
2000	28.2	1400.5	4959.5
2001	27.8	1412.8	5079.1
2002	28.1	1459.0	5187.7
2003	28.5	1517.4	5319.4

Source: The density calculations for the years 1976-1995 inclusive are the most recent revisions of historical estimates provided by Statistics Canada that are based upon CALURA estimates of the total number of unionized ("covered") workers and LFS data estimates of total employment. See Cansim Table 270-0025. Statistics from 1997 onwards are based upon LFS estimates, see Cansim Table 282-0078.

² Godard (2003) suggests that it is possible, although not necessarily certain, that a change in data collection methods in 1998 may account for a slight decline in density levels in that year. Nevertheless, it is debatable whether this reduces the ability to make reliable comparisons between the CALURA and LFS data, particularly the most recently published revised CALURA

The data also reveals starkly different patterns as between the public and private sectors. Although official Canadian data was not consistently disaggregated until 1997, Godard (2003) provides a very useful summary of data available from “official” sources as well as data generated in previous attempts by researchers to disaggregate Canadian density levels (see Appendix Table A1.1 for a summary of this, along with U.S. data). While aggregate density levels in Canada were approximately 32.4% in 2003 (LFS, 2003), private sector density has fallen from approximately 34.0% in 1958 (Troy, 2000) to approximately 19.8 % in 2001 (LFS, 2003). A similar sectoral divergence has also occurred in the province of Ontario. Data listed in Appendix Table A1.2 reveal that private sector density levels in Ontario have fallen in very recent years from 19.4 % in 1997 to 17.8% in 2003.

This public/private divergence has prompted some observers (Troy, 2000, 2002) to conclude that Canadian density levels are merely lagging the U.S. levels, with the remaining density differences being primarily due to differences in public sector unionization rates. Linked with this assertion is a challenge to the conventional institutionalist view about the importance of Canadian labour laws in explaining divergence. As a result, a renewed debate has been sparked concerning the very basic question: Does labour law (still) “matter”? (Godard, 2003).

This is an important question not only because of its obvious interest for students of labour law, public policy, and industrial relations, but it is also an important aspect of our broader political economy and democracy, given the observed correlation between worker organization and the extent of social democratic state development (Korpi, 1983), and given that worker organizing is a fundamental concrete expression of the concept of “freedom of association” in

estimates. Indeed, Statistics Canada has claimed that such comparisons between the CALURA and LFS data are valid (Akyeampong, 1997).

a liberal democracy. As well, in practical terms, since it has been determined that union organizing is a mathematically large component of union growth in Canada (Johnson, 2002b), assessing the impacts of law on organizing is thus an important component of understanding union growth generally in Canada.

This dissertation addresses the relationship between labour law and union organizing in the Ontario context. Ontario is a very large populous province, which means that understanding its peculiarities will contribute substantially to understanding Canadian dynamics as a whole, which in turn increases the contribution of this literature to the debate about comparative dynamics across North America. As well, as will be described in greater detail in chapter 3, Ontario provides a good Canadian “case” within which to assess the relationship between labor law and union organizing given that it experienced significant shifts in its labour law regime³ during the decade of the 1990’s. Thus, this dissertation is driven by the central empirical research question: What impact have shifts in labour law had on union organizing and related activities in Ontario over the past 15 years?

As will be discussed further in the next chapter, the issue of whether labour law “matters” is also theoretically linked to the question of union behaviour. In developing a theoretical response to the question “does labour law matter?”, it is important to consider the important theoretical question “why should it matter?”. Part of the argument presented in this dissertation is that the question of whether (and how) labour law affects union organizing is somewhat dependent upon

³ It is important to understand that the Canadian Constitutional division of powers allocates most of the authority for the regulation of trade unions and industrial relations to the ten individual provincial governments. Thus, it is very difficult to speak specifically about the role of “Canadian” labour law. Rather, it must be understood that in Canada there have developed eleven separate labour law regimes, modeled largely upon the federal government’s 1944 wartime order in council PC-1003, which in turn was modeled upon the *National Labour Relations Act* or “*Wagner Act*” of 1935 in the United States, but which have each followed separate patterns of legal development and revision. Thus, where one is interested in conducting careful analysis of the impact of labour law in Canada, one must be very mindful of the differences between the provinces and, in the case of empirical investigation, conduct analysis largely on a province-by-province basis.

competing assumptions concerning union behaviour. Alternative and competing models of union behaviour have been developed in the literature, based on each of rationalistic, strategic, and moralistic behaviour. This dissertation addresses the question of the impact of labour law on organizing by incorporating into the analysis an explicit theoretical model of union organizing behaviour based upon bounded rationality. This model guides the empirical research and its implications are tested directly. Then, this dissertation adopts the following research question framing the overall analysis: How has the relationship between labour law and organizing been *mediated* by union strategic and/or moralistic behaviour in Ontario?

This dissertation makes original contribution to the literature in several ways. After developing an original model of union behaviour based on bounded rationality, this model is used to develop seven hypotheses for testing. Four of these are original and previously untested in the Ontario context, concerning the relationship between labour law and average new bargaining unit sizes; the sectoral allocation of organizing activities; aggregate raiding activities; and the volume of Duty of Fair Representation complaint activity. Testing of the other three hypotheses concerning the relationship between labour law and certification success rates, aggregate organizing levels, and unfair labour practice complaint activity improves upon prior analysis of these phenomena. Lastly, this quantitative hypothesis testing is followed by qualitative case studies of two specific unions' organizing behaviour (the Canadian Auto Workers union and the United Food and Commercial Workers union) to further examine the accuracy of both the hypotheses and the underlying theoretical model.

This dissertation also involves rigorous analysis of the impact of the recent "Bill 31" legislation on organizing and related activities in Ontario. As well, various operational improvements upon prior analysis of Ontario are made and detailed in Chapter 3.

Overall, it is argued that labour law shifts in Ontario have indeed “mattered” in that they have had important impacts on organizing and related activities over time. There have been large and significant impacts on organizing dynamics, both in terms of certification success rates and underlying volumes of certification attempts. Labour law shifts have also significantly affected the level of Unfair Labour Practice complaint activity and the sectoral allocation of organizing activity in Ontario. Some support for the proposition that labour law shifts have influenced growth in bargaining unit sizes and volumes of Duty of Fair Representation complaint activity is provided, as is some very limited evidence concerning the relationship between labour law and union raiding. Overall the evidence suggests that labour law shifts have caused these dynamics despite the impact of other phenomena such as economic internationalization and industrial restructuring. Lastly, qualitative analysis provides qualified support for the usefulness of the model of union behaviour based upon bounded rationality, while also revealing the importance of union strategic choice in determining organizing behaviour.

As noted, the relevant bodies of literature concerning these questions are reviewed in chapter 2 and the basic elements of the theoretical model employed in this dissertation are presented towards the end of that chapter. Chapter 3 concretizes the analysis by reviewing the historical and institutional context in Ontario, which serves as the site of the empirical inquiry. Specific contextualized deductions and hypotheses are then developed based on the theoretical model, and the chapter further provides an explanation of the research design employed. Chapters 4 to 6 present the results of the quantitative research, and chapter 7 provides the results of the qualitative research. Finally, conclusions are provided in chapter 8.

Appendix to Chapter 1

Appendix Table A1.1 - Private Sector Union Density Estimates, Selected Years

	United States ^a	Canada ^b			
		Bergeron	Meltz and Verma ^c	Troy ^d	Labour Force Survey
1961	31.9	30.0			
1966	30.8	28.6			
1970	29.1	29.3			
1974	23.8	28.3			
1975	21.9			25.7	
1980	20.4	26.0			
1984	15.5		20.6		
1985	14.6				
1986	14.0	21.0		20.7	
1989	12.4		20.5		
1990	12.1	21.5	20.5	18.0 ^e	
1991	11.9		20.4		
1992	11.5		20.2		
1993	11.2		18.4		
1994	10.9		18.0		
1995	10.4		18.2		
1996	10.2				
1997	9.8				19.0
1998	9.6				18.8
1999	9.5				18.1
2000	9.0				18.4
2001	9.0				18.3

Source: Godard, 2003

Notes:

a. To 1970, from Troy and Sheflin (1985); 1974-1980, May Current Population Survey (CPS), as provided by Larry Hirsch (<http://www.trinity.edu/bhirsch>); 1984-1999, from CPS Outgoing Rotation Group Earnings Files, also as provided by Larry Hirsch; 2000-2001, from the BLS website.

b. Dion and Hebert (1989) also report estimates for 1961 (33%) and 1984 (21%), but their sources and methods are not identified.

c. Estimates for 1989 and 1991-1995 were calculated by the author, using the same method as Meltz and Verma. They include agriculture, forestry, fishing, mining, manufacturing, construction, trade, finance, bus. services, accomodation, and other services.

d. In some of his work (e.g., 1992: 38), Troy provides estimates for 1958 and 1966, but these are based on the assumption that private sector density was the same as overall density in each of these years (1990: 37).

e. The source of Troy's 1990 estimate is unclear, but it appears in a paper where he states that his earlier estimates were too high, suggesting a change in his method of calculation for 1990 (see 1992: 37). Troy does not, however, explain how any of his estimates were arrived at.

Appendix Table A1.2 – Public/Private Sector Union Density in Ontario, 1997-2002

Year	Public Sector			Private Sector		
	Density (%)	Employees Covered (x 1000)	Employees (x 1000)	Density (%)	Employees Covered (x 1000)	Employees (x 1000)
1997	70.9	638.1	899.8	19.4	690.6	3564.9
1998	70.1	632.4	901.1	19.3	720.5	3726.9
1999	69.6	666.0	956.5	17.7	678.7	3835.6
2000	68.6	677.5	987.1	18.2	723.0	3972.4
2001	70.1	692.6	988.3	17.6	720.2	4090.8
2002	70.8	735.1	1037.9	17.4	723.8	4149.8
2003	71.3	762.4	1069.6	17.8	755.1	4249.8

Source: Statistics Canada, Labour Force Survey, 1997-2002, Cansim Table 282-0078.

Chapter 2 – Literature on Labour Law and Union Growth

While there has emerged recently a specific debate addressing the precise issue of labour law's continuing effects on union growth in the modern era (Troy, 2000, 2001; Godard, 2003), this debate may also be understood as being rooted in more general debates within political economy, broadly defined. The phenomena of "globalization" and/or "internationalization" raise questions about the continuing capacity of domestic institutional and legal frameworks to determine domestic labour market policy processes and outcomes. While many have raised claims about the "hollowing out" of the state and across-the-board erosion of policy capacity as a result of globalization, other researchers caution us to reject simplistic assumptions and models of global economic integration, capital mobility, and policy convergence. Various institutionalist researchers argue that the predictions of what has been referred to as the "neoclassical model" (Hay, 2004) of policy convergence resulting from globalization is not reflected in the empirical evidence (Hall and Soskice, 2001; Thelen, 2001; Hay and Marsh, 2000; Wood, 2001; Hay, 2004). Rather, these researchers argue that even if states are experiencing a set of common external pressures from globalization, which is itself an important and contested assumption (Hay, 2004), these pressures are subject to varied forms of ideational and institutional mediation in different national contexts. These mediating influences continue to yield important differences in policy processes, outputs and outcomes across states, and thus a "hyper-globalization" convergence thesis is generally rejected.

A prevalent approach that has emerged within this institutionalist literature is the "Varieties of Capitalism" model ("VOC"), with which many institutionalists have aligned themselves loosely, while some have also refined and extended the approach in different ways (see for example Thelen, 2001; Thelen and Van Wijnbergen, 2003). This approach, which utilizes the new institutional economics to emphasize the importance of alternative types of coordinating mechanisms across economies, suggests that globalization pressures have in fact led to a significant divergence between two main clusters of economies, referred to as

the “Liberal Market Economies” (“LME”) and the “Co-ordinated Market Economies” (“CME”) (Hall and Soskice, 2001). In this model, the persistence of certain “interventionist” labour market policies in the CME economies is explained by the comparative advantages that these institutions confer upon firms in these economies in terms of firms’ capacities to coordinate relationships external to firms. As a result of “institutional complementarities”, or the increased utility of certain kinds of interventionist policies in the presence of other complementary institutions, the labour market institutions of the CME states, which are generally more social-democratic in orientation, remain intact while an alternative pattern of deregulation and neo-liberalization has taken place across the LME states. Thus, globalization has actually lead to a divergence of policy outputs and outcomes between the CME and LME states.

Processes of institutional change and the consequences of such changes, is not the central focus of the VOC literature, but is somewhat problematized by certain VOC researchers. Hall and Soskice themselves claim that their model is not a static once, given that within each economy, states retain a large degree of relative autonomy to fashion institutional arrangements over time. Institutional structures cannot simply be understood as the collective product of firms; rather, they argue, firms face institutional structures largely beyond their control. Thus, implicit in this model is an ongoing potential process of institutional change. However, institutional dynamics remain highly circumscribed by the overarching pressure on states to provide firms with comparative economic advantage through market or non-market coordinating mechanisms. Hall and Soskice conclude that this model predicts a tendency for further neo-liberal institutional change within the LME economies, but not necessarily such a pattern of change within the CME economies.

Other institutionalists have extended the VOC approach to examine the question of institutional change, with particular emphasis given to the question of institutional resiliency within the CME economies (Thatcher, 2004; Thelen and

Van Wijnbergen, 2003; Goodin 2003). Others, however, are more critical of the VOC school's embrace of key aspects of the standard neoclassical globalization thesis, namely that of a common set of external pressures which states are subjected to, as policy inputs, and which tend to overpower mediating factors, with the only substantial exception being the option of adopting institutions that form part of a cohesive set of efficiency-generating coordinating mechanisms. Hay (2004) persuasively argues that as a result, the VOC school has essentially replaced the neoclassical/business school "hyper-globalization convergence" thesis with an only slightly more complex and less deterministic "dual-convergence" thesis, which similarly overlooks the wide range of ideational and institutional mediating factors continuing to influence institutional change dynamics in specific national contexts (Hay, 2004).

It is within this earlier and broader institutionalist tradition identified by Hay (2004), which remains interested in the ongoing importance of legal/institutional variations/changes in general, either within so-called LME or CME states, that this dissertation is located. This dissertation examines the impact of institutional change (labour law shifts) on outcomes (union growth) within what has been classified by some as an LME state, over time, and accepts the basic institutionalist argument developed by various scholars, reviewed below, that labour law continues to "matter" significantly.

Non-institutionalist arguments for rejecting (or at least de-emphasizing) the continued importance of labour law, may be understood as generally being rooted in one of two very different theoretical perspectives on institutions. I shall refer to these two perspectives as the *neoclassical economic* and the *political-economy* perspectives on this question.

The primary proponent of the thesis that labour law no longer "matters" has been Leo Troy (2000, 2002). Although lacking an explicit theoretical account, Troy's analysis is indeed grounded in a neoclassical economic perspective of

institutions as being instruments of state intrusion into an otherwise natural functioning of markets. Troy argues that union growth was historically rooted in union wage setting power, which in itself was a partial product of intrusive labour laws which operated in a domestic environment protected from international “market forces”. In this environment, unions were able to effectively impose wages/benefits standardization and horizontal wage inequality (i.e. the union “wage premium”). Troy seemingly accepts wage setting power to be the key source of “demand” for union representation, and that the interventionist labour law apparatus in Canada and the U.S. historically supported this wage setting power. However, this union wage setting power was also heavily dependent upon concurrent restrictions on “market forces” in both labour and product markets that existed during the era of steady union growth in North America. Troy suggests that as these constraints on market forces and competition have been eased (as has allegedly occurred over the past few decades) the extent of competition within labour and product markets has increased, union wage setting power has been greatly eroded, and market forces have recently flattened “union-imposed wage inequality” (Troy, 2001). Thus, this primary source of worker demand for unionization – wage setting power - has evaporated. As a more *extreme* claim, in the so-called recent “Age of Adam Smith” (Troy, 2002), even increasingly “supportive” labour law changes will no longer assist unions because “market forces” will overwhelm such public policy initiatives in determining union wage setting power. Thus, the qualitative character of labour laws no longer matters. Troy argues that this more extreme claim about labour law’s lack of capacity as an instrument is supported by his allegation that more “supportive” labour laws in Canada have not prevented a decline in private sector unionization similar to what has occurred in the U.S., as the Canadian economy has become increasingly exposed to these same “market forces”.

It should be noted that Troy additionally points to long term product cycles and ensuing industrial restructuring as being further contributors to the destruction of union power and growth in addition to increased labour market competition from

economic internationalization. To a certain extent, this factor appears closely linked to the loosely defined “market forces” phenomenon he refers to and thus the underlying intuition would appear to be the same. That is, product-cycle-driven restructuring has over time generated product and labour markets that are increasingly more competitive and therefore more corrosive of union wage setting power. Crucially, it is still through the decline in wage setting power - and the corresponding reduced demand for unionization - that union growth evaporates.

It is difficult to reject this perspective entirely. However, even if one were to accept the claim that increased market competition via economic internationalization has “rolled back” union growth somewhat, it is highly problematic to conclude that this process is not restricted by, or indeed even *determined by*, the *qualitative* nature of the existing labour law regime.

The key weaknesses in this neoclassical economic perspective lay in its problematic conceptualizations of labour law. One flaw is that labour law configurations are seen implicitly only as a set of “supportive” measures that unnaturally increase union power to set wages and grow beyond what the market would naturally allow. This view fails to acknowledge the dual role of these broadly encompassing regulatory regimes that involve a significant degree of coercion upon many aspects and forms of collective worker and union activity *in exchange for the residual forms* of “support” that modern labour laws do continue to offer (Hyman, 1989; Svirsky, 1998; Panitch and Swartz, 2003). Various significant restrictions on union activity imposed through modern North American law and policy, which would conceivably retard union growth, include complex restrictions on the processes of union organizing and collective action. The institutional framework channels and restricts underlying worker desire for collective worker action. Under the Wagnerist regime(s) in North America, the state plays a heavy role in creating the very structure of worker organization and collective bargaining through its ultimate control over bargaining unit structures

and places systemic pressures in favour of decentralized, individual unit-level bargaining which creates corresponding restrictions on the self-organizing capacity of the labour movement (Svirsky, 1998). Further limitations imposed by the institutional regime in exchange for residual forms of “support” for some forms of collective action include restrictions on bargaining or other activity deemed by the state to be beyond the “scope” of the individual atomized bargaining unit; restrictions on organizing including those based upon property rights, and the imposition of real resource costs of organizing under the legalistic requirements and norms of certification regimes enforced through litigation before administrative tribunals. Thus, the notion of labour law as an intrusive “dam” protecting union activity from the natural “waves and tides” of the market is ill conceived.

A second flaw in this neoclassical conceptualization of labour law is that it does not consider labour law as a domestic environmental phenomenon *within which* other forces, such as the increased product market competition that Troy identifies, are played out. Labour law establishes an institutional *forum* that *mediates* the impact of other forces and phenomena. Rather than understanding it as simply another isolated factor or variable acting upon union growth (or not), it may more properly be understood as having a very important *interactive* effect with many other phenomena. One particular labour law configuration interacts with and mediates the effect of liberalized trade and increased product market competition differently than will another configuration. In other words, to some extent, it is the *character* of the labour law framework that *determines* the impact of environmental forces like liberalized trade and/or industrial restructuring. For example, industrial restructuring that occurs within environment A, in which new firms are legally “born non-union” will surely yield a significantly different mediated effect upon union growth than an industrial restructuring occurring within environment B, in which new companies are obliged to belong to national multi-industry co-ordinated bargaining structures. If a greater decline in union growth occurs in environment A than in B, it would be incorrect to attribute the

causal effect simply to the shift in industrial structure, even if the labour law framework remained *constant*. This flawed conception fails to see the casual, interactive and mediating effect of the *non-shifting* legal environment – it is not logically necessary for the law to “shift” for it to *causally* explain union decline. This is a flaw underlying neoclassical logic: it privileges and *takes as given* the fairly constant, liberal Wagnerist model of labour law in North America while attributing the causal forces behind the observed decline in union growth to other factors that have “shifted” while labour law did not. Indeed, this approach seemingly accepts the existing configuration of labour laws as being *definitional* of labour law in general. In Troy’s case, the concept is not only flawed but tautological – one cannot use such a definitional conceptualization of labour law in order to support an inquiry into the very question of *whether alternative labour law configurations might matter!*

A third conceptual problem relates to Godard’s (2003) more basic point that what Troy refers to as “market forces” were more appropriately understood as being particular forms or styles of public policy. Similarly, the increased extent of labour and product market competition that Troy points to as eroding demand for unionization under the shadow of labour law may well not be entirely exogenous to labour law and policy but rather may be a *partial product* of existing labour law and policy and liberalization in both substantive rules and enforcement patterns.

Lastly, this perspective on the relationship between labour law and union growth may be challenged, as may any other perspective, by examining the assumptions involved in its underlying model of union *behaviour*. The model present in Troy’s work, for example, even if it is not explicitly developed and incomplete, is one in which union wage setting is a central mode of union behaviour and which generates the key source of demand for unionization. This implicitly ignores evidence about other aspects of union behaviour, and other sources of demand for unionization, particularly employee concerns about fairness, equality and respectful treatment by employers. Such a model also fails

to acknowledge the capacity of the legal framework itself to *determine* the mode of union behaviour⁴. Overall, there are serious conceptual weaknesses to the neoclassical challenge to the continuing capacity of labour law, as exemplified in the arguments of Troy.

The second perspective that rejects or de-emphasizes the importance of labour law in determining union growth is the *political-economy* perspective.

For some political economists, the question of whether law “matters” is essentially a question about the autonomy of institutions. The real question to answer, in their view, is whether laws have real *autonomous* effects, in a concrete sense, apart from other underlying structures and social phenomena, particularly class relations. An early challenge to the autonomy of laws and institutions is found within original Marxist political economic theory of the state. These arguably crude models adopted a strong instrumentalist view of the state. Not only was the state understood as being merely the instrument of the dominant class but, more importantly, the contours and content of its institutions and laws were mere *epi-phenomena* of the underlying structure of class relations.

Gradually, within this line of Marxist political economic thought, this rigid perspective gave way to emerging “neo-Marxist” or “structural Marxist” political economic theory that acknowledged, to varying degrees, an element of state (and institutional) “relative autonomy.” A large challenge for modern political economy has been the inability of early Marxist political economy to satisfactorily explain the range of social outcomes and divergences in class contours across different states or “social formations”. It is fair to say that one of the outcomes of the attempt to address this weakness has been a much broader acceptance of a model of the state in which its laws and institutions may generate effects and outcomes that are *relatively autonomous* from, and even perhaps somewhat

⁴ The way in which alternative models of union behaviour shed further light on the question of the impact of labour law on union growth is a matter that will be revisited, later in this chapter.

constitutive of, the underlying “structure” of class and production relations (Poulantzas, 1975; Gramsci, 1971).

Certain non-Marxist theorizing on the state rejects both structural determination as well as the “relative autonomy” compromise position, in order to emphasize the entirely unique and autonomous interests of the state qua state. (Skocpol, 1986). Of course, political economists more influenced by non-Marxist, and particularly Weberian theories of the state have always tended to be much more easily accepting of the notion of state, and institutional, autonomy, and have rejected what appears to them as a strict insistence on structural “uni-causality” in Marxist political economic analysis (Milovanovic, 1989). This orientation is also more common to mainstream political scientists who routinely accept the autonomous power of institutions, often as the basis for rejecting Marxist concepts of the state. Researchers within the *historical institutionalist* variant of political economy accept that institutions have “sticky” historical effects that ought to be considered as at least relatively autonomous given that they may contribute to the determination of historical patterns of power distribution among actors and to the structuring of politics in general (Thelen and Steinmo 1992; Rothstein, 1992).

Yet, despite these variations, many within the political economy paradigm remain skeptical about the *extent* to which we ought to accept claims of institutional autonomy, and are not prepared to accept the usefulness of abandoning the approach of taking underlying class relations as being the primary determinant of institutional character, while de-emphasizing the endogenous aspects of underlying class relations. Some such researchers have taken issue directly with the institutionalist claim about the importance of labour laws in determining union growth. While accepting that labour policy broadly defined seems to have had some impact on union growth in the U.S. over the past century, Goldfield (1987) argues that underlying historical factors have been far more important and have effectively given rise to the laws and policies privileged by the insitutionalists. Goldfield emphasizes discrete, historical events and the strategies employed by

the labour movement over time, as being the most crucial factors explaining union decline in the US. As an example, he argues that the changes to labour laws under the Reagan administration must be understood as the product of deeper historical factors, and points out that a very lengthy decline in U.S. union membership and growth predated this shift in policy. Thus, Goldfield argues that the key factor explaining U.S. union decline is the set of discrete historical choices made by the labour movement in the U.S., in terms of the strategic battles it has waged, and the outcomes of such battles. Goldfield places particular emphasis on the U.S. labor movement's utter failure to organize sufficiently in the Southern states, which had been a strategic goal of the labour movement held in abeyance until the conclusion of World War Two. This great historical loss set in motion a political economy dynamic in which U.S. capital continually held a domestic exit strategy via relocation to the unorganized south, and which steadily eroded labour's power to play a sufficient role in political coalitions at both the state and national levels, in order to institutionalize its strength, and/or to defend itself from state and capital encroachment through national policy adjustment.

Swartz (1993) rejects the institutionalist thesis in his challenge of the argument that labour laws explain divergent patterns in union growth in North America. He argues that the divergent Canadian/U.S. density pattern observed at that time was better understood as being the product of *qualitative* differences in the nature of prevailing unionism in the two countries, and that these differences are rooted in the deep historical trajectories of the two union movements. Swartz claims that to credit Canadian laws as being responsible for generating superior union growth and organizing activity in Canada is inconsistent with the longer historical record, given that Canadian trade unionism emerged out of a relatively *more hostile* state institutional environment than did its American sister movement. Swartz argues that it was somewhat because of a *lack* of such an institutional labour law framework and the existence in Canada of a relatively *more hostile* state environment in Canada in the 1930's and 40's than in

Roosevelt's U.S., that a relatively more aggressive and expansionistic form of unionism emerged in Canada, out of necessity. This claim runs contrary to those explanations of contentious politics and social movements based upon familiar notions of rationality and "political opportunity structures" (Olson, 1965; Tarrow, 1989) in that it suggests that a more restrictive or coercive environment may spur social movement expansion (Haklai, 2003). Rather than finding cause to celebrate labour law's effects during the mid-century, Swartz, and Panitch and Swartz, eschew the corresponding "institutionalization" of unions, and the "legalistic" tendencies that have become molded in unions over time.

Robinson (1990, 1993) also rejects the institutionalist claim that labour laws and institutions explain divergence in North America, and develops a somewhat more radical argument based upon alternative underlying behavioural motivations within the trade union movement. In what is arguably a misplaced generalization, Robinson (1990), seems to understand labour law frameworks, almost by definition and regardless of content and configuration, as being a support-system for a very specific mode of union behaviour: "legalistic" unionism. Legalistic unionism is here understood as behaviour in which workers engage in collective action primarily through calculations of rational self-interest, based on the classic expression of the determinants of collective action found in Olson (1965). Olsonian logic holds that it is often necessary for individuals to be provided some form of "selective incentive" to engage in collective action and that the challenge for groups seeking to generate collective action is to provide the optimal selective incentives required to encourage participation. Robinson rejects this underlying model of behaviour as being inappropriate for understanding union collective action.

As does Swartz' and Panitch and Swartz' analysis to a degree, Robinson's analysis draws upon the insights provided by Offe (1985). Offe puts forth an alternative "logic" of collective action rejecting neoclassical rationality at the heart of Olsonian thought. According to Offe, collective action must be understood as a *dialogical process*. That is, rather than assuming that individuals engage in

collective action based upon a *priori* understandings of their respective interests in and preferences for collective action, such interests and preferences are *constructed* through dialogical processes – through ongoing processes of learning, interaction, and self-reflection that come with actually *engaging* in processes of collective action with one another.

While this may be an important further insight into the weaknesses of the neoclassical conception of collective action, and into worker and union behaviour, the acceptance of Offe's alternative logic of collective action does not logically or necessarily lead to the specific and strong claims about labour law made by political economists like Swartz and, most particularly, Robinson. Even if we accept Offe's logic, it is not clear why labour law configurations are only capable of generating selective incentives to support behaviour based upon self-interested rationality, and are incapable of impacting upon processes of "dialogical unionism" and/or other forms of motivation. Indeed, the failure to address the extent to which institutional and labour law configurations may determine (or at least restrict) underlying union and worker behaviour is a general shortcoming of a political economy approach. For example, the phenomenon of the "bureaucratization of unions" identified by political economists suggests the importance of labour laws in moulding and determining union and worker behaviour, which is a significant element in the structure of class relations. This suggests something of a contradictory tension in this literature, and expands the space for (historical) institutionalist claims about feedback effects from current laws and institutions into "underlying" political structures.

Overall, there is significant cause for questioning the challenges to the institutionalist thesis of the importance of labour law, and there remains significant theoretical space for this perspective. Given the theoretical importance of union movement size and strength in the determination of underlying contours of class politics, the potential for direct impact of labour law on union growth makes labour law a centrally important institution to examine

when considering potential institutional impacts on underlying political power structures.

There is a fairly extensive “institutionalist” literature identifying the importance of labour law in explaining patterns of union growth in North America. Weiler’s (1983, 1984) extensive comparison of the rules, procedures, and enforcement mechanisms involved in union certification illustrated the relatively more supportive (or less coercive) aspects of the Canadian regime and provide one useful insight into sources of different union certification patterns in the two countries. Bruce (1990) performed a similar analysis of unfair labour practice litigation and enforcement mechanisms in the two countries and concludes that the Canadian institutions allow for more effective and faster enforcement of restrictions on illegal forms of employer activity and resistance to unionization.

Rose and Chaison (1990) analyzed union organizing patterns in Canada and the U.S. between 1976 and 1985 and find that Canadian unions significantly outperformed their American counterparts based on several different indicators, and that the differential in performance increased in the mid-1980’s. They concluded that differences in labour legislation and employer resistance⁵ were relevant to both the level and success of new organizing.

Riddell (1993) performed multivariate regression analysis on comparable micro-data from both countries and concludes that structural differences between the two economies only account for about 15% of the inter-country differential in union coverage. Riddell’s analysis also suggested that there was little support for the hypothesis that the union density gap was the result of allegedly more pro-union social attitudes in Canada, since public opinion data suggested that attitudes were very similar across the two countries. Similarly, the “union substitutes” thesis was challenged, since the extent of social welfare

⁵ The level of employer resistance is conceivably a function of the existing labour law configuration.

development in Canada was still relatively higher than in the U.S. Thus, the opposite pattern of “union substitutes” existed than what theory would require to exist in order to be a potential explanator. Through this logical process of elimination, Riddell suggested that alternative laws and policies may be an important factor in explaining the divergent union density patterns.

In a subsequent study, Riddell and Riddell (2001) examined the decline in unionization in Canada and the U.S. from 1984-1998 in order to determine the extent to which structural and non-structural factors account for the decline in the respective countries. They concluded that structural factors account for only about 20% of the decline in the U.S. and virtually none of the decline in Canada. The remainder of the decline was due to a decrease in the likelihood of a worker with given characteristics being unionized, which they claimed would include changes in labour laws, increased management opposition to unions, and growth in union substitutes. While it is possible, as the authors suggest, that changes in laws and policies were relevant during this period, the authors did not consider the further possibility that unchanging labour laws and policies were nevertheless important contributors to the decline in density through their interactive effects with other phenomena, as discussed earlier in this chapter.

Kumar (1993) compared union density and organizing patterns in Canada and the U.S. and found a more robust and stronger labour movement in Canada. Kumar suggested that this is largely the result of institutional and qualitative differences in the labour movements of Canada and the U.S., but also suggested that differences in legal and public policy environments were important factors as well.

Gilson and Wagar (1995) analyzed certification success rates in Nova Scotia, a province with relatively regressive labour legislation as compared to other Canadian provinces, from 1979-1988. They found that success rates were quite high and significantly higher than those in the U.S., even in the private sector.

They attributed this finding to superior organizing ability of Canadian unions and argued that it contradicts Troy's convergence thesis. Arguably, despite the authors' claims that Nova Scotian labour laws were relatively regressive, these results may also be interpreted as supporting the view that the labour law environment in Nova Scotia was still an important factor in determining superior organizing performance relative to the U.S.. Despite the ad hoc labour law weaknesses pointed out by the authors, it is arguable that the labour law regime in place in Nova Scotia during that period was still significantly more conducive to organizing activities than that which existed in the U.S.⁶

Rose and Chaison (1996) compared the effects of shifts in union density on organizing performance in the U.S. and Canada and found that declining union density in the U.S led to reduced organizing performance, generating a downward cycle in union density. In Canada, however, unions avoided such a downward cycle, in part by maintaining much more aggressive organizing efforts. The authors suggest that the ability of Canadian unions to regenerate their membership ranks is linked to the existence of a legal environment that is more supportive of unionization, and that this legal environment is itself the product of relatively greater union performance and political influence in Canada, which is a claim consistent with the historical institutionalist perspective.

Johnson (2002b) combines results from two of her prior studies in order to consider the question of whether the form of union recognition procedure – card check or mandatory vote – has had a significant impact upon the Canada-U.S. density gap. She constructs a simulation model in which certification success rates are everywhere reduced by 9% across the board under mandatory votes, based on the results from Johnson (2002a), and then calculates the contribution of the different recognition procedures to the overall density gap. She finds that

⁶ For example, despite the existence of a mandatory vote, the regime ensured that such votes occurred within 5 days of the application for certification (Gilson and Wagar, 1995, 71). As well, the rules and processes of unfair labour practice regulation were apparently significantly different from those in the U.S.

the recent increased use of mandatory votes in several Canadian provinces has narrowed the density gap by a full 1 percentage point, and that the differences in recognition procedure in Canada and the U.S. had accounted for about 3 to 5 percentage points of the gap in 1998. Johnson's analysis supports the relevance of labour law, although it may suffer from an oversimplification of differences in labour law environments. For example, a switch to mandatory votes was only one of several significant changes to the labour law environment made in 1996 in Ontario. Thus, her results may tend to exaggerate the specific importance of the choice between votes or card-check, since other shifts in the labour laws often take place at the same time, as they did in Ontario in 1996.

Aside from these comparative studies, there have also been a large volume of empirical studies that focus on the determinants of U.S. density levels, the propensity of individual workers to unionize, and on U.S. union certification success rates⁷. There have been relatively fewer non-comparative Canadian studies of aggregate union growth in Canada (Swidinsky, 1974; Bain and Elsheikh, 1976; Kumar and Dow, 1986). One such study on aggregate national patterns of union membership growth addressed the question of the relevance of labour law and policy (Kumar and Dow, 1986), and concluded that changes to labour laws in 1944 seem to have had a positive impact on subsequent union growth. Yet, the cross-provincial, aggregate national scope of this study arguably weakens its ability to more closely assess the relationship between labour law and union growth given that variation and fluctuation in labour law takes place at the provincial level. Other Canadian studies have focused on this relationship by analyzing relevant union growth indicators at the provincial level (Martinello, 1996). Riddell (2004), for example, finds a strong relationship between the type of certification procedure established by labour law as heavily influencing certification success rate outcomes in British Columbia since 1978.

⁷ See Fiorito and Greer (1982) and Stepina and Fiorito (1986) for reviews of this large body of empirical literature. As well, see Slinn (2003) for a further extensive review of this literature, particularly as it pertains to the determinants of worker voting behaviour and certification application success.

Other research has focused specifically on the Ontario context. The literature that has assessed the relationship between labour law and union growth within the context of the province of Ontario will be discussed in the next chapter, although suffice it to say at this point that there have been recent studies putting forth evidence confirming the importance of labour law regime shifts in Ontario since 1990.

This summary reveals that a large body of literature exists supporting the importance of labour law, both in affecting union growth within Canada and the U.S., and in explaining cross-national differences in union growth between Canada and the U.S.⁸ This dissertation is essentially supportive of this broader institutionalist thesis and contributes to our understanding of how labour law continues to have an important effect on union growth dynamics.

An important element of understanding the potential effect of the law is an understanding of the ways in which the law's effects are mediated and/or determined by the mode of union *behaviour*. In one sense, this dissertation takes the position that the qualitative nature of prevailing labour law will generally impact upon unions' capacity to organize workers, through the coercive regulatory controls that the legal/institutional framework places on this behaviour, and which partially determine the set of resource constraints and organizational capacities facing union actors in their efforts to expand⁹. To this end, this dissertation subsequently employs a theoretical model of union behaviour that is consistent with these assertions. Yet, it should be noted that there is considerable debate on the accuracy of alternative models of union behaviour, and the debate concerning the impact of labour law on union growth may also be

⁸ Godard (2003) provides a further supplemental summary of this literature supportive of this institutionalist thesis

⁹ It should be noted that it is possible to conceive of some union organizing activity taking place somewhat "outside" of certain institutional processes. At this point, I am suggesting that all organizing activity, even that which is designed to "skirt" certain institutional processes, nevertheless takes place "within" the institutional framework broadly defined.

partially understood as being dependant upon an underlying debate over alternative conceptions of union behaviour, given the potential mediating/determining aspects of union behaviour on the effects of labour law. Indeed, the debate raises the question of whether there are *invariant* effects of law at all.

It should be noted that in some literature concerning the impact of labour law on union growth, it is arguable that a “model” of union behaviour is not explicitly developed in great detail¹⁰. For instance, in much of the quantitative empirical analysis aimed at locating the “determinants”¹¹ of union organizing activity through empirical methods, there is usually some *a priori* discussion of why different candidate variables might be considered empirical determinants of organizing activity, but it is often the case that individual variables are not incorporated into any *a priori* theoretical model or framework of how unions behave.¹² Fiorito and Greer (1982) provide a useful summary of a large body of research in this “empiricist” methodology where they note that many studies seem to have confirmed through these methods the importance and correct sign of several variables or “determinants” of union organizing behaviour, although they note that there remains uncertainty and conflicting results in the case of

¹⁰ For instance, although I have argued that Troy’s convergence thesis, and his extended thesis about the inefficacy of labour law and policy would seem to be based upon a familiar neoclassical model of behaviour, such assumptions are not entirely explicit in his work.

¹¹ A more appropriate term here would be “correlates” given that quantitative research results reveal correlation and not causation. Hence, the use of the word “determinants” implies a theoretical analysis of underlying causal mechanisms that is often lacking. Not all empirical quantitative work uses this word however, as some researchers claim to be seeking the “correlates” of union organizing activity or organizing success.

¹² See for example Heneman III, Herbert G. and Marcus H. Sandver, 1989. “Union Characteristics and Organizing Success.” *Journal of Labor Research* 10 (1989): 377-389. While there is undoubtedly an argument to be made that there are linkages between union characteristics and organizing success, in my opinion these authors do not sufficiently develop their theoretical account of the causal linkages that give rise to their “candidate” variables selected for use in their regression equations. In my view, this gives rise to the selection of variables whose real meaning is highly unclear when these empirical objects are transformed into these quantitative variables. For instance, the binomial variable capturing the presence of an “organizing director” (either a zero or a one enters the equation) may be a very poor way to capture an increased organizing effort by a union.

many other variables¹³¹⁴. Fiorito and Greer conclude that since this literature has not yet fully and correctly revealed the determinants of union growth, “at present, there is *no satisfactory model* of union growth” (emphasis added). This statement reveals that what is understood as being a theoretical model of union growth in this type of research is an exhaustive list of correctly specified variables (“determinants”) whose values and signs are robust across different quantitative empirical studies. This dissertation, while employing quantitative techniques as a portion of its empirical *research design*, does so in an effort to explore the usefulness of an explicit theoretical model of union organizing behaviour.

Besides this empiricist literature, it is also possible to identify certain bodies of research that are indeed aimed at the development of a more explicit and extended theoretical model of union behaviour. The literature revealing explicit alternative theoretical models of trade union behaviour, and specifically *organizing* behaviour, can arguably be summarized as falling into three general “ideal types” of models: the *strategic choice* model, the *moral economy* model, and the *rational choice* model. This literature within these three broader ideal types will now be summarized briefly.

The Strategic Choice Model:

In apparent response to significant shifts in the industrial relations system and the decline of private sector unionism in the U.S, there emerged a body of research that challenged an alleged system orientation, or environmental determinism in industrial relations literature. Kochan Katz and McKersie (1986)

¹³ Critics of this “empiricist” methodological approach, such as those operating within the “theoretical realist” philosophy of science, have argued that this approach confuses statistical correlation with actual *understanding* of real world phenomenon (Godard, 1989). They propose that greater emphasis be placed upon the continual refinement of theoretical frameworks designed to improve our understanding of complex *causal mechanisms* involved in how and why unions behave as they do. This philosophy of science is also often referred to simply as the “Realist” orientation. See Sayer, (1984); and Shapiro and Wendt (1992). More specifically, Godard (1989) provides an example of a theoretical realist critique of this mainstream empiricist research methodology in industrial relations.

¹⁴ Slinn (2003) also provides a recent review of much of this literature.

have been credited with the development of this paradigm, referred to as the “Strategic Choice” model of industrial relations. A central premise in this model is that we must understand actor behaviour over time as being strategically selected from a *range* of potential *alternative and feasible paths* of behaviour at any given time and place. This contrasts with the rational choice approach in which strict rationality assumptions yield models of behaviour with tractable predictions about agent behaviour generally and in response to environmental phenomena. The strategic choice approach resembles that of researchers within political science and sociology concerned with emphasizing the extent and nature of actor *agency* vis-à-vis environmental *structure*. For the purposes of this dissertation, I refer to such literature concerned with understanding union actor behaviour in this manner as part of the “strategic choice” model, broadly defined.

It is important to emphasize that by using the term “strategic choice model” I am indeed referring to a model of behaviour rejecting environmental determinism, emphasizing the existence of alternative behavioural pathways. This is quite different from the meaning of popular phrases like “acting strategically” (i.e. with a plan) or so-called “strategic behaviour”. Such phrases would seem to include behaviour simply implementing a purely economically rational choice of behaviour, which would be consistent with environmental determinism and the rational-choice model of behaviour, discussed below.

It should be noted that Kochan, Katz, and McKersie (1986) had originally developed their “strategic choice” perspective as a model of *management* behaviour, since they argued that strategic managerial decision making had become the most important factor in the reconstruction of the industrial relations system in the U.S. Yet, the strategic choice model clearly applies to both management and union actor behaviour, and there is common emphasis upon the actor agency and environmental indeterminacy in research concerning both management and unions. For instance, literature concerned with more closely examining trade union characteristics and the relations between their behavioural

patterns and organizing success (Bronfenbrenner, 1997, 1998; Murray, 1990, 1998; Yates, 2000) is part of this ideal type. Much of this literature seeks to gain a greater understanding of which union organizing practices and techniques tend to help unions succeed in organizing (Bronfenbrenner, et al., 1998; Yates, 2000), and to understand how internal union structures tend to support a climate of successful organizing (Murray, 1990, 1998). Also falling within this ideal type is the work of Goldfield and to a certain extent that of Panitch and Swartz, given the emphasis that these political economy authors place upon the strategic choices made by actors in their specific historical contexts, from a range of alternative paths.

One of the most extensively developed, explicit theoretical frameworks concerning union organizing behaviour within this strategic choice ideal type is that of Lawler (1990). Lawler develops a model of internal union choice processes that generate a union's approach to organizing, based upon insights from organizational theory. This explicit "strategic choice" model of union organizing behaviour relies heavily upon the concept of organizational "resource dependencies" which suggests that the primary concern of organizational authorities is to protect the organization by maintaining coalitions of critical resource suppliers in the external environment. Viewed through this lens, union organizations are seen as being continually preoccupied with survival and the resolution of immediate crises. Union behaviour is not usually driven by the attainment of long term abstract goals, and in any case, long-term goal statements are often fashioned after the fact to justify and rationalize previous organizational action. Unions, as inherently political organizations, often suffer from inertia, and from internal paradigm construction that favours the status quo allocation of political power inside the union. Paradigms and internal understandings are rationalized after the fact, and rationality as it is understood in mainstream literature is largely absent. In fact, goals are necessarily ambiguous and ill defined as a consequence of maintaining internal power structures. Rarely are objectives or goals clearly defined in a way that might

threaten the power of those in control in the event that the goals are not achieved. Rather, comparisons with outside organizations may often serve as benchmarks and/or the basis for rationalizing existing and past behaviour. The true state of the organization's health, in terms of its relationship and bargaining power vis-à-vis its external environment is generally obfuscated.

Lawler suggests that the pattern of behaviour outlined in his framework creates strong tendencies in established union organizations to drift into complacency with their current status, and that this tendency creates a *bias against organizing*. Yet, the linkage between environmental or contextual circumstances and the union's behaviour are less *deterministic* here and depend more on the strategic choices of union leadership and its ability to manage transitions in organizational patterns in response to environmental circumstances. Thus, we may interpret Lawler's model as suggesting that the impact of an external phenomenon such as a change in labour law is *mediated* through a series of internal political processes, and that this mediating process may produce outcomes that sharply *diverge* from those predicted by rational choice theory. For example, a shift in the external environment such as a change in labour law might have little impact on a union, if that particular union was not at any time engaged in any extensive organizing effort close to its real potential effort. Similarly, labour law changes may also be exploited by internal leaders as a means of rationalizing ineffective organizational performance unrelated to the real difficulties of organizing. Or, in a more positive view, a shift in law and/or policy may serve as a rallying cry around which to generate the necessary internal organizational commitment to organizing. This last potential response to labour law changes is more consistent with the claims of Yates (2000) concerning the impact of labour law shifts in Ontario. Lawler (1990), however, is not as optimistic, providing his opinion that, while it is *possible* for unions to make conscious choices to re-invent themselves by aggressively expanding organizing efforts towards long term goals, there is consistently a great deal of inertia and resistance to these efforts built into the norms of union organizational behaviour. Thus, it is often the case that serious

efforts to increase organizing behaviour are short-lived and die a slow and painful death.

The central point of the strategic choice model – that union actor behaviour is chosen from a range of alternative potential responses, and thus cannot be predicted accurately by appeals to tractable models based upon strict rationality – has considerable merit. However, the question of *how* determinate or indeterminate certain environmental influences may be upon union behaviour remains problematic. Certainly, this perspective does not seem to suggest that environmental stimuli do not at all influence union behaviour, but rather suggests that strong tractability in predicted impacts is unrealistic and misconceived, for the reasons noted above. Thus, if this central theoretical premise of the strategic choice model is accepted, this does not necessarily provide a theoretical basis for entirely rejecting the influence of external phenomena such as labour law. While the strategic choice model emphasizes the continual range of feasible paths of behaviour, it risks overlooking the conceivable *reduction in the range* of alternative paths of behaviour that remain potentially and realistically available, across time and space, due to external environment shifts. Once the possibility of a reduction in the range of such possible choices is accepted, this opens space for conceiving of certain environmentally determined impacts on behaviour, depending upon the specific restrictions imposed. In Lawler's own terms, shifts in the environment will conceivably exacerbate internal problems of "resource dependency" vis-a-vis the external environment, and will both *necessitate* a response, and potentially *constrain* the responses available. Thus, the debate remains over what *extent* we conceive of such impacts as being *mediated* by the particular internal behavioural processes of the union. Relatedly, the question of the *level* of the analysis is important. It may be correct that the effect of a specific environmental phenomenon on any particular union is dependant upon the mediating effects of its internal processes, and that as a result there will be divergence in effects across unions. However, this does not rule out the possibility of being able to assess quasi-regular (non-universal)

effects of environmental phenomena, should the research be concerned with understanding such effects at some *aggregate* level, perhaps based upon the concept of an “average” effect upon unions after acknowledging the reality of divergent specific effects.

The Moral Economy Model

I credit Robinson (1990) for putting forth a seminal piece on what I refer to as the “moral economy” ideal type model of union behaviour. Robinson’s arguments concerning the (un)importance of labour law have been reviewed earlier in this chapter, but further discussion of his underlying model of behaviour is provided here. Robinson claims that in developing this theoretical framework, he seeks to remedy an observed lack of explicit micro-level behavioural modeling in neo-Marxist political economy literature.

Robinson argues that a key common element in most existing models of union behaviour is their failure to distinguish between *economistic* and *non-economistic* modes of behaviour, an argument that is reminiscent of Marxist and neo-Marxist (Gramsci, 1971) critiques of neoclassical political economy. He argues that there are two ideal types of unionism – “legalistic” and “moralistic” - driven essentially by two different modes of behaviour. “Legalistic unionism” is that type of union behaviour that is driven by economistic motivations and commitments. Legalistic unionism expands by seeking to appeal to notions of self interest held by workers and actors defined in economistic terms. Consistent with Olsonian rationality, individuals here engage in collective action based upon calculated self-interest, and therefore this form of unionism must often rely upon the device of “selective incentives” to encourage collective action (Olson, 1965). This form of unionism generally seeks to foster participation in the collective endeavour primarily by

attempting to provide individual union members with tangible improvements to wages and other economic benefits¹⁵.

In contrast, “moralistic unionism” is that type of union behaviour driven by non-economistic, moral commitments. This type of unionism does not seek to utilize an appeal to the economistic self-interest of members but rather appeals to and fosters in current and potential members an underlying moral commitment to others. Moral appeals to *altruism* and *solidarity* are relied upon more than appeals to self-interest, and thus the role played by economic selective-incentive payments to members is low. Rather, a moral basis for the imperative of organizing the unorganized is articulated as a primary motivation for organizing.

Robinson argues that both of these ideal types of unionism may exist simultaneously, but that they respond very differently to changes in their external environments. He links the development of the Wagnerist model of labour law in North America with the growth in legalistic/economistic unionism, arguing that the legalization of union behaviour has created a self-reinforcing bias in favour of unionism based upon this underlying behaviour. He accepts that the underlying motivations within legalistic unionism may very well provide some support for union organizing efforts when the overall environment is otherwise highly supportive of union growth. However, he makes the important claim that the economistic motivations underlying legalistic unionism are not a good basis for generating organizing effort when the environment becomes more hostile. Moralistic motivations and commitments are a superior basis for organizing effort in a more hostile external environment.

Robinson’s claims about the irrelevance of labour law contradict his view that the legal regime has generated and re-inforced legalistic/economistic behaviour,

¹⁵ Technically, the term selective incentives refers to any form of good provided directly to individual participants in exchange for participation in or contribution to the collective endeavour. They are designed to increase the individual marginal benefits, from a rational-choice perspective, of participating in the collective endeavour.

which is at least indirectly responsible for the weak state of union growth in the U.S. While his basic argument about the existence of two different modes of behaviour may have some merit, it is inappropriate to assume that the sole or primary function of the North American labour law regime is to support the use of economistic “selective incentives” central to legalistic unionism. It is even more extreme and inappropriate to assume that this is the central function of a labour law regime *in general*, regardless of its particular configuration. Labour laws and their differences amount to more than mere variations on some sliding scale measuring the extent of support for selective incentives. Further, labour laws may have important implications for the generation of these two competing forms of micro level behaviour. In other words, the nature of prevailing labour laws may determine the extent to which moralistic unionism prevails. Robinson argues that the decision whether to engage in a moral commitment is not influenced by the labour law regime because the regime can only provide more or less support for economistic motivations. He cites empirical support for the proposition that where individuals are paid to engage in moral behaviour, they will quite often engage in a reduced amount of this behaviour, because the receipt of payment has fundamentally and qualitatively transformed the act. The question to be moral or not, therefore, stands separately, and on its own. Yet, this reasoning is tautological in that it is based entirely upon the assumption that labour laws only influence behaviour in one way, which is by supporting union’s uses of selective incentives.

Robinson’s conceptual oversimplification of the properties of labour law regimes lies at the root of his conclusion that labour law differences do not “matter”. Even if Robinson is correct that people do not generally engage in moralistic behaviour in search of economic payment, a labour law regime nevertheless has numerous properties which may conceivably effect moralistic behaviour. For example, it is possible to conceive of different labour law configurations facilitating different degrees of coercion or repression of worker *activism*. Properties of labour laws may significantly impact patterns of communication between workers, unions and

management. Different properties may affect types of emotional experiences workers face, including the extent of fear, coercion, and deprivation that individuals confront if they engage in visible forms of activism. These examples suggest that labour laws may directly influence the generation of “dialogical unionism” (Offe, 1985), and that Robinson’s argument that the claim that labour law “matters” is dependant upon a model of “economistic” unionism is unjustified.

The Rational Choice Model

One of the earliest explicit models of trade unions as *rational* actors is that of Berkowitz (1954). In this seminal paper, Berkowitz argued that unions could be considered as rational economic actors engaged in an activity similar to that performed by modern business organizations, namely the sale of a “service”. This service is union membership and the corresponding employment representation and security that this membership provides. Berkowitz (1954) argued that even though the fact that trade unions act as agents involved in broader social and political movements places limitations upon modeling them as rational economic actors, there are nevertheless benefits from doing so. In particular, he argued that the need for trade unions to successfully sell their services made them analogous to business organizations because union activities could not be undertaken without regard to the *real economic costs* involved in providing these services. As a result, some degree of rational calculation and comparison of costs and benefits to the union organization is an inevitable part of union activity.

Berkowitz classifies the costs of providing union services into two different categories – the costs of *organization* and the costs of *administration*. He argues that the costs of organizing are akin to *quasi-fixed*, sunken investments in a new enterprise, and the costs of administration are the ongoing day to day costs of maintaining the new enterprise, which vary (in part) with bargaining unit size and with the need to select a level of administration services that will keep a majority of the members of the particular bargaining unit in support of maintaining union

membership voluntarily¹⁶. Assuming a random distribution of worker preferences for unionization across firms and potential bargaining units, he points out that it will certainly take greater investments in organizing costs to successfully persuade workers to unionize in some target bargaining units than in others. Based on the magnitude and division of expected costs in these two categories, compared to the expected levels of dues “revenues,” unions will rationally choose whether or not it is economically feasible to organize workers in particular target bargaining units. This results in a rationalization of organizing resources towards the most “profitable” target units.

Berkowitz admitted that reality of course was far more complex than portrayed in his model, and noted how in many circumstances, these conditions would not hold. He noted that the existence of imperfect information, uncertainty, and qualitative heterogeneity of workers preferences in the real world makes this form of analysis less realistic. Further, the existence of internal organizational political processes raise doubts as to whether unions operate according to *any* rational economic calculus whatsoever. Yet, despite these acknowledged problems, Berkowitz argued that the issue of union resource allocation was sufficiently important in terms of *organizational survival* that the patterns of rational calculation that he identified could *not* be entirely suppressed or displaced over time. Organizational survival imperatives over time force unions to engage in the patterns of rational calculation that he outlines.

Subsequent developments within the rational-choice paradigm seem to have de-emphasized the qualifications Berkowitz’ accepted as limiting the utility of this approach. Berkowitz may be understood as advocating somewhat of a “weaker form” of rational-choice modeling, in which we may assume that unions do undertake *certain basic* economic calculations in order to try to prevent the

¹⁶ A portion of Berkowitz’ discussion here is devoted to calculus comparing the level of services to the number of workers who will maintain membership post-certification. As this thesis will be concerned with modeling the state of affairs in Ontario, this aspect of Berkowitz’ reasoning is not

wasting of union resources within the organizing process. This is referred to as a “weaker form” of rationalist modeling both because he acknowledges the limits to this behaviour, given the unique status of unions, and because he does not suggest that unions seek to “optimize” or “maximize” any particular outcomes, which would in turn require assumptions about some pre-existing utility or preference function. Rather, Berkowitz may be interpreted as putting forth the more modest claim that, in their unique status and behaviour, unions seek to prevent the violation of certain *basic economic constraints* in their decisions about union organizing.

Subsequent theoretical development within the rational choice ideal type can generally be described as involving a “stronger form” of rationalist modeling. Block (1980), for example, claims that Berkowitz “fails” to develop a “rigorous” model of union organizing behaviour. Block seeks to build upon Berkowitz’ model in a manner that generates certain mathematically tractable conclusions about unions’ allocation of their resources. In Block’s model, union leaders, responding to membership pressures, seek to maximize the utility of the aggregate membership. It is assumed that expending resources on union *organizing* generates a return to members in the form of improved wages, benefits and rights under their collective agreement due to the union’s increased clout at the bargaining table that comes with expanded union coverage within that union’s particular industrial jurisdiction. Alternatively, resources spent on union *administration* generates returns to members in the form of improved enforcement of their existing wages, benefits, and rights under existing collective agreements. Importantly, Block assumes that the marginal increase in bargaining power *declines* as the jurisdiction becomes more organized, and thus the union’s membership will demand a relatively greater commitment of union resources to the organizing function when industry coverage is low, and this demand for organizing will decrease as coverage increases, in favour of

really relevant, given that the existence of mandatory dues checkoff provisions in collective agreements is the norm in Ontario.

expending resources on administration. A further assumption is added, with little justification, that the *probability of winning an election* in an organizing drive *decreases* as coverage increases, meaning that the expected benefits of organizing in the form of additional union dues from the new members also decreases when coverage is higher. Based on this set of assumptions, the model yields tractable predictions that unions that operate in jurisdictions where coverage is high will engage in relatively little organizing activity because the marginal utility to its membership of expending resources on organizing is lower than the marginal utility from expending resources on administration. It should be noted, of course, that an additional assumption here is that unions only organize within a particular jurisdiction. This rather strong assumption underpins the models use of a smooth continuous marginal benefit function for organizing based upon the extent of union coverage.

There are significant problems with the application of strong-form rationality to the modeling of union behaviour, as exemplified by Block's model. The desire for universal laws and tractable predictions – such as the conclusion that unions will always organize more where coverage is low *ceteris paribus* – come at a high costs in terms of realism and usefulness. There are significant concerns about the stability of the underling processes that are assumed to behave in accordance with smooth, continuous, well-defined functions. A serious weakness is that this approach is dependent on the assumption that unions are essentially restricted to organizing within their “jurisdictions”.¹⁷ Much research suggests that “jurisdiction” is no longer a very useful concept given that many unions are organizing in several industries and sectors of the economy (Chaison and Dhavale, 1990; Yates, 2000), and given the existence of multiple unions competing for membership within most jurisdictions. Given the strong-form objective of optimizing membership utility, the model depends upon a smooth transmission of membership preferences, and on a set of well defined

¹⁷ This assumption is implicit and crucial given the assumed smooth, continuous function linking coverage and the marginal benefits from organizing.

membership preferences for benefits from bargaining power on the one hand and servicing expenditures on the other. The former are in turn dependant upon a smooth continuous function linking union bargaining power with coverage within an industrial jurisdiction that is assumed to be monopolistically dominated by a union that is itself wholly limited in its activities to this jurisdiction. Thus, the price which is paid in the strong-form attempt to gain tractable predictions to much more specific questions about organizing behaviour seems, based on this conceptual critique, to be quite high.

Indeed, this conceptual critique of this strong-form approach is re-inforced by a series of research efforts seemingly designed to put aspects of this strong-form approach to test. Voos (1983) examines union organizing patterns and data on expenditures to test how closely it conforms to rational cost/benefit calculation. Using certain available data on union organizing expenditures in the US for a number of unions, she develops a model in which the amount of new organizing is a function of the amount of resources a union spends on organizing and on the size of the union's potential organizing jurisdiction. Using regression, she estimates that the marginal cost of organizing one new worker ranges from about \$375 to \$1235. She then looks to the existing econometric studies on union wage effect for estimates of the marginal benefits to the union of organizing a new worker. Applying strong-form, marginalist logic, the union wage effect would then represent the average increase in the prevailing wage in the industry as a result of an increase in organizing. Thus, based on these studies, she generates an estimate of the marginal benefits to unions of organizing a new member, assuming that unions were to calculate the discounted value of wage increases for its membership, and that this represents the primary marginal benefit gained by organizing new members. The results are very consistent: in 19 of 20 industries, the marginal benefits from organizing calculated in this manner *significantly exceed* their corresponding marginal costs. This result creates a puzzle as to why unions had not significantly expanded organizing programs, given the presumed rational expectation that doing so would be marginally

beneficial for their respective memberships. Voos (1983) suggests that one explanation for the puzzling result is that there may be problems of accuracy and meaning attached to the empirical variables. However, more fundamentally, she suggests that the results of this simple experiment challenge the usefulness or appropriateness of models of union organizing based upon a rational marginalist cost/benefit analysis. She suggests that, given the organizational and political nature of unions, it may be that these organizational political processes consistently tend to generate outcomes in which unions spend *less* on organizing than would seem to be in the rational self-interest of the membership.

In a subsequent study, Voos (1984) tests the assertions in the literature at the time (Block, 1980, Freeman and Medoff, 1984) that during the previous few decades union organizing efforts and resource expenditures in the U.S. had declined, and that this decline in organizing expenditures was at least partially responsible for the observed decline in union density. This alleged decline in real organizing expenditures, if it did in fact occur, might conceivably be explained somewhat by Block's model's predictions of such a decrease when union coverage was high. Through analysis of various indicators of organizing expenditures, she finds that from 1953-1977 union expenditures on organizing in the US *actually increased substantially in both nominal and real terms*. Further, these indicators of organizing expenditures increased relative to the growth in the target populations. The only indicator of organizing expenditures that appeared to decline was the proportion of organizing expenditures as a percentage of total union expenditures, towards the end of the time period of the study.

Voos (1987) further challenges Block's "saturation thesis" by testing for an empirical correlation between a union's organizing expenditures and the extent of coverage in the union's primary jurisdiction. Voos finds some support for the proposition that as coverage increases, unions tend to devote a smaller *proportion* of their overall budgets to organizing. However, she found that *nominal* organizing expenditures within jurisdictions actually tended to increase

as coverage within the jurisdiction increases. This key finding held across a broad range of density levels. She further points out that the estimated regression equation suggests that the “critical levels” of coverage – the point at which the equation predicts organizing expenditures will actually reach their maximum - are at *very high* levels of density, often around 76%, and that most unions operate at levels well below these critical levels of coverage. These results reinforce the weakness of the strong-form rationalist approach and bolster the conceptual critique provided above. Thus, this modeling approach is also rejected as being inappropriate.

Based on this discussion, this research will rely upon a model based upon weaker-form or “bounded” rationality, similar to that originally put forth by Berkowitz. Farber (2001) employs a very similar model in his analysis of representation elections in the U.S. He develops a simple model of a union’s decision whether to request a representation election in a particular unit, and the model assumes that unions will attempt to organize new units whenever and wherever there is an expected marginal positive benefit to doing so, regardless of jurisdiction. Farber develops this model to address the narrow question of why union election success rates in the U.S. are consistently lower in larger bargaining units than in smaller ones. His model suggests that, since there are fixed costs of organizing and administering any bargaining unit (a la Berkowitz) the “external” benefits of organizing to the union organization are greater in larger units than in smaller ones. Farber argues that this explains why unions lose elections more often in larger units than in smaller ones – unions rationally choose to spend more time and resources trying to organize large units, pursuing the larger gains from such, even where the real probability of success is lower. This dissertation employs a model of union organizing behaviour intuitively similar to Farber’s, which will be applied to the institutional context in Ontario in the next chapter.

The above review of alternative approaches to modeling union behaviour suggests that while there are good reasons for avoiding strong-form rationality assumptions in modeling union behaviour, there remain significant and unique advantages to the “bounded rationality” approach. This approach is significantly less subject to the critique of rational-choice modeling put forth in the strategic and moral choice models, while retaining its own independent strengths and unique potential insights. Overall then, the literature review provided in this chapter locates this research within the broadly defined institutionalist paradigm, given the acceptance of the basic premise that institutions such as labour law regimes have independent impacts on important outcomes like union growth, and this research further explicitly embraces the relative advantages of a bounded rationality model of union organizing behaviour, while attempting to remain sensitive to the critiques of the strategic and moral choice models.

Thus, the model underlying this research includes the following intuition. Unions are assumed to respond to shifts in the expected costs and benefits of engaging in alternative types of activities with a significant degree of regularity, generating discernible patterns of behaviour. Shifts in the external labour law environment and anticipated managerial responses to the new environment have the capacity to adjust the expected costs and benefits of alternative activities confronting unions. As a result of sufficient regularity in engaging in “bounded” rational cost-benefit calculations, it is possible to identify patterns in organizational behaviour based upon these calculations. Where the legal environmental changes impose resource costs and benefits on union actors’ behaviour, it is possible to observe patterns of rationally calculated responses. In particular, shifts in labour law are capable of adjusting the costs and benefits of various activities such as organizing activities generally, targeting particular types of bargaining units, and engaging in related forms of activity such as litigation over unfair labour practice activity. The assumption that unions engage in the “optimization” or “maximization” of some well defined “preference function” is rejected, which is consistent with the rejection of complete environmental determinism. Yet, it is

accepted that unions do engage in some simpler types of cost-benefit calculations. In particular, in the selection of target bargaining units, unions regularly apply a basic economic decision constraint based upon the concept of economic *feasibility* in allocating resources to organizing and in the selection of target bargaining units. Feasibility is here defined as the existence of greater expected economic benefits than costs in organizing a target unit, which is similar to the decision constraint used in Farber (2001).

Further, unions' bounded rational calculations may also be subject to a degree of *risk aversion*. It seems reasonable to assume *some* degree of risk aversion given that union executive decision-makers are elected by existing membership and would thus likely prefer to avoid the appearance that they are allocating resources to unsuccessful organizing efforts. This assumption is consistent with the strategic choice model developed by Lawler, and stresses the importance of internal union processes and potential union heterogeneity. To the extent that unions are risk averse, this tendency may exacerbate the patterns in their calculated responses to shifts in the legal environment.

Finally, shifts in the legal environment are also capable of adjusting the amount of aggregate resources *available* to the union overall by shifting the costs associated with simply maintaining the union's status quo in terms of size and power.

The next chapter concretizes this research based on this model by describing the Ontario context, and by elaborating on the specific aspects of the model (and hypotheses derived from the model) employed in this context.

Chapter 3 – The Ontario Context and the Empirical Research Design

This chapter begins with a brief description of shifts in the Ontario labour law regime during the decade of the 1990's. It is argued that given the extensive and multi-directional shifts in policy which will be outlined, Ontario provides a good “case” within which to analyze the relationship between labour law and union growth. Next, the basic theoretical intuition or “model” of union organizing behaviour discussed in the previous chapter is extended and made more concrete by developing certain specific deductions about the impact of particular labour law shifts on union and employer behaviour in Ontario, and a set of hypotheses are generated for testing through empirical research. Finally, there is a description of this dissertation's empirical research design, including both quantitative and qualitative techniques.

The Ontario Context:

The province of Ontario has a long history of gradualism and progressivism in its approach to labour law development and reform. Prior to the decade of the 1990's, reforms to the labour law regime in Ontario seemed to have been intended to gradually expand access of various employees into a system of regulated collective bargaining based generally upon the “Wagner” model, and to gradually increase the capacity of labour relations institutions such as the Ontario Labour Relations Board (the “OLRB”) and the labour arbitration system, to intervene in and mediate labour market outcomes. This gradualist policy history was associated with a certain degree of associational governance within labour relations as a “policy field”, given the history of tripartite representation within various institutional structures, and the degree of meaningful dialogue and consultation by government with actors within the labour relations policy community concerning the legitimate management of the policy field (Burkett, 1998).

This process of consultative gradualism in Ontario labour law reform was essentially disrupted in the decade of the 1990's, during which the labour law regime experienced a series of multi-directional and significant shifts. This process began with the passage of the "Bill 40"¹⁸ legislation by the NDP government in November, 1992. Despite certain consultation efforts, the legislation was passed with little consensus, generating efforts by the business community to obtain a repeal of the legislation in future. While there was considerable public controversy surrounding the Legislation's limited restrictions on employer replacement workers during strikes, this legislation contained numerous other shifts in the legal framework designed to improve access to collective bargaining itself, through numerous changes to the regulation of organizing and certification activity. Reforms that were theoretically directly related to organizing/certification activities included: reforms to increase access to and streamline the pre-existing system of "automatic certification" based on card-check; a reduced threshold level of 40% support amongst proposed bargaining units for access to a representation vote (where evidence of membership support was not sufficient for automatic certification); improved access to "remedial certification"; increased organizer access to private property in certain circumstances; access to certification for certain previously excluded employee groups; improved protections for fired organizer activists, including stronger interim relief powers for the OLRB; a flexible approach to the combining of full and part-time bargaining units; more expeditious administrative procedures, and expanded access to first contract arbitration, post-certification.

This pendulum swing was forcefully reversed when the newly elected Progressive Conservative ("PC") government responded in kind with its passage of the "Bill 7"¹⁹ legislation in November, 1995. Changes to labour laws under this PC government were part of a broader neoliberal policy agenda that involved

¹⁸ S.O. 1992, c. 21.

¹⁹ S.O. 1995, c. 1, Schedule A.

significant reductions in taxes, social transfers, and public sector employment²⁰. The change to the labour law regime under Bill 7 that has been given the most emphasis in prior research (Johnson, 2002a) was the removal of the card-check system entirely and replacing it with a system of mandatory representation votes in every bargaining unit subject to a certification attempt. In fact, Bill 7 actually involved a far broader and extensive set of shifts in labour regulation than this single attribute. Indeed, most of the improvements to union and/or OLRB powers during the organizing/certification process instituted under Bill 40 were subsequently removed by Bill 7. Additionally relevant were new restrictions on OLRB capacity to regulate employer resistance behaviour, including a restricted scope for the granting of “remedial certification” in the face of employer unfair labour practices (“ULP’s”).

Subsequently, the PC government made yet further significant reforms to the labour law regime through “Bill 31”²¹ in June, 1998. Bill 31 is qualitatively a very significant piece of law reform in its own right. This piece of legislation completely removed the OLRB’s long-standing power to grant “remedial certification” in any circumstance, regardless of the severity of proven ULP’s committed by employers in relation to union organizing drives. Rather, the OLRB was increasingly directed by the statute to rely simply upon additional and subsequent representation votes as a so-called remedy for illegal forms of employer resistance²². This dissertation provides the first attempt to model the independent impact of the Bill 31 legislative reforms on union organizing

²⁰ For an overview of the PC’s broader agenda and its treatment of workers and unions overall during the 1990’s, see Panitch and Swartz (2003, chapter 9).

²¹ S.O. 1998, c.8.

²² Controversially, Bill 31 was passed one month after the Supreme Court of Canada rejected Wal-Mart Canada Inc.’s application for leave to appeal the Ontario Court of Appeal’s refusal to interfere with a decision by the OLRB in which it certified a bargaining unit of Wal-Mart employees in Windsor, Ontario by relying upon this previous Remedial Certification power. As a result, Bill 31 has been referred to by some critics as the PC government’s “Wal-Mart amendment”. See “Wal-Mart’s challenge to certification fails,” *Lancaster’s Labour Law News*, Vol. 24, No. 5/6, May/June, 1998.

activity²³. A review of some OLRB decisions under Bill 31 by Lebi and Mitchell (2003) suggests that the OLRB has not been inclined and/or able to provide alternative remedies under its residual remedial powers that would supplant this substantive legal power, or policy capacity. In other words, this statutory policy shift has certainly not been “undone” by interpretive functions of OLRB adjudicators.

The extensive changes involved in these three major pieces of legislation are summarized in somewhat greater detail below in Table 3.1, as well as some additional changes to the labour law regime that were also instituted by other pieces of legislation. For example, Bill 139 passed in December, 2000 extended the previous one year bar on re-applications to the OLRB following a failed certification attempt to all other existing unions as well. Thus, under Bill 139, if a union’s certification application was dismissed, this unit of employees was effectively forced to remain in non- union status by law for at least one year. Bill 139 also mandated that employers must distribute and post, in every unionized environment, a “guide” to union decertification that was to be prepared by the Ministry of Labour, and created more onerous rules on the holding of union strike and ratification votes. Bill 69, passed in late 2000, applying primarily to the construction industry, involved new rules controlling for the timing of bargaining and strikes in the residential sector, and further restrictions on the Board’s power to make related employer declarations.

²³ Lebi and Mitchell (2003) provide a few annual statistics from the OLRB’s Annual reports suggesting that certification activity may have fallen since the passage of Bill 31, but there is no rigorous or extensive quantitative analysis of these figures.

Table 3.1 – Aspects of Bill 40, Bill 7, Bill 31, and other Legislation

Bill 40 (Nov. 1993)	Bill 7 (Nov 1995)	Bill 31 (June, 1998)	Other
Easier access to "automatic certification" based solely on membership evidence ("cards"). Threshold support required for vote lowered to 40%. Reduced effect of anti-union petitions and membership revocations. Removed requirement for "purchase" of membership.	Mandatory vote certification system increasing Employer role and participation in certification process. One year Bar upon re-applying after loss.	Complete removal of OLRB power to grant Remedial Certification.	Bill 139 - extension of 1 year bar after failed cert to all other unions
Increased access to "ULP Certification" by removing requirement of "sufficient membership support" in such cases	New restrictions narrowing power of OLRB able to grant ULP Certification in face of Employer illegality.	Further restrictions upon power of OLRB to grant lesser remedies (eg. 2 nd vote) in face of Employer illegality during Organizing and Certification process.	Bill 139 – requirement of all employers to post and distribute guide to decertification
Increased legal access of union organizers to various groups of employees previously inaccessible because of employer and 3 rd party power to exclude unions from private property. (eg. retail employees in shopping malls)	Restricted new rights of access to union organizers upon 3 rd party property	Restrictions on process of defining the "appropriate bargaining unit", effectively raise initial threshold requirements in many cases by requiring unions to establish more than 40% of their own proposed bargaining unit. Retroactive dismissal of Application for Certification if subsequently determined initial threshold not met.	Bill 139 – extended open periods for raiding during collective agreements
"Just cause" protection for employees fired post-certification and/or during strikes/lockouts where no CA in place.	Reduced rights of certain professionals, as well as domestic and agricultural workers to organize. Reduced access to combined units of full and part time workers.	Clarified reductions in OLRB power to grant substantive "interim relief"	Bill 69 – system of user fees for use of Board in construction arbitration cases
Easing of restrictions preventing creation of combined units of full and part time workers	Reduced access to substantive "interim relief" from OLRB to address employer illegal activity, specific prohibition on re-instatement of terminated employees	System of User Fees for use of OLRB by construction industry unions in OLRB's traditional role as grievance arbitrator in this industry	Bill 69 - new controls on timing of bargaining and strikes in residential construction
Increased expedition in OLRB hearings, OLRB powers to grant interim relief, particularly in the face of allegations of Employer threats, coercion, and terminations during organizing	Removed Bill 40 restrictions on replacement workers		
Restriction on non-employee replacement workers during strikes, and improved picketing rights	Increased restrictions on grievance arbitration process and powers of arbitrators, including strict and legalistic approach to procedural time limits		
Increased remedies through grievance arbitration, including powers of interim relief, and clarified power to apply employment related statutes.	Increased regulation of internal union affairs including mandatory strike and ratification votes		
Extended access to collective bargaining to certain previously excluded groups (eg. Agriculture)	Increased access to Union Decertification		
Improved "successor rights upon sale of business", especially in contract service sector.	New restrictions narrowing scope of granting First Contract Arbitration; reduced power of OLRB to determine outstanding terms when Duty to Bargain in Good Faith violated		
Expanded access to First Contract Arbitration	Removed successor rights in contract service sector.		

Other policy reforms involved the regulation of individual employment standards and human rights. Aside from what may be referred to generally as an erosion of employment standards regulation since the mid 1990's, there has also emerged a fairly distinct trend in the relationship between the labour relations regime and these individual rights-based regimes. Gradually, since the early 1990's, unions have assumed both greater powers and burdens in the enforcement of these individual rights within the labour relations sphere. This trend began in the early part of the decade under the NDP government. Under the Bill 40 legislation, the power of labour arbitrators to apply and enforce human rights and employment related statutes in arbitration proceedings was clarified and made more explicit. While this may have been desired by some unions as a way of improving their legal powers at arbitration in certain cases and may have potentially involved certain efficiencies, it may also now in hindsight be described as a "mixed blessing". Increasingly, the resource burden from enforcing these areas of regulation fell upon unions. The PC government was content to leave intact the powers of arbitrators to enforce these areas of employment law in this quasi-private forum, and thus Bill 7 did not erode this arbitral jurisdiction. Then, amendments to the *Employment Standards Act* passed in October of 1996 made it explicit that workers covered by collective agreements were no longer entitled to access the administrative enforcement provisions provided under that statute²⁴. Instead, these matters could thereafter *only* proceed by arbitration, the employee became bound by decisions of the union with respect to whether to seek enforcement of the employee's rights²⁵, and the union's behaviour remained subject to the Duty of Fair Representation ("DFR") mechanism in respect of these matters²⁶. A similar "downloading" of both powers and burdens took place with respect to enforcing the *Human Rights Code*, during the Bill 7 era. Policy

²⁴ *Employment Standards Improvement Act*, S.O. 1996, c. 23

²⁵ *Ibid.*, section 18.

²⁶ *Ibid.*

changes increasingly blocked unionized employees from accessing the enforcement procedures at the Human Rights Commission, and directed these matters into the quasi-private realm of labour arbitration. Again, unions remained bound by the statutory DFR mechanism in relation to employees' complaints concerning allegations that their individual human rights had been violated in the workplace, and perhaps that a remedy had been insufficiently pursued by the union.

Overall, this gradual shift in regulation which occurred across *both* the NDP and PC governments expanded the purview of the quasi-private labour arbitration system and the scope of issues and disputes that must be directed to it (MacDowell, 1998). A legitimate interpretation of this policy shift is that the trade union in Ontario has been increasingly transformed into a quasi-regulatory agent of the bureaucratic state. The state has increasingly directed the union into the role of administrative enforcer of its individual-rights-based legislation, and there seems to have been increasing state pressure on the union to channel its scarce resources into performing various regulatory tasks directed by the state and/or which the state had previously performed itself to a greater extent. The new legal duty upon the union to be "proactive" in pursuing and defending individual human rights in the workplace suggests that the scope of state review of these new regulatory chores has been gradually expanding as well (Adell, 2002).

These extensive and multi-direction shifts in the labour law regime make Ontario an excellent case in which to analyze the impact of labour law on union organizing. These extensive and multi-directional regime shifts will be analyzed through the lens of the model of union behaviour based on bounded rationality, developed in the previous chapter, which provides specific theoretical insights or *deductions*. The following relevant *deductions* flow from this analysis:

- 1) Following the shift from Bill 40 to Bill 7, there was *ceteris paribus* an increase in the real and expected *quasi-fixed costs* (hereafter “fixed costs”)²⁷ of successfully organizing any particular bargaining unit of a given size. This effect was subsequently exacerbated with the shift to Bill 31. The increased quasi-fixed costs of organizing a new unit include the costs of directing greater resources to both the organizing drive and a lengthier certification procedure. For example, union representatives must be present at the vote, and the whole gamut of potential disputes concerning voters lists and employer behaviour during the campaign is expanded. Generally, examples of such quasi-fixed costs are those associated with assigning organizing personnel, whether they be full or part-time personnel, for periods of time, along with compensation for associated expenditures such as travel, accommodation, and *per diem*,²⁸ as well as other physical resources used in campaigns such as campaign leaflets, literature, store-front campaign office space, other forms of communication media and the services of various expert personnel. Further, the time available for and the scope for employer resistance was greatly expanded by the regime shift(s), and previous disincentives to engaging in aggressive forms of resistance were reduced²⁹ by the removal of quick and inexpensive remedies available from the OLRB against illegal employer activity. Thus, it is deduced that underlying levels of employer

²⁷ The phrase “quasi-fixed” or “fixed” costs is used here in a somewhat more relaxed manner than is typically found in economics. It is understood that the strict definition of fixed costs in economics implies that there is no variability in costs as size changes. Here, it is understood that there is both a fixed and variable component, and that the fixed component may even vary slightly along bargaining unit size ranges. The simple point is that there is *some* fixed aspect to the organizing costs, they do not simply vary according to bargaining unit size.

²⁸ It should be clarified that the hiring of personnel by the union is *not in itself* understood as being a fixed cost of organizing. Rather, the theoretical model in this thesis understands the fixed cost as the *assignment or allocation* of staff to the *organizing of target bargaining units*, whether the staff in question happens to be hired as a full time organizer, a temporary organizer, or a servicing/administrative staff. Personnel may be hired and assigned to various duties, although it is possible that to the extent that a union hires dedicated full time or temporary “organizers”, their flexibility to allocate them to non-organizing work is reduced.

²⁹ One might even consider the removal of quick remedies against illegal activity such as firing union organizers as constructing positive *incentives* for employers to engage in such activity, rather than simply a reduced *disincentive*, given the potential that this will have such a significant

resistance increased with the regime shifts to Bill 7 and then Bill 31, which seems to be supported by some survey research on this question (Bentham, 2002), and that this further increased the quasi-fixed resource commitments necessary to overcome this employer resistance in each organizing drive.

- 2) Following the shift to Bill 7, and subsequently into Bill 31, there was an increase in the expected fixed costs of *administering* any particular bargaining unit of a given size. The increased costs of administering a new unit include the increased likelihood that under the Bill 7 and Bill 31 regimes, the union will have to fight a decertification application³⁰, and also new burdens involved in the ongoing representation of unions including the requirements for and restrictions on internal votes; an increasingly legalistic arbitration process with stricter rules on procedural time limits and interim relief; and the near complete downloading of employment and human-rights related laws onto the already expensive and privately financed arbitration system during the Bill 7 era³¹. This latter factor may also on its own, or perhaps in conjunction with general pressures on resources causing unions to ration their arbitration expenses, lead to increased pressure on unions from its own membership via the legal “Duty of Fair Representation” complaint mechanisms³², which in itself results in a further increased fixed cost.

impact on the outcome of representation votes and thus determine the ability of the employer to defeat the union and continue to reap the economic benefits of operating non-union.

³⁰ This expected risk seems to have been confirmed in prior research (Martinello, 2000),

³¹ For the regression analysis in this paper, the time difference of approximately 12 months between the passage of Bill 7 and these amendments fully completing this “downloading” is ignored. Thus, the interpretation of the results should be viewed with this slight caveat.

³² Section 74 of the *Labour Relations Act, 1995*. Further, if the theory herein is correct that the regime is causing an increase in DFR litigation that unions must contend with, this in itself is a further increase in the fixed costs associated with administering any existing or new bargaining unit, thus reinforcing or exacerbating the initial effect of the regime and leading to an even stronger “equilibrium-type” effect.

- 3) As a result of the deductions in paragraphs 1 and 2, the *risks* to the union of each unit not being economically feasible, such that the union may *recover* the quasi-fixed costs of organizing and administering a new bargaining unit of a given size, through subsequent dues collection, have increased. This risk is *further* exacerbated by the expectation that, after Bill 7 and even more so under Bill 31, success in the certification procedure itself is less likely³³ and, given increased employer resistance in general, this also implies greater difficulty in achieving a collective agreement post-certification. In Ontario, unions are only legally entitled to dues remittances as a minimum term *within* collective agreements, but generally do not receive stable dues revenues from a newly organized bargaining units until the point in time when a collective agreement is finally *concluded* with the employer.
- 4) Unions respond to these shifts in costs and risks in a bounded rational manner. The feasibility constraint causes unions to ration their efforts and resources, as an increasing portion of target bargaining units no longer satisfy this constraint.
- 5) The increased fixed costs of administering any particular bargaining unit of a given size have the potential to “crowd out” other forms of union resource allocations. To the extent that unions simply continue to engage in their *status quo* operations of membership servicing and administration for their *existing* membership, these increased administration costs have the potential to reduce spending on organizing activities.

These deductions are rooted in the concepts of bounded rationality and the significance of real-world resource constraints discussed previously. They may be understood as being potentially unobservable, or difficult to observe, yet they

³³ It is in fact this *post-application* process that is the specific phenomenon studied in models of “success rates” found in Slinn (2003) and Johnson (2002).

are fundamental underlying phenomena. Based on the model of bounded rationality and these fundamental deductions about these potentially unobservable phenomena, certain specific researchable hypotheses about the impact of these labour law regime shifts may be further derived. The following hypotheses, understood as being of a *ceteris paribus* nature, flow from this model and deductions, and will be a focus of empirical investigation in this dissertation:

- 1) *There have been fluctuations in certification success rates over time that were directionally correlated with the regime shifts.* Certain of these effects have been revealed in prior studies noted above, although the independent impact of Bill 31 has yet to be examined.
- 2) *There have been fluctuations in the aggregate number of new bargaining units being attempted and successfully certified over time that were directionally correlated with the regime shifts.*
- 3) *There have been fluctuations in the targeting of "small" target bargaining units and thus a corresponding fluctuation in the average size of newly certified bargaining units over time, that were directionally correlated with the regime shifts.* Given the increased fixed costs of both organization and administration for units of a given size, it is increasingly likely that smaller units will not be viewed as feasible after Bill 7, with further exacerbation of this effect upon the shift to Bill 31.
- 4) *There has been fluctuation in the relative targeting of public versus private sector target bargaining units, that was directionally correlated with the regime shifts.* It is expected that post Bills 7 (and 31) unions will increasingly seek to channel their organizing efforts in manners that avoid or mitigate the increased resistance power of employers. This suggests an increase in the propensity of unions to attempt to organize in the public sector. This is based on the assumption, which seems to have been empirically confirmed, that public sector employers do not engage in the same degree of outright resistance to unionization as do private sector employers (Swimmer and

Thompson, 1995), given that they face a different set of incentives and constraints.

- 5) *There have been fluctuations in union efforts to expand membership by “organizing the already organized”, or through “raiding” activities, that were directionally correlated with the regime shifts.* Raiding previously certified units becomes relatively more attractive as organizing new units becomes relatively more expensive in order to overcome employer resistance. This effect is expected upon the shift to Bill 7, with potentially exacerbating effects of subsequent shifts to Bill 31 and Bill 139. Raiding existing units has the relative attraction that the unit of employees has already cultivated a preference for, or culture of, unionization, and thus employer resistance is substantially less of a burden to overcome³⁴. It should be noted that this concept of the relative attractiveness of raiding assumes that the expected degree of resistance from the incumbent union does *not also* increase, *ceteris paribus*.
- 6) *There has been a post-Bill 40 increase in the level of Duty of Fair Representation complaints from union members.* This is the result of the increased burdens placed upon the arbitration system and the increased pressure upon scarce union resources as a result of the increased fixed costs involved in both organizing and administering bargaining units. Given that these shifts actually began under Bill 40, an increase in these complaints is expected upon the shift to Bill 40, with a subsequent increase upon the shift to Bill 7. To the extent that this hypothesis is correct, it reinforces and exacerbates the increased fixed costs of administering any new unit, creating an even stronger feedback or equilibrium effect.
- 7) *There has been an indeterminate impact of the regime shifts on Unfair Labour Practice complaint activity at the OLRB.* While it is deduced that underlying levels of Employer resistance are directionally correlated with the regime shifts, and actually increased under Bill 7 and again under Bill 31, given the

³⁴ This is not to suggest that somehow raiding has become more attractive than the organizing of new units overall. The argument is simply that the relative attractiveness of raiding to new unit organizing has increased by some positive amount.

corresponding policy shifts that have effected the incentives and disincentives to actually filing a complaint, it is possible that despite increased employer resistance and/or illegal behaviour, unions may be relatively less inclined and/or able to engage in ULP litigation given that both the potential remedies, and the resources available for such, have both *decreased*.

It should be noted that hypotheses 1,2, and 7 have been tested somewhat in prior research concerning Ontario, and this dissertation improves upon this analysis in several ways, which is discussed below. Hypotheses 3 through 6 are original, derived specifically from the model of union behaviour developed in this dissertation.³⁵

Research Methodology:

This section outlines how the dissertation operationalizes the investigation into the research questions and tests the accuracy of the above hypotheses. The section begins by providing a brief review of some of the prior empirical research on the impact of labour law on union organizing in Ontario. Subsequently, the research design is described. The research design is driven primarily by a desire to test the accuracy of these various hypotheses concerning the impact of labour law regime shifts on organizing behaviour in Ontario. To this end, quantitative empirical research techniques described below are employed to carry out this analysis. However, while this dissertation adopts a bounded-rationality model of union organizing behaviour, it is possible that impacts of labour law shifts on union behaviour are mediated (or exacerbated) by alternative models of union behaviour. In order to provide a further perspective on the accuracy of these hypotheses and the underlying model of union behaviour itself, certain qualitative research techniques are employed to examine union behaviour and responses to labour law shifts in Ontario in a more idiographic manner. Since the quantitative

³⁵ Slinn (2003) provides certain descriptive statistics concerning the public/private sectoral allocation in her sample of cases under Bill 40 and Bill 7, but her analysis focuses on success rates, and so she does not engage in rigorous analysis of this sectoral allocation over time.

research captures the net effect of changes in the law on organizing activity including the mediating or exacerbating effect of union (and employer) behaviour, the qualitative research may be understood as an attempt to get closer to capturing the “purer” effects of the law by additionally and directly examining its effects on union behaviour. The qualitative empirical research carried out is also described in greater detail below.

Prior Empirical Analysis Concerning Ontario

In an early paper, Piliotis (1975) examined the impact of labour law changes in 1971 that required an increase in the initial threshold support necessary for automatic (card-based) certification from 55% to 65%, and a corresponding reduction in the support necessary for an applicant to become entitled to a representation election from 45% to 35%. Piliotis concluded that the shift in law had an effect on union certification activity in that it resulted in a slight rise in the number of certification applications, although it also increased the number of certification applications in which a representation vote was required.

Thomason (1994) studied the impact of employer unfair labour practices on union certification success from 1982-1990. Thomason (1994) found that employer unfair labour practices reduced union support in certification campaigns in Ontario, but that their effect was far below that found in studies of the effects of unfair labour practices on certification in the U.S., likely due to the much more accelerated system of certification in Ontario relative to the U.S.

Martinello (2000) performed econometric analysis of aggregate certification activity testing for impacts of both the legal and political environment on a number of different measurements of organizing activity from 1987-1998. Martinello used monthly data from the Ontario Labour Relations Board (“OLRB”) collected by counting the number of individual certification applications disposed in each month listed in the OLRB Monthly Reports. He analyzed the impact of

the political/legal environment from 1987-98 on fluctuations over time in certification success rates; aggregate certification applications granted/disposed and the number of employees covered by such; unfair labour practice complaints; and fluctuations in decertification application activity. Martinello also used the following independent variables in each of the above regression equations:

-
1. Twelve (12) Monthly dummy variables, January to December, to remove seasonality or monthly influences
 2. Four (4) mutually exclusive dummy variables for government in power and public policy:
 - a) Months with NDP government in power only
 - b) Months with NDP government and "Bill 40" in effect
 - c) Months with PC government in power and Bill 40 in effect
 - d) Months with PC government and "Bill 7" in effect
 3. Free Trade Agreement era dummy variable – all months as of January 1, 1989.
 4. Rate of change in Ontario employment for month and preceding 3 months. Martinello argues that this captures the effect of the business cycle, and further argues that the lag effect built in here will compensate for the lag in using Applications Disposed as a dependant variable rather than Applications filed, which is not available in the monthly data.

Martinello found the combined government in power and public policy variables to be significant, with expected signs, across most but not all of the dependant variables. He also found that certification activity and success rates increased under Bill 40, but not under the NDP government alone, and suggests that this may have been a rational calculation on the part of unions to briefly withhold from organizing as they awaited superior legislation being put into place by the NDP. Under the PC government and Bill 7, certification activity and success rates both dropped. Similarly, decertification activity and decertification success rates declined under NDP/Bill 40 era but increased in the PC/Bill7 era. The free trade agreement dummy was also significant in its impact on the aggregate certification activity variable, but not on certification success rates. Martinello also found a positive relationship between the volume of ULP applications and both the NDP and Bill 40 variable and the PC and Bill 40 variable. He found a negative relationship between the PC and Bill 7 variable and ULP activity. Martinello

interprets these findings as suggesting that Bill 40 bolstered ULP complaints due to expectations of greater remedies, however, does not conclude that Bill 7 had the opposite effect. Rather, he seemed to interpret the corresponding decline in certification activity observed under Bill 7 as suggesting that Bill 7 has not been associated with an increase in employer opposition causing Ontario to more closely resemble the U.S. model. This dissertation will shed further light on this question of the relationship between employer resistance and organizing by analyzing the independent impact of Bill 31 - which was primarily aimed at removing OLRB remedies to employer ULP behaviour - on various indicators of organizing behaviour.

Johnson (2002a) performs cross-section time-series econometric testing of the impact of certification procedures on certification success rates in different provinces in Canada, including Ontario. She uses annual data on nine Canadian jurisdictions, for the years 1978 –1996. Two dependant variables measure certification success: “cert success rate”, which is the percentage of applications disposed that are granted, and the “win rate”, which is the percentage of all business establishments in a province that are certified in that period. The following independent variables used include: a separate dummy variable for each of mandatory votes, compulsory dues checkoff, and first agreement interest arbitration; the unemployment rate; the inflation rate; the union density level; the percent of workforce that is part-time; the percent of the workforce that is female; an “industry mix” variable³⁶; province specific time trends; and province specific fixed effects. In her “cert success” equation, she finds the impact of mandatory votes negative and highly significant (at the 99% confidence level). The value of the coefficient suggests that mandatory votes reduce certification success rates by 9 percentage points. The remaining policy instrument variables were not found to be significant. In the “win rate” equation, she finds again that the

³⁶ This variable does not simply measure the impact of shifts in industry share but is a calculation that weights the employment share of each industry by the union density of that industry in 1976. Johnson (2002a) found that this variable was positive and significant in her model of the *certification success rate* but negative and insignificant in her *win rate* model.

presence of mandatory votes had a negative and significant impact, and that compulsory dues check-off was also significant and positive. A limitation of Johnson's (2002a) analysis is that it tends to overly simplify the differences between different legal environments. For example, a change to mandatory votes was only one of several significant changes to the labour law environment made in late 1995 in Ontario under Bill 7. Thus, her results and interpretations tend to overstate the importance of whether mandatory votes are used or not, since numerous other shifts in the regime often take place at the same time, as they did in Ontario.

While accepting the general validity of the results in Martinello (2000), Yates (2000) argues that most prior analysis of union organizing in Ontario suffers from environmental determinism and fails to incorporate the insights of the strategic choice model of union behaviour. Yates claims that after an initial year or two of shock from the new legal environment, unions in Ontario have made strategic increases in their investments in and moral commitment to organizing. Through these efforts, unions in Ontario have recently been "staying" the decline in union membership and density. Yates' conclusion relies upon a combination of different methods, including: a review of descriptive statistics on certification activity; a survey of union organizers and representatives; interviews with union representatives, and reviews of union documentation. Yates reports consistent increases in union expenditures and organizing commitments throughout the 1990's by the following unions involved in very different sectors of the economy: The United Food and Commercial Workers ("UFCW"), the Canadian Auto Workers ("CAW"), the Canadian Union of Public Employees ("CUPE"), the United Steel Workers of America ("USWA") and the United Brotherhood of Carpenters and Joiners of America ("UBCJA"). Looking at the data on certifications filed by six large unions (the five above-noted unions, plus the Teamsters) she seems to suggest that there are patterns of initial decline in organizing activity and success rates after Bill 7, but that this decline seems to have been followed by a *resurgence* in activity and success rates in the next few years for each union.

Next, by looking at the proportion of the total certification activity that takes place within various sectors, she suggests that the data reveal a shift in the pattern of organizing efforts over the past decade away from the manufacturing sector and towards the service sector(s). One result she highlights in particular is that while activity in the private services sector accounted for only 17.3% of total certification applications in Ontario for the years 1981/82 to 1989/90, this rose dramatically throughout the 1990's to an average of 30.3% of total certifications. She further notes that in the year 1993/94 the private services sector accounted for an extraordinary 48% of all certification activity before the OLRB. Thirdly, based on a province-wide survey of union organizers, she points to shifts in union organizing strategies and techniques as being important indicators of organizing success. These conclusions echo those found in the work of Bronfenbrenner et al. (1998) on U.S. organizing techniques. She argues that Ontario unions have had greater success where they have paid attention to gender and have capitalized on an apparently greater propensity of women to vote in favour of union representation than men at present, and where they have undertaken certain specific techniques such as the use of insider organizing committees.

Although Yates does provide evidence of increases in organizing effort from certain selected, albeit large, unions, there is little evidence to support an argument that Ontario unions *overall* have improved their organizing performance since Bill 7 in the way she suggests, other than her reference to a single aggregate certification statistic for 1998/99, which represents an increase in volume over the last year of data used in Martinello's (2000) study. Further, it seems that some of the statistics Yates cites in support of her contention that organizing volumes have increased actually contradict her argument that environmental and institutional variables ought not to be viewed as being of paramount importance. For instance, she argues that unions have generated renewed success by choosing strategically to prioritize organizing in private services. However, it is important to take note that the statistics allegedly

revealing an extraordinarily high priority given to organizing in private services actually seem to be capturing activity during the years of the relatively more *union supportive* NDP/Bill 40 environment. Yates cites the fact that private services accounted for 48% of the overall number of certifications in 1993/94, but this is in fact an OLRB fiscal year that is right in the middle of the NDP/ Bill 40 era. Further, the ratio of private services to total certification activity declined steadily and significantly each year afterwards, and throughout the Bill 7 years, to 27% by 1998/99, the final year cited in her study. Yates does not mention this apparent subsequent decline in the “priority” of private services organizing which seems to have taken place precisely after the changes in the legal environment under Bill 7. It is at least somewhat problematic to cite these statistics as support for the significance of union strategic responses that were not determined by the legal environment. Another concern about Yates’ study is that the analysis does not address the possibility that the increased activity towards the end of the decade under Bill 7 may have been simply the result of cyclical economic factors. It has long been hypothesized that union membership growth tends to be pro-cyclical (Ashenfelter and Pencavel, 1969). It has been found that Ontario is no exception to this basic pattern (Martinello, 2000) and certain of the years of the Bill 7 regime in the 1990’s were also years of positive economic growth. There is no discussion of the contribution of economic growth or attempt to “control” for the impact of the business cycle or employment changes in any way. The research in this dissertation addresses the issue of a post-Bill 7 union response cited by Yates by examining aggregate volumes of organizing behaviour in the period of time subsequent to the Bill 7 regime era, and into the Bill 31 regime era, and by doing so in a manner that controls for other relevant economic environmental phenomena. Further, acknowledging the importance of Yates’ caution about environmental determinism, the qualitative research performed in this dissertation serves as a way to yet further refine the inquiry into whether and how labour law had an impact on union organizing behaviour, *despite* union strategic responses.

Slinn (2003) performs regression analysis of unit-level certification outcomes in 3567 non-construction certification application cases filed with the Ontario Labour Relations Board between 1993 and 1998. She examines the magnitude and significance of factors related to union certification success in certifications applications filed under the two certification systems of Bill 40 and Bill 7. Her results demonstrate that, overall, certification applications under Bill 7 were significantly less likely to be granted than under Bill 40. The results also suggest that this negative effect on the probability of certification success is greater for private sector certification applications than for those from the public sector. Further, multinomial logit regression analysis suggests that the increased probability under the vote system that certification applications will not succeed is partly due to the significantly increased probability that these applications will be withdrawn rather than being dismissed, compared to applications filed under the card system. The results also indicate that certification elections held under the Bill 7 vote system are significantly more likely to result in a union majority and a greater proportion of votes cast in favour of certification, compared to elections held under the Bill 40 card system. This result is fairly intuitive since previously, elections were held under the Bill 40 card system only in bargaining units where union support was insufficient to warrant automatic certification. Thus, this is something akin to a comparison of outcomes in marginal units under Bill 40 versus average units under Bill 7. This last result was found to hold for both public and private sector applications.

Slinn's results also suggest that various different factors are significantly associated with certification application and representation vote outcomes as between public and private sector applications, and as between applications filed under the card and vote systems. Slinn also provides certain descriptive statistics suggesting that the proportion applications filed involving public sector employers increased upon the shift to Bill 7. Under Bill 40, the public share was 28.2%, while under Bill 7, it increased to 36.2%. The shift in labour law environments also had a greater negative affect on the probability of certification

in private sector applications than in public sector applications. Slinn's calculation of these cross-sectoral shifts however involves a fairly short time horizon; her analysis does not include comparisons to the pre-Bill 40 era, and looks only at the first 3 years of the Bill 7 regime. Slinn also finds that larger units were more likely to be put forth in applications under Bill 7 than under Bill 40. This dissertation provides a different perspective on the sectoral allocation of organizing over time by using a longer period of study and by comparing these patterns before, during and after the Bill 40 era.

Overall, the research design, discussed more fully below, extends the literature in numerous ways. The analysis is guided by a model of bounded rationality used to develop seven hypotheses concerning organizing in the Ontario context, four of which have not been previously tested. This is also the first attempt to analyze the impact of the recent Bill 31 regime. The research also examines, through regression analysis, patterns in the sectoral allocation of union organizing, raiding activity, and DFR complaint activity. As well, the quantitative research in this dissertation makes various improvements upon prior related research. These include performing various data correction techniques such as removing raiding activities from certification data, and decomposing ULP data so that it more closely captures union complaints about Employer behaviour. The quantitative research also improves the analysis of the impact of economic internationalization and industrial structure in prior research through additional and improved control variables. Finally, this research, guided as it is by an explicit theoretical model, problematizes the question of union behaviour in response to labour law. To this end, the research also includes original intensive case studies of two specific unions (the Canadian Auto Workers and the United Food and Commercial Workers) and their organizing behaviour over time.

Quantitative Research:

Quantitative analysis was performed on numerous indicators of organizing, certification, and related activities revealed within data from the Monthly Reports,

and in certain instances, the Annual Reports, published by the Ontario Labour Relations Board. Monthly data was obtained on numerous variables for the years 1981 to 2002, inclusive, by counting the number of individual bargaining units (in the case of certification data) and applications (in the case of ULP and DFR data). Dependant variables were constructed as indicators of monthly certification success rates, aggregate organizing activity (certification attempts), aggregate certification activity in terms of new bargaining units and employees, Unfair Labour Practice complaint activity and Duty of Fair Representation complaint activity. The OLRB confirms that its Monthly Reports do contain a complete listing of all cases disposed of in some fashion by the OLRB, meaning that they provide a complete record of all certification activities for the province over the time period of study.

The monthly data obtained from the OLRB was corrected in a few different ways. One correction performed on this data set involved isolating bargaining units that were not “new” units but were re-certifications of existing units by unions, or “raids” as they are commonly known. A raid bargaining unit data set for 1981-2002 was constructed using data for the years 1987-2002 from a recent study of raid activity in Ontario (Martinello, 2003), supplemented by my own data collection from the Monthly reports for the years 1981-86 inclusive.

Unfortunately, the OLRB Monthly Reports do not indicate whether a certification application is a new unit or a raided unit. Nonetheless, the OLRB procedures allow for a reasonably accurate method of isolating raid units within the data. A raid unit is defined for the purposes of this research as a bargaining unit in which the OLRB Monthly Reports records illustrate: i) the *existence* of an intervenor (incumbent) union within the particular certification application pertaining to the bargaining unit, and ii) the *opportunity* of the employees to choose between the applicant (raiding) and the intervenor (incumbent) union³⁷. The opportunity to vote in this manner will be present in all raid cases given the OLRB’s consistent and longstanding practice in such cases of ordering a representation vote in

³⁷ This is the same definition employed in Martinello (2003).

which both of the incumbent and the applicant unions are listed on the ballot. The OLRB has confirmed that this is likely the best method of isolating raid cases within the data (Stelmaczinski, 2003). The ability to correct the data for raids in this manner is useful in that it allows for more precise testing of the impact of changes in the legal and political environments upon aggregate levels of successful *new* organizing. It further enabled the researcher to construct an additional dependant variable measuring aggregate raid activity over time, which was also used in the quantitative analysis.

Another correction of the monthly data was performed by decomposing the Unfair Labour Practice (“ULP”) complaint data. The aggregate number of ULP complaints listed in the Monthly Reports represents an accumulation of different types of cases, some of which involve conflicts between unions and employers, and others that do not. Most importantly, a very large sub-category of complaints identified as being ULP cases in the Monthly Reports are actually cases filed by individual union members alleging violations of the legal Duty of Fair Representation (“DFR”) imposed upon unions. Some early analysis of unfair labour practice complaint activity implicitly accepted all of the ULP data listed in the Monthly Reports as being qualitatively homogeneous³⁸. This is not appropriate when one is trying to understand the dynamics in the different types of ULP activity, particularly if one wishes to assess trends in what is traditionally understood as being ULP complaint activity, namely complaints filed by unions alleging illegal Employer behaviour. In order to address this problem, the data was decomposed by isolating the large subcategory of DFR cases through the following method. A DFR case was defined as a case listed in the OLRB Monthly Reports as being a ULP complaint, and in which an individual person was identified as the Applicant and a trade union was identified as the Respondent. This is a reasonably accurate method of isolating DFR cases from more traditional ULP activities, albeit an imperfect one. There are a very small number of other types of cases filed by individual applicants against trade union

³⁸ The analysis in Martinello (2000) does not correct the ULP data and thus suffers from this problem.

respondents that are not specifically referred to as “DFR” cases. One example is where an individual member files a complaint alleging that the union has failed to properly disclose its financial statements. However, the OLRB confirmed that the number of non-DFR cases that would appear in the Monthly Reports in this manner is very small, and that this is the best possible method for isolating DFR cases from traditional ULP complaints (Stelmasczinski, 2003).

Lastly, in order to perform analysis of sectoral patterns in certification/organizing activity, it was necessary to use data published only in the Annual Reports, in annual format. The OLRB’s Monthly Reports do not provide any information relating to industry categories, neither on a per-unit nor aggregate monthly basis. Although the OLRB does seem to collect and record the industry category code for each application, this information is not published in Monthly Reports and is also not otherwise available directly from the OLRB. Unfortunately, during the last few years, the OLRB has adopted a strict policy of refusing to provide researchers with such information, based on computer personnel resource constraints. The OLRB does, however, provide a breakdown of aggregate certification activity by industry categories on an annual basis in its Annual Reports³⁹. Since data on “sector” per se is not actually collected, the data on industry composition was used to construct estimates of the sectoral allocation composition by using a definition of the “public sector” based on the aggregate of certain industry categories, namely those industries whose total employment is largely comprised of “public” employment based on the standard definition of public used by Statistics Canada. Thus, the public sector definition used in this dissertation was the composite of the following industry categories: education (including school boards), health and welfare (including hospitals), utilities (electric, gas, and water), and local government⁴⁰. It should be noted that this is a

³⁹ While this suggests that the OLRB must actually collect data on industry categories on a per unit basis, it steadfastly refuses to provide this information to researchers, citing a lack of financial resources available for computer database operations involved in retrieving or generating this information.

⁴⁰ Other levels of government, such as “provincial government” are traditionally included in the definition of the “public sector” as well. However, the OLRB reports no certifications at any time

slightly different definition of the public sector than that employed in certain prior research involving OLRB data. I chose not to follow the approach of Slinn (2003) and Thomason (1994) of including the transportation industry as part of the public sector because the recent data suggests that this industry is predominantly comprised of private sector employment. Between 1997 and 2001, the public sector component of the transportation industry ranged only from between 22.4 to 23.6% (Statistics Canada, 2003). It should be noted as well that the annual data on industry compositions is only available for the years 1985-2000, so the quantitative analysis of sectoral patterns of certification activity was performed only within this shorter time period.

Models were run on a number of dependant variables pertaining to six relevant categories of phenomena, as outlined below. Within each category, different dependant variables were employed, and at times alternative model specifications were run on the different dependant variables. The analysis of the results from these modeling exercises are found in the next three chapters of this dissertation. The following dependant variables were used:

Certification Success Rates:

Two (2) dependant variables were constructed to measure the average monthly success rate of new certification applications. Both variables measure the ratio of successfully certified bargaining units to the total number of bargaining units for which unions applied to certify, and were listed as being “disposed” of by the OLRB. The difference between the two dependant variables is as follows. In the first variable *Success Rate 1*, the denominator *excludes* all of the attempted bargaining units listed as being *withdrawn* by the applicant union in that month. In the second variable, *Success Rate 2*⁴¹, the *withdrawn* bargaining units are included in the denominator. There are competing theoretical reasons in favour of both the inclusion and exclusion of the withdrawn cases. The fact that a

throughout the period of study that would fall within other levels of government, so it was more appropriate to use this more limited definition.

⁴¹ This is the definition for the success rate used in Martinello (2000).

withdrawn case often represents an unsuccessful attempt by the union, in which case the union withdraws the application to avoid having it be dismissed by the OLRB, suggests that these ought to be included in the denominator. On the other hand, sometimes applications are withdrawn and subsequently re-filed by the union, and such attempted bargaining units would appear twice in the data and would be counted as two attempts within the denominator. Thus, it was decided to run models based on both of these definitions of the success rate.

Aggregate Organizing/Certification Activity:

Modeling of aggregate organizing/certification activity was performed on four (4) different dependant variables. The first dependant variable was the number of *new bargaining units certified* per month. The second dependant variable was the number of *employees covered by new bargaining units certified* per month. This is the first econometric study of aggregate Ontario certification data to assess the impact of Bill 7 upon the number of employees covered by certifications granted⁴², as well as being the first to assess the impact of Bill 31 on various indicators. The third dependant variable employed was the number of *employees covered by new bargaining units divided by total Ontario employment*, per month. This transformation of the data from the second dependant variable provides a measurement of the intensity of organizing relative to the overall level of employment. This provides a separate indicator of the intensity of organizing efforts and its contribution to union growth overall, and may also improve the analysis by potentially removing whatever long term positive effect there may be on aggregate organizing levels resulting simply from the sheer increase in the size of the labour force. The fourth dependant variable was the *number of new*

⁴² Martinello (2000) uses this dependant variable in his study, but not for post-Bill 7 data. Martinello (2000) claimed that after Bill 7, the OLRB switched to a practice of recording the unit size as being the number of employees on the voters list, which in some cases is different from the number of employees in the actual certified bargaining unit. The OLRB has advised the author that this is not correct and that the OLRB Monthly Reports should identify the number of employees in the bargaining unit correctly, based on the best knowledge available to the OLRB staff (Stelmaczinski, 2003).

bargaining units attempted in certification applications filed by unions, and listed as being disposed by the OLRB per month.

Sectoral Patterns in Organizing/Certification:

As noted above, the lack of monthly data on the sector attribute required analysis based on Annual data instead. The following numerous dependant variables were used in models based on this data:

- *The number of employees covered by private sector certifications granted*
- *The number of employees covered by public sector certification granted*
- *The ratio of private sector employees certified to private sector employment*
- *The ratio of public sector employees certified to public sector employment*
- *The ratio of private sector employees certified to total employees certified*
- *The number of private sector bargaining units certified*
- *The number of public sector bargaining units certified*
- *The average size of private sector bargaining units certified*
- *The average size of public sector bargaining units certified*

Average Bargaining Unit Sizes:

The dependant variable *monthly average bargaining unit size (non-raid)* was constructed to model the impacts of independent variables on new bargaining units selected for organizing. A second dependent variable, *monthly average bargaining unit size (raid)* was constructed to model the average size of bargaining units in raid applications.

Raid Activity:

A number of regression models were run to test for increases in actual volumes of raid activity, as well as the proportional intensity of raid activity relative to non-raid organizing activity. Dependant variables included the number of *raid*

bargaining units certified; the number of raid bargaining units attempted; the ratio of raid units certified to non-raid units certified; and the ratio of raid units attempted to non-raid units attempted. Certain data corrections were performed to isolate the impact of a single extremely large alleged raid event between the CAW and the SEIU, and analysis is presented on both corrected and uncorrected data for comparisons.

Unfair Labour Practice complaint and Duty of Fair Representation complaint activity:

Following the data corrections discussed above, the dependant variable *ULP cases disposed per month* was constructed and represents a truer measurement of ULP activity in the traditional sense. Lastly, two measurements of Duty of Fair Representation complaint activity are also used as dependant variables in order to test the hypothesis that the regime shifts have increased the volume of DFR activity to which unions must defensively divert their resources. The first is simply the *number of DFR cases disposed per month*⁴³. The second dependant variable, *DFR Ratio*, is calculated by dividing this variable by the total number of unionized employees covered by collective agreements in Ontario⁴⁴. Performing this transformation of the data provides an indication of the intensity of DFR activity relative to the size of the unionized workforce covered by collective agreements, which is the body of individuals eligible to file DFR cases. It may also improve the analysis by potentially removing whatever long term positive effect on DFR levels has been caused by a sheer increase in the size of the unionized workforce. Data on total unionized employment in this form was only

⁴³ A further correction has been performed on the data by removing the DFR cases that appear to have been filed by a "teacher" against a teachers union. This is necessary because teachers did not have access to the DFR mechanism until the passage of the Bill 160 in December 1997. Thus, this correction adjusts for the fact that there should be an increase in the DFR activity due solely to this legislative change, and not due to the theory and hypotheses being tested in this study.

⁴⁴ Data for the number of unionized employees covered by collective agreements in Ontario are annual estimates provided by the Office of Collective Bargaining Information of the Ontario Ministry of Labour. The figures are estimates of the number of employees as of December 31 for each year. The estimate provided for December 31 of each year was entered as the value for the

available for the years 1984 to 2000, so this model involves fewer data points and degrees of freedom than the previous one.

In most of the above models, a similar master set of independent variables was used, although some alternative specifications were run at various times in different models. Where alternative specifications were used, these results are also provided and analyzed in the subsequent chapters. Pearson correlations of seven of the key dependant variables used were calculated to assess the distinctiveness of the various models and are provided in Appendix Table A4 at the end of this chapter⁴⁵. As well, it should be noted that most models were run in current time without lags with the exception of those relating to certification and raid *attempts*, in which case the dependent variables were lagged by one month. One explanation for this approach is that the construction of the legal regime dependant variables (see below) implicitly incorporates some lag effects by assigning the value “1” to a regime variable only beginning in the month following the month in which the law first came into effect⁴⁶. Further, while organizing may in some cases may take lengthy periods of time, this approach focuses on the crucial period of behaviour more temporally close to invoking the certification procedure. Lastly, the models of *attempts* use lagged data since they are seeking to measure slightly earlier behaviour relative to the other models.

The following independent variables were employed:

Legal/political regime variables:

months of July to December of that year, and for the months of January to June of the following year.

⁴⁵ Two Pearson correlation values that were relatively high: the correlation between “New Bargaining Units Certified” and the two success rate variables (.692 and .724 respectively), and that between “New Bargaining Units Certified” and “New Bargaining Units Attempted” (.954). Various other coefficient values were significant, but were less than 0.6 in absolute value. The correlation between the 2 different success rates was also high, but this is to be expected given that they are slightly different definitions of the same phenomenon. However, it is argued that despite these few relatively high correlation scores, it was nevertheless useful to use each of these dependant variables in separate models given that each dependant variable nevertheless refers to a somewhat different real-world phenomena, and the consistency of the results with respect to the various independent variables was *a priori* unknown.

⁴⁶ This was the same approach taken in Martinello (2000).

Building upon the regression modeling approach employed in Martinello (2000), six (6) dummy variables were used to capture the influence of the combined legal/political environment in Ontario during the period of study (months in the brackets are the months for which the variable takes the value of 1):

Old PC (Jan 1981 to May 1985)

NDP only (Oct 1990 to November 1992)

NDP and Bill 40 (also referred to as “*Bill 40*”) (Dec 1992 to June 1995)

PC and Bill 40 (July 1995 to Nov 1995)

PC and Bill 7 (also referred to as “*Bill 7*”) (Dec 1995 to June 1998)

*PC and Bill 31*⁴⁷ (also referred to as “*Bill 31*”) (July 1998 to Dec 2002)

The Liberal government from June 1985 to September 1990 serves as the reference group for this set of non-dichotomous dummy variables. Using this “centrist” government as the reference group theoretically results in the toughest test on the data. It should be noted that with this structure, the model implicitly assumes that all other minor changes to labour laws other than those used here are not important enough to generate any significant isolated impact on the dependant variable. Lastly, it should be noted that a separate regime variable for the *PC and Bill 139* era was used only in the modeling exercise involving raiding activity, given the theoretical relevance of Bill 139 to raiding. This regime variable was not used in any other analysis. In the models of raiding activity, the *PC and Bill 31* regime takes values of one only until and including December 2000, the month in which Bill 139 was passed, and the *PC and Bill 139* variable takes values of 1 thereafter.

Economic Internationalization:

⁴⁷ It should be noted that the last portion of the data for this time period may also contain some effects from Bill 139, which was passed in December of 2000. Various models were run with separate dummy variable for Bill 139, but it was not significant and appeared to reduce the utility

Three (3) variables designed to capture the timing of shifts in the internationalization of the provincial economy were used:

- I) *CUFTA*, a dummy variable to capture the timing of the Canada-U.S. Free Trade Agreement. *CUFTA* takes the value of 1 in the months from Jan 1989 to December 1993.
- II) *NAFTA*, a dummy variable to capture the effect of the North American Free Trade Agreement. *NAFTA* takes the value of 1 in the months from January 1994 to December 2000.
- III) *Trade Ratio*, which is the ratio of total Ontario international exports plus imports, to Ontario GDP⁴⁸, designed to capture actual shifts in the degree of economic internationalization of the provincial economy, defined in terms of the international flow of goods and services, over time.

It is generally assumed that the *CUFTA* increased the potential for capital mobility generally, and that this might have a negative impact upon union organizing and certification success. This could operate in a number of ways, including an effect via an increased threat of employer relocation outside of Ontario, post union certification. It is expected that under the *NAFTA* era, these effects may well have been exacerbated, given the extension of the free trade zone to Mexico⁴⁹. The impact of the *Trade Ratio* variable is somewhat indeterminate. We might expect a negative sign on this variable as a more full expression of the impact of employer resistance buoyed by increased capital mobility and economic integration revealed in trade adjustment over the time period. However, a positive effect might be expected, after holding the existence of the trade agreements constant through separate variables, if increases in underlying trade flows reflect improved opportunities for Ontario workers and unions to capture economic rents in Ontario during periods of relatively advantageous terms of trade and/or export opportunities. This may bolster

of the model overall. Thus, this single dummy variable should be thought of as capturing something of a combined effect of further revisions from Bill 31 onwards.

⁴⁸ Data used here was quarterly, from the Ontario Economic Accounts. Within each quarter, monthly values were entered as being the same in each month.

⁴⁹ This assumes, implicitly, that any positive impacts that might be conceived to flow from the North American Agreement on Labor Co-operation, known as the labor "side agreement" to NAFTA, if any, are outweighed by the further increase in potential capital mobility under NAFTA.

worker/union mobilization and positively affect certification success outcomes. Overall, this approach provides a set of improved controls for the effects of economic internationalization than what was employed in Martinello (2000), which to its credit, is the only existing study to attempt to do so.

Industry Structure:

A simple indicator of *Industrial Mix* was used, being the ratio of Ontario employment in goods producing industries to total Ontario employment, *SIC 1980, SEPH*. A positive sign is expected, reflecting an historically strong union presence in goods producing sectors broadly defined (Jackson and Schetagne, 2003).⁵⁰

Economic/Employment Growth:

The monthly rate of growth in Ontario employment was used, based on monthly employment data from the *Labour Force Survey*. This variable is meant to capture the effects of the business cycle and the fluctuations in worker power that come from a tightening labour market. Previous empirical research seems

⁵⁰ A recent study using individual-level data for all of Canada by Riddell and Riddell (2001) found that shifts in employment between industries made very little contribution to the decline in union density in Canada. The inclusion of the *Industrial Mix* variable in this study is nevertheless meant to probe the question of whether such industrial shifts potentially impacted on actual *organizing* activities over time, which is not revealed by the analysis in Riddell and Riddell (2001). Riddell and Riddell (2001) find that changes in structural characteristics do not account for any of the decline in density. Rather, they suggest that the full amount of the decline can be mathematically attributed to a decline in the "propensity" of individuals with a given set of characteristics to be unionized. Mathematically, in order for overall density to remain unaffected in the face of employment shifts from a high density sector to a low density sector, there must correspondingly be either a density decrease in the high density sector or a density increase in the low density sector, or both. Riddell and Riddell found some evidence of both of these phenomena. Yet, it is conceivable that a decline in employment in a high density sector may have a negative impact on organizing levels in that sector and perhaps elsewhere, especially if employment loss comes disproportionately from unionized workplaces (decreasing resources available for organizing) or from workplaces that are desirable targets for organizing. Further, any corresponding density increase in the low density sector may not only be the result of new organizing in that sector, but may also be the result of employment expansion in previously unionized enterprises. Overall then, even if we were to accept that Riddell and Riddell are correct that industrial shift did not in isolation yield a mathematical decrease in density, it does not necessarily follow that organizing activities were unaffected by industrial shift.

to consistently reveal a positive relationship between economic and employment growth and union growth (Ashenfelter and Pencavel, 1969), and this has become a standard control variable in research of this sort.

Monthly/Seasonal effects:

The analysis employed 11 *monthly dummy* variables, in order to control for any monthly or seasonal fluctuations in the data.

Given the desire to test for fluctuations over time in the various indicators of organizing and related activity and their relations to the timing of labour law regime shifts, time-series regression analysis was appropriate, and it seemed useful and appropriate to adopt and build upon the basic time-series regression analysis structure employed in Martinello (2000). The quantitative regression modeling approach here (as in Martinello's study) was guided by a concern for parsimony. In each regression model, the monthly dummy variables were dropped, as F-Test results repeatedly indicated that they simply did not improve the models.

Notably, I do not include any measurement of ULP complaint activity as an independent variable in these models as was performed in a recent study of certification success rates in British Columbia by Riddell (2004). Riddell performed quantitative analysis at the level of the individual bargaining unit, with unit-level micro-data, and made the assumption that a filed ULP served as a proxy for underlying employer resistance. While ULP filings may be in part a function of employer resistance activities, I reject the approach of assuming that it serves as an accurate proxy for such resistance for two reasons. Union filings of ULP complaints are a function of both the potential benefits associated with filing a complaint, and available resources. It is argued that both of these are in turn a function of the legal/political regime. In terms of union benefits, when the legal/political regime alters the potential remedies from ULP litigation, union

filings will respond in kind. In terms of resources, as the legal regime shifts the resource costs of organizing and administration, which is the central premise of this dissertation, the impact on union resources will also potentially further affect ULP filing decisions. The latter effect may occur *regardless* of whether the remedies under ULP litigation were modified. In the case of Ontario, *both* effects are present, since a central attribute of the regime shifts under Bill 7 and Bill 31 involved a qualitative change in the regulation of ULP activity and in the available remedies from ULP litigation. Thus, in this study of Ontario activity, it would be highly inappropriate to model the level of ULP complaint activity as an exogenous independent variable determining aggregate certification outcomes⁵¹.

Unfortunately, consistent, comparable data for the *industrial mix* variable was only available for the years 1983-2000, inclusive. The inclusion of this variable resulted in the loss of approximately 49 degrees of freedom in each model. As a result, it was decided that in most cases, both *long series* and *short series* models for each dependant variable used were constructed. In the short series models, the *industrial mix* variable was available for use and the periods of study was shortened to the 1983-2000 period. In the long series models, a *time trend* variable was used as a replacement for the industrial mix variable, and the period of study was the longer 1981-2002 period. Of course, the time trend is not a perfect proxy for the industrial mix variable. Yet, given the high Pearson correlation between the *time trend* and *industrial mix* variable⁵², it was hoped that this would capture roughly the same phenomena over time⁵³.

⁵¹ ULP activity is modeled in a separate exercise as dependent variable, and the interpretation of the results of this model are provided in chapter 6. The results show a very large and significant decline in ULP filings under the Bill 7 and 31 regimes in which ULP remedies were reduced, even after controlling for reduced certification activity. This important finding reinforces the argument here as to the inappropriateness of using ULP complaints as an independent variable proxy for underlying employer resistance. Yet further qualitative evidence that was gathered and presented in chapter 7 confirms that unions have indeed been increasingly and strategically avoiding the ULP process as a result of Bill 7 and particularly Bill 31, reinforcing this argument.

⁵² The Pearson correlation value was -.846, and was significant at the 1% level (2 -tailed).

⁵³ The time trend variable may be viewed as simply an alternative way of controlling for "market forces" identified by Troy, although the assumption of the *continuous* intensification of these forces over time, as represented by a time trend variable, is admittedly a strong assumption.

Qualitative Research:

The qualitative portion of the research seeks to obtain further evidence relevant to the hypotheses being explored, as well as evidence concerning the accuracy of the underlying model of behaviour used to generate the hypotheses. Given the theoretical issue of union behaviour as a mediating factor, based on the insights of the strategic and moral choice behavioural models, the unit of analysis ought to be the individual union. Qualitative case studies of two unions and their organizing behaviour over time were thus undertaken.

The selection of the specific individual unions took place with a “purposive sampling” approach, rather than a random sampling approach (Palys, 2003). The logic of case selection was driven by three key objectives as well as by resource constraints, given the time-intensive nature of this research, and given that this qualitative research is performed in addition to the already large volume of quantitative research also performed in this dissertation. One objective was to select candidate unions that displayed a historical commitment to *some* volume of organizing activity and thus were consistently engaged in organizing activities across the entire period of study. Secondly, the researcher sought candidate unions that were primarily private sector “general unions” in nature. It was reasoned that while this reduced the ability to gain further insights about patterns of organizing across sectors, this would strengthen the potential insights about organizing behaviour within the private sector. Thirdly, there was an attempt to purposely select candidate unions that seemingly embodied characteristics of strategic and/or moralistic behaviour as understood in the literature on these models discussed above. This approach not only created the strongest additional “test” for the model adopted, but also maximized the potential for discovering ways in which the model might require qualification.

These objectives were operationalized through certain preliminary analysis of descriptive statistics of individual union activity, and by reference to certain

characteristics of individual unions. This union case selection process, as well as the research procedures, are discussed extensively in Chapter 7. Based on this analysis, case studies were performed on the Canadian Auto Workers union and the United Food and Commercial Workers union.

Overall, it can be seen that the analysis carried out within the research design described above may conceivably contribute to each of the three main categories of existing literature reviewed in this dissertation: the general debate about the relevance of labour law to union growth; explicit theoretical accounts of union organizing behaviour; and, in the specific manners identified in this chapter, the empirical literature analyzing the relationship between union organizing and labour law in the province of Ontario.

Chapter 4 – Quantitative Empirical Research – Certification Activity

This Chapter has two parts, both pertaining to certification activities. Part One reviews the results of the quantitative analysis of aggregate certification activity. This analysis, which does not segregate organizing activities by sector, includes a review of certification success rates, new bargaining units certified, employees covered by new units certified, new bargaining units attempted, and the average size of new bargaining units. Part Two provides the results for the analysis of sectoral patterns in aggregate certification activity.

Part One – Aggregate Certification Activity

4.1 – Certification Success Rates

As noted in Chapter 3, two dependant variables measuring certification success rates were constructed, given the competing theoretical reasons in favour of including and excluding the withdrawn bargaining units. In the first variable *Success Rate 1*, the denominator excludes all of the attempted bargaining units listed in the OLRB Monthly Reports as being *withdrawn* by the applicant union in that month. In the second variable, *Success Rate 2*⁵⁴, the withdrawn bargaining units are included in the denominator.

Figure 4.1 provides a graph of the values of the 2 dependant variables over the period of study. Analysis of this visual plotting of the dependant variable alone seems to suggest that success rates in Ontario fluctuated somewhat randomly, but without any strong trend, until the period of significant labour law fluctuation beginning in the early 1990's. The graph suggests a very slight increase in average success rates for a short period of time, followed by a strong decline in success rates beginning in 1995, which is the year of transition from the NDP to the PC government, and also the year of transition from the Bill 40 labour law regime to that of Bill 7. As well, a slight further decline seems evident for a short

⁵⁴ This is the definition for the success rate used in Martinello (2000).

Figure 4.1 – Certification Success Rates In Ontario

period around 1998, the year of the further Bill 31 reforms, although the variation seems quite high, given high success rates in certain months of 2000 and 2001⁵⁵.

Table 4.1 provides a summary of the results of the regression analysis for both models. Consistent with expectations, these results reveal a major decline in certification success rates after the transition from Bill 40 to Bill 7. The size of the predicted decline in success rates resulting from this shift may be measured by

⁵⁵ It should be noted that that these high average success rates for these months is not "explained" by the CAW/SEIU raiding activity taking place at that time, since these dependant variables were constructed to measure success rates in non-raid bargaining units only.

Table 4.1 – Monthly Certification Success Rates (Non-Raid)

	Success Rate 1 – denominator excludes withdrawn cases		Success Rate 2 – denominator includes withdrawn cases	
	Long Series (1981- 2002) N=262✓	Short Series (1983- 2000) N=214	Long Series (1981- 2002) N=262✓	Short Series (1983- 2000) N=214
	Coef.	Coef.	Coef.	Coef.
Old PC	.0321 (.0245)	.0383 *** (.017)	.0110 (.0256)	.0274 (.018)
NDP only	-.0015 (.0236)	.0158 (.029)	-.0252 (.0247)	-.0368 (.031)
NDP & Bill 40	.0386 * (.0347)	.0645 (.040)	.0388 (.0364)	.0285 (.042)
PC & Bill 40	-.0546 (.0544)	-.0261 (.051)	-.0698 * (.0569)	-.0810 (.053)
PC and Bill 7	-.1768 **** (.0528)	-.143 **** (.048)	-.1145 *** (.0553)	-.125 **** (.05)
PC and Bill 31	-.2499 **** (.0669)	-.198 **** (.053)	-.1991 **** (.07)	-.198 **** (.055)
Empl. Growth	.0682 (.3216)	-.227 (.338)	-.0521 (.3365)	-.266 (.353)
Trade Ratio	.001241 (.001163)	.000977 (.00118)	.002416 *** (.001218)	.00200 ** (.00123)
NAFTA	.0198 (.0393)	.0313 (.029)	-.0036 (.0412)	-.0095 (.031)
CUFTA	.0306 (.0245)	.0359 ** (.019)	.0068 (.0257)	-.0036 (.02)
Ind'l Mix		.00169 (.00366)		-.000815 (.00383)
Time Trend	.0002 (.0004)		-.0002 (.0004)	
Mean Values of Dep. Variable	.778	.792	.658	.670
Adj-R ²	N/a*	.587	N/a*	.411

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

✓ It was determined that the OLS estimates of this model were affected by serial correlation, so these results were obtained using the Maximum-Likelihood estimator. The Cochrane-Orcutt method was not available due to missing data in one month.

*Tests suggested that the OLS model of this variable was affected by serial correlation, so the results provided here are based upon a Maximum Likelihood model. Adjusted R-squared scores were thus not available.

calculating the difference in the values of the coefficients for the *NDP & Bill 40* and the *PC and Bill 7* variables. The long series models suggest a decline in the range of 15.53 to 21.54 percentage points. As discussed in chapter 3, this was

likely caused largely, but not solely, by the shift from the “card-check” certification system to the “mandatory vote” system. Given the fact that many cases which had previously been certified “automatically” would subsequently be subjected to a lengthened certification process involving a representation vote and a chance of failure that had been previously absent in this entire subset of cases, this result, similar to prior studies, is not surprising⁵⁶.

Arguably more interesting is the new finding revealed by these results that the *yet further* transition from the Bill 7 regime to the Bill 31 regime seems to clearly have resulted in a significant *further* decline in certification success rates. All of the models reveal a large and significant further decline in success rates as a result of the transition from Bill 7 to Bill 31. These strong results for the impact of the Bill 7 and Bill 31 regime are robust across both the short and long series models. In the short series model of *Success Rate 1* the difference between the *Bill 7* and *Bill 31* coefficient values suggests a further decline in success rates by 5.5 percentage points under Bill 31. In the short series model of *Success Rate 2*, the difference in the coefficient values suggests a further decline in this definition of the success rate under Bill 31 to be 7.3 percentage points. When compared to the mean values of these two measurements of the success rate over the entire time period of the study, being 77.8% and 65.8% respectively, it is apparent that these impacts are not negligible in size. Similar results were produced by the long series models: the estimated impacts of Bill 31 being 7.31 and 8.46 percentage points, respectively.

⁵⁶ It is also interesting to compare these results with findings from previous similar studies. Martinello (2000) estimated the coefficient values on his analogous versions of the “NDP and Bill 40” and “PC and Bill 7” variables to be + 6 and –8 percentage points, respectively. Similarly, Johnson (2002) estimated a coefficient value of -9.08 percentage points on her “mandatory votes” dependant variable⁵⁶. However, Johnson’s finding must be qualified by the fact that her model does not contain a separate variable for Bill 40. As well, neither of these earlier studies corrected for raid activity. Since raids tend to have high rates of success, (Martinello, 2003) the corrections for raids in this study may contribute to the higher estimated impacts of legal shifts upon certification success rates found in this study. Differences in coefficient values are also due to the longer time frame of this study and the inclusion of improved controls for industrial shift and economic internationalization.

As well, it should be noted that revised versions of these models were run using the *Bill 7* variable as the reference group for this set of non-dichotomous legal/political regime dummy variables. In all four of these revised models, the *Bill 31* variable was found to be highly significant and negative, confirming that the *Bill 31* coefficient values are *significantly different* from those for the *Bill 7* variable. These results provide some evidence confirming the autonomous importance of law apart from other factors, including the broader political environment, given the marginal impact of incremental labour law regime changes within the same PC government era. The results for these models using the *Bill 7* era as the reference group are contained in Appendix Table A4.1 to this Chapter.

The coefficient on the *Bill 40* variable was positive in all four models, as expected, although it was only found to be significant in the long series model of *Success Rate 1*. Similarly, the coefficient on the *PC and Bill 40* variable, representing the 5 months of PC government rule prior to their *Bill 7* reforms, was negative in all of the models, as expected, but was only significant in the long series model of *Success Rate 2*.

The results for the remaining environmental variables were not as robust as those for the legal/political variables. The coefficient on the *industrial mix* variable was positive in the first model and negative in the second, and was insignificant in both. The time trend proxy in the longer series model, was also positive in the first and negative in the second model, and insignificant in both.

The coefficients on the *NAFTA* variable took positive values in the both the long and short series versions of the first model but in the second model, but took smaller, negative values in both versions of the second model. The coefficients on the *CUFTA* variable was positive in both versions of the first model, and was actually significant in the short series version. This resembles the result for a similar “free trade” variable in Martinello (2000). In the second model, the

coefficient was positive in the long series, negative in the short series, and insignificant in both. The coefficient values for the *Trade Ratio* variable was somewhat more consistent, since they were positive in all four models. They were significant in both the long and short series versions of the second model, and were also larger here as well. In terms of size, the coefficients on these variables suggest that a percentage point increase in the trade ratio coincides with an increase in success rates in the second model of approximately .2 to .24 percentage points.

4.2A – Aggregate New Organizing Levels - New Bargaining Units Certified:

Figure 4.2A provides a graph of the values of the number of new bargaining units certified each month over the entire period of study. Although there is substantial variation over time, until the middle of the 1990's, the dynamic appears visually as a series of long waves in both positive and negative directions. The early part of the 1990's during the NDP government, and especially during the latter years of this government (1993-5) when its Bill 40 legislation was in effect, appear to be part of a positive long wave. A sharp decline in new bargaining units is clearly evident as of late 1995, once the PC government took power. After 1995, it is difficult to determine whether there are any further trends in the dependant variable.

Table 4.2A provides the results for the regression analysis of the number of number of *new bargaining units certified monthly (non-raid)*. In both the long and short series models of this dependant variable, every one of the coefficients on the legal and political regime variables has the sign consistent with expectations.

Figure 4.2A – New Bargaining Units Certified Monthly (Non-Raid)

Further, each of the *Bill 40*, *Bill 7*, and *Bill 31* legal regime variables was found to be significant, in both the long and short series models. The remaining regime variables were not as consistently significant, although the *Old PC* variable was found to be significant in the long series model, and the *NDP only* variable was significant in the short series model.

In terms of the size of variables, measured in the number of new bargaining units per month, the results are quite stark. The coefficients on the *Bill 40* variable were 10.1 and 19.3 under the long and short series models respectively. At the other end of the pendulum are the coefficient values on the *Bill 31* variable, being -29 and -29.9 in the long and short models respectively. Given a mean value of 48.91 bargaining units per month over the period of entire period of study, these

Table 4.2A - New Bargaining Units Certified Monthly (Non-Raid)

	Long Series Models ✓ (1981-2002) N = 263	Short Series Model (1983-2000) N = 215
Variable	Coef.	Coef.
Old PC	-6.763 ** (3.99)	-2.050 (3.232)
NDP only	2.525 (3.855)	10.274 ** (5.592)
NDP and Bill 40	10.183 ** (5.694)	19.326 *** (7.67)
PC and Bill 40	-7.545 (9.006)	-1.217 (9.7)
PC and Bill 7	-24.704 **** (8.647)	-19.755 *** (9.172)
PC and Bill 31	-29.06 **** (11.017)	-29.953 **** (10.11)
Empl. Growth	1.574 **** (.588)	1.655 **** (.643)
Trade Ratio	.714 **** (.194)	.734 **** (.224)
NAFTA	-11.835 ** (6.434)	-15.655 **** (5.567)
CUFTA	-4.447 (4.012)	-4.962 (3.635)
Ind'l Mix		1.703 *** (.6977)
Time Trend	-.11481 ** (.067)	
Mean Value of Dep. Variable	48.91	50.26
Adj-R ²	.494	.566

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

✓ The results provided here are for a GLS model after a Cochrane-Orcutt transformation, since this OLS model was affected by serial correlation. The OLS results were very similar, and were somewhat more significant. Each of the "Old PC", "NDP and Bill 40", "NAFTA", and "time trend" variables were significant under OLS but not under GLS, although the coefficient values were quite similar.

are very *large* changes in the volume of activity correlated with these labour law regime shifts. The results also support the independent importance of the Bill 31 regime. T-tests provided that when *Bill 7* was used as the reference group, *Bill*

31 was significant at the 70% and 99% confidence levels in the long and short models respectively.

Turning to the environmental variables, the coefficient on the employment growth variable has the expected sign and is significant in both of the models. The size of the coefficients suggests an increase of 1.57 to 1.65 new bargaining units per month correlated with a 1% increase in employment. The coefficients on both the *NAFTA* and *CUFTA* variables are negative, and the *NAFTA* variable was significant in both models. The size of the *NAFTA* coefficient suggests a large decline of 11.8 to 15.6 new units per month associated with the timing of the *NAFTA* regime. The coefficient on the *Industrial mix* variable has a positive sign in the short model as expected, is significant, and suggests an increase of 1.7 units per month associated with a percentage point increase in the goods producing share of employment. Similarly, the coefficient on the time trend proxy in the long series model is negative and significant, with its size suggesting an average trend of .11 fewer units per month.

This important model of the number of new bargaining units certified was also run on the original data that was not corrected for raids in order to see whether the correction for raids significantly altered the results. These results are provided in Appendix 4.2 to this Chapter. The changes in the results were not dramatic although there did seem to be certain noticeable differences suggesting that the results pertaining to the legal regime variable were somewhat stronger after the correction for raids. For example, the *Bill 40* regime variable was insignificant in the uncorrected model, but became significantly positive under the corrected model. The *Old PC* party variable was not quite significant in the uncorrected model but became significantly negative in the corrected model. Further, the corrected model seems to reveal a more significant difference in the sizes of the coefficients on the *Bill 7* and *Bill 31* variables, which measures the isolated impact of the *Bill 31* regime. In the long series models, the impact of *Bill 31* was a mere decline of 1.93 units per month, while the corrected models

suggest a decline of about 4.4 units per month. In the short series models the uncorrected model suggests that Bill 31 was associated with a decline of 7.5 new units per month, while the corrected model suggests a decline of about 10.2 units per month.

4.2B - Employees Covered by New Bargaining Units Certified:

Figure 4.2B provides a graph of the number of employees covered by new bargaining units certified each month for the entire period of study. Interestingly, the graph does not reveal trends in the data as clearly as did the graph of the

Figure 4.2B – Employees Covered By New Bargaining Units Certified Monthly (Non-Raid)

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Figure 4.2C – Employees Covered in New Bargaining Units Certified as a Ratio of Ontario Employment

number of new bargaining units certified. A few of the largest values of this dependant variable, which appear to be outliers, fall in 1995 and subsequent years. This same description seems to apply as well to the graph of the data for the ratio of new employees certified to Ontario employment, found in Figure 4.2C.

Table 4.2B provides the results for the regression analysis of the number of employees covered by new bargaining units certified monthly (non-raided), as well as the results for the models of the number of *new employees certified as a percentage of Ontario employment*.

Overall, it appears that the number of employees covered by new bargaining units certified has fluctuated much more randomly than did the number of new units. This has resulted in a relative weakness of the former models compared to the latter, illustrated in part by the much lower adjusted R- squared scores for these models. Nevertheless, the results are arguably “well behaved”.

All of the legal and political regime variables have the expected sign in every model with the only exception of a negative and insignificant value for the *NDP only* variable in the long series models of the number of new employees certified. The *Bill 40* and *Bill 7* variables were each significant in 3 of the 6 models, and the Old PC variable was significant in 4 models. Importantly, the *Bill 31* variable was negative and significant in every model.

The sizes of these coefficients make it fairly clear that these legal and political regime variables have had an important effect on union growth. The long and short versions of this model estimate that the shift of the legal and political regime from the *NDP and Bill 40* context through to the *PC and Bill 7* context accounted for a decline of about 1085 employees per month. The further impact from Bill 31, (the difference between the coefficient values on the *PC and Bill 7* and the *PC and Bill 31* regime variables) is estimated at about 490 to 530 employees per month, or about 5900 to 6400 employees annually, depending upon whether the long or short series results are preferred⁵⁷. This is fairly strong evidence that Bill 31 has had a large and significant independent impact on the aggregate number of employees certified over time.

⁵⁷ Again, these estimates changed very little when the models were modified by dropping the *NAFTA* and *CUFTA* variables.

Table 4.2B – Employees Covered by New Bargaining Units Certified Monthly (Non-Raid)

Variable	Employees Covered by New BU's Certified		Employees Covered in New BU's Certified as Percentage of Ontario Employment	
	Long Series Models (1981-2002) N = 263	Short Series Models (1983-2000) N = 215	Long Series Model (1981-2002) N = 263	Short Series Model (1983-2000) N = 215
Coef.	Coef.	Coef.	Coef.	Coef.
Old PC	-398.878 ** (231.42)	-265.596 * (191.245)	-.006168 * (.0045)	-.0025 (.0037)
NDP only	-49.993 (223.15)	335.788 (330.9)	.0008315 (.0043)	.006132 (.0064)
NDP and Bill 40	99.805 (330.13)	666.39 * (453.843)	.004033 (.0064)	.012 * (.0088)
PC and Bill 40	-582.896 (522.4)	-64.306 (573.942)	-.0101 (.0101)	-.003188 (.0112)
PC and Bill 7	-986.032 *** (501.4)	-420.735 (542.681)	-.0185 ** (.0097)	-.0112 (.0106)
PC and Bill 31	-1476.75 *** (638.28)	-953.366 * (598.196)	-.029 *** (.0123)	-.0234 *** (.0116)
Empl. Growth	92.48 **** (33.951)	99.329 **** (38.10)	.001724 **** (.000656)	.00184 *** (.0742)
Trade Ratio	33.245 **** (11.21)	28.854 *** (13.259)	.000708 **** (.000217)	.000602 *** (.0258)
NAFTA	-155.843 (372.66)	-113.499 (329.4)	-.005097 (.0072)	-.005935 (.0064)
CUFTA	-291.373 (231.7)	-230.537 (215.105)	-.007315 ** (.0045)	-.00764 ** (.0042)
Ind'l Mix		62.772 * (41.287)		.0010033 * (.0804)
Time Trend	-.769 (3.87)		-.00004762 (.0001)	
Mean Value of Dependant Variable	1598.54	1661.9	.0321	.0333
Adj-R ²	.169	.162	.248	.223

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Results for the models of the ratio of new employees certified to total Ontario employment can be similarly interpreted as follows. Using the estimates from the long series first, we see that the difference between the coefficient values for the *NDP and Bill 40* variable and the *PC and Bill 7* variable is approximately .0225 % of total provincial employment. For a rough estimate of the annual impact, we

may simply assume that provincial employment remains constant over a 12 month period and that this shortfall of .0225 % of total employment holds in each of the 12 months. Thus, multiplying this figure by 12, the annual reduction in employment caused by these regime shifts is roughly estimated to be approximately .27% of the provincial employment level each year. The higher coefficient value on the Bill 31 variable results in a difference between the coefficient values of .033 %. Using similar mathematics, this suggests an annual decline in organizing equivalent to approximately .4% of total employment per year that can be attributed to the full pendulum swing from the *NDP and Bill 40* regime through to the *PC and Bill 31* regime. Where unions are organizing at or below the mathematical “steady-state” rate sufficient merely to maintain union density steady-state rate, these declines will clearly translate into an erosion of union density levels over time.

Interestingly, the trade ratio variable was found to be positive and significant in every model, with an estimated increase of 28.8 to 33.2 additional employees with each percentage point increase in the trade ratio. The coefficients on both of the *NAFTA* and *CUFTA* variables were negative, as expected, in each model, but were not significant in each case. Only the *CUFTA* variable in the models of the number of employees covered by new units as a percentage of employment was significant, and it was found to be so in both the long and short models⁵⁸.

4.3 New Bargaining Units Attempted (Disposed)

Given the importance of understanding the potential impact of labour law not only on outcomes within the certification procedure but also within the overall and lengthier *organizing* process, it is important to analyze the dynamics in the

⁵⁸ Given the insignificance of the *NAFTA* and *CUFTA* variables in the basic models of the number of employees covered by new units, additional models were run in which these two variables were dropped from the analysis. The results changed very little under this alternative specification.

aggregate number of certification *attempts* as well. Figure 4.3 provides a graph of the monthly number of new bargaining units in certification applications attempted (disposed by the OLRB) for the entire period of study. This graph suggests that this dependant variable has followed a very similar pattern as the number of new bargaining units certified, produced in Figure 4.2A. A steep decline in aggregate attempts seems to have occurred in late 1995, and activity levels do not exhibit any significant recovery since that time. It is also difficult to discern, simply from reviewing this graph, any other clear trends in the data, either before or after this major decline that seems to have corresponded with the timing of the shift to the Bill 7 labour law regime.

Figure 4.3 – Number of New Bargaining Units Attempted (Non-Raid)

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Table 4.3 – Number of New Bargaining Units Attempted (Non- Raid)

	Basic Model		Basic Model Plus Success Rate 1 (excl withdrawn cases) as indep variable		Basic Model Plus Success Rate 2 (incl withdrawn cases) as indep variable	
	Long Series Model (1981- 2002) N=262✓	Short Series Model (1983- 2000) N=214	Long Series Model (1981- 2002) N=262	Short Series Model (1983- 2000) N=214	Long Series Model (1981- 2002) N=262	Short Series Model (1983- 2000) N=214
	Coef.	Coef.	Coef.	Coef.	Coef.	Coef.
Old PC	-13.733 *** (6.206)	-6.412 * (4.286)	-13.127 **** (5.312)	-7.449 ** (4.474)	-12.826 *** (5.282)	-7.963 ** (4.394)
NDP only	4.976 (5.998)	10.317 * (7.416)	4.977 (5.144)	10.427 * (7.467)	5.351 (5.128)	12.102 * (7.493)
NDP & Bill 40	14.169 * (8.788)	19.577 ** (10.171)	13.034 ** (7.641)	18.686 ** (10.312)	12.484 ** (7.638)	18.135 ** (10.237)
PC and Bill 40	.976 (13.699)	1.35 (12.863)	-1.204 (11.931)	1.734 (12.951)	-1.302 (11.915)	2.312 (12.893)
PC and Bill 7	-17.783 * (13.315)	-19.08 * (12.162)	-18.28 * (12.158)	-15.546 (12.987)	-17.913 * (11.799)	-13.868 (12.65)
PC and Bill 31	-16.381 (16.882)	-26.993 *** (13.406)	-17.152 (15.538)	-21.976 * (14.564)	-16.151 (15.117)	-18.908 * (14.248)
Empl. Growth	1.63 *** (.777)	1.63 ** (.854)	1.846 *** (.782)	1.616 ** (.865)	1.8 *** (.783)	1.533 ** (.861)
Trade Ratio	.705 *** (.292)	.703 *** (.297)	.736 *** (.259)	.714 *** (.299)	.69 *** (.265)	.668 *** (.299)
NAFTA	-16.833 ** (9.971)	-25.218 **** (7.382)	-17.323 *** (10.01)	-26.492 **** (7.57)	-19.495 *** (8.553)	-25.501 **** (7.395)
CUFTA	-6.209 (6.219)	-9.905 *** (4.821)	-6.895 * (6.258)	-10.311 *** (4.88)	-7.392 * (5.38)	-9.351 ** (4.838)
Ind'l Mix		1.578 ** (.925)		1.635 ** (.932)		1.654 ** (.928)
Time Trend	-.196 ** (.103)		-.169 ** (.091)		-.158 ** (.092)	
Success Rate 1			.114 (.238)	.248 (.278)		
Success Rate 2					.217 (.236)	.477 ** (.285)
Mean Value of Dependant Variable	72.6	73.6	72.4	73.8	72.4	73.8
Adj-R ²	N/A*	.478	.507	.474	.508	.479

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

✓It was determined that the OLS estimates of this model were affected by serial correlation, so these results were obtained using the Maximum-Likelihood estimator. The Cochrane-Orcutt method was not available due to missing data in one month

* Tests suggested that the OLS model of this variable was affected by serial correlation, so the results provided here are based upon a Maximum Likelihood model. Adjusted R-squared scores were thus not available.

A clear analysis of this underlying organizing activity is important because otherwise it would be difficult to determine if the pattern of shifts in aggregate certification activity that were revealed in the previous section of this chapter were simply the mathematical product of a decrease in certification success rates.

Thus, regression models in long and short series versions, of the number of bargaining units in certification applications attempted (disposed) were run and the results are provided in the first two columns of Table 4.3. The *NDP and Bill 40* variable was significant and had a positive coefficient as expected, in both versions of the model. Similarly, the coefficient on the *PC and Bill 7* variable was negative and significant in both models. The *PC and Bill 31* variable was negative in both models, but only significant in the short series model, indicating an independent impact of Bill 31 beyond the Bill 7 only in that model.

Also, the results of these models more clearly suggest the additional importance of each of the environmental variables upon this underlying organizing activity. In both the long and short series models, each of the environmental variables has the expected sign. As well, they were found to be significant in every case other than the *CUFTA* variable in the long series model.

Since it is theoretically possible that this underlying, pre-certification organizing activity may itself be largely affected by *certification success rates*, as unions rationally take account of changes in the likelihood of success in the late-stage certification process and adjust the intensity of their efforts accordingly, additional models were run attempting to control for changing certification success rates over time, using the prior three month moving average of the *certification success rate* as an independent variable. The three month prior moving average was used since it makes sense that it takes time for unions to react, and because this reduces possible simultaneity in the model. Both of the two different measurements of the success rate employed in the prior analysis in this chapter

were used as control variables in separate models, and the results for these models are provided in the third to sixth columns of Table 4.3.

In all of the versions of these revised models, the success rate variable was found to be positively related to this underlying organizing activity, as expected, although the success rate was only significant in the short series version of the model using Success Rate # 2. As well, the legal and political regime variables became somewhat less consistently significant once the effect of the success rate was added to the model. Yet, despite this, the sizes and signs of the coefficients changed very little, and many of the variables remained significant in the revised models. The *NDP and Bill 40* variable remained positive and significant in all of the models. The *PC and Bill 31* variable, which was negative and significant in the short series, remained negative and significant in both of these two short series revised models, and also remained negative and relatively large in size in the long series models. The extreme differences between the absolute values on the *NDP and Bill 40* variable and the *PC and Bill 31* variable were only slightly reduced by the addition of the success rate variables. Overall, the inclusion of an additional success rate variable does not seem to significantly alter or weaken the findings in the basic model of certification attempts much, if at all. This suggests that a large portion of the overall decline in certification activity is mathematically due to a decline in the volume of potential new bargaining units that reach the application for certification stage. These four latter models estimate that the size of the shift in the volume of this organizing activity owing to the shift from the Bill 40 regime through to Bill 31 regime is in the range of 28.6 to 40.6 fewer bargaining units per month. Compared to a mean value of approximately 73 units for the entire period of study, these fluctuations in activity that correlate with the legal regime shifts are quite substantial in size (in excess of a 33% drop).

The analysis thus far suggests that not only have the shifts in labour law made post-Application certification success less likely *ceteris paribus*, they have also

had important effects on underlying organizing activity, as measured by the number of bargaining units for which unions have been able and/or willing to file Applications for Certification. The other environmental variables were revealed to be fairly consistently important as well. Yet, there is fairly strong support here that labour law regime shifts remained important *despite* the importance of these other environmental variables.

4.4 - Average Size of New Bargaining Units Certified

The bounded rationality theoretical framework employed in this dissertation suggests that the size of potential target bargaining units is a relevant consideration taken into account by unions in their organizing behaviour. As environmental factors cause the fixed costs associated with organizing a new bargaining unit to increase, unions will tend to respond by attempting to organize relatively larger units, *ceteris paribus*.⁵⁹

Figure 4.4 provides a graph of the monthly average bargaining unit size, for both raid and non-raid bargaining units, throughout the entire period of study. What seems most apparent from a review of this graph is that raid units have displayed a tendency to be larger on average than non-raid units, despite a significant degree of variation in raid unit sizes over time. However, it is difficult to determine simply from reviewing this plotted data whether there have been clear shifts or trends in the average sizes of either raid or non-raid units over the period of study.

An alternative, simple method of analyzing the relationship between average bargaining unit sizes and the legal and political regime periods is to compare the mean values of the average monthly bargaining unit size during each of the

⁵⁹ It should be noted that this analysis implicitly assumes that employer resistance levels are on average consistent across size ranges. It is also possible however that smaller employers exhibit a greater degree of resistance and that shifts in law act to magnify the relative degree to which small employers resist more strongly than larger employers. In such a scenario, the relative attraction of small bargaining units to unions would be that much lower.

regime periods. Table 4.4 provides mean average bargaining unit sizes⁶⁰ during

Figure 4.4 – Average Size of Bargaining Units Certified (Raid and Non-Raid)

each of the regime periods, for both non-raid and raid bargaining units. These calculations similarly reveal a pattern of growth in the average size of new bargaining units over the period of study. They also seem to suggest that there was little growth in average unit sizes during the first half of the period of study and that unit sizes grew relatively more in the second half of the sample. Unit sizes also seem to be generally larger during each of the three regime periods under the PC government, although there is also some evidence that growth in

⁶⁰ These figures are not the mean size of all units certified during each period. Rather, they are simply the means of the individual monthly means, which have not been weighted by the number of cases per month.

unit sizes may have began under the *NDP and Bill 40* regime period.

Due to fluctuation in average raid unit size, it is rather difficult to determine simply from the calculations in Table 4.4 whether raid bargaining units have been following any long term trend or if they have shifted in accordance with the regime periods. The clearest observation that can be made is that the three regime periods under the PC government seem to have witnessed larger average raid units than those specifically under the *NDP and Bill 40* era.

Table 4.4 - Mean Monthly Average Size of New Bargaining Units

Regime	Mean of monthly average unit size (non-raid)	Mean of monthly average unit size (raid)
Old PC	25.7	90.5
Liberal	29.5	93.4
NDP only	26.7	83.7
NDP and Bill 40	34.1	63.4
PC and Bill 40	40.5	99.9
PC and Bill 7	49.7	106.3
PC and Bill 31	46.1	94.5

The data in Table 4.4 further illustrate that raid units consistently tend to be much larger on average than non-raid bargaining units. This suggests that larger bargaining units are relatively more desirable targets for raiding activity and that unions in Ontario have over the past two decades consistently tended to limit themselves in their raiding activities to larger target units. This could be a contributing factor to why raids are seen to be so controversial and divisive to the labour movement even if their actual volumes are rather low: when they do occur, they tend to be rather large events affecting large bargaining units, large numbers of employees, and thus large volumes of union dues and resources are at stake. These results also suggest that in seeking to understand whether and/or how unions actually incorporate target unit sizes into their organizing decisions, it is important to isolate raid units from non-raid units, as has been

performed in this study.

In order to look more closely at dynamics in average sizes of non-raid units certified over time, regression analysis was performed on this dependent variable. Table 4.5 contains the regression model results on the average size of non-raid bargaining units certified. The short series model reveals a positive and significant increase in average unit size as a result of the *PC and Bill 7* regime. This model estimates that the *PC and Bill 7* regime was independently associated with an increase in non-raid bargaining unit size by 17 additional employees on average. Unfortunately, the models were not able to fully isolate significant impacts of the remaining legal and political regimes. One reason for this seems to have been the extremely high levels of multicollinearity in the models, particularly resulting from the inclusion of the *Time Trend* in the long series model and the *Industry Mix* variable in the short series model⁶¹. With the near exception of employment growth, none of the environmental variables were found to be significant, suggesting their lack of relevance. As a result of this apparent lack of relevance, separate and more parsimonious models were run excluding all of the environmental variables but employment growth, and the results for these are shown in columns labeled models # 2 and 5 of Table 4.5. Once the influence of these other variables is removed, adjusted R^2 increases, and the model results are closer to expectations. The coefficients on both the *PC and Bill 7* and *PC and Bill 31* variables increased in size, are quite large relative to all of the other regime coefficients, and both are significant at greater than 99% confidence in both the long and short series models. This suggests that the legal regime variable are relevant, but that the coefficient values actually represent a combined effect of these regime variables along with the other environmental factors having a positive effect on unit sizes. The simplified long series model also captured a smaller positive and significant effect of both the *PC and Bill 40* regime as well as the *NDP and Bill 40* regime.

Table 4.5 – Average Size of Bargaining Units Certified (Non-Raid)

	Long Series Models (1981-2002) N = 262			Short Series Models (1983-2000) N = 214		
	Model # 1	Model # 2	Model # 3	Model # 4	Model # 5	Model # 6
Variable	Coef.	Coef.	Coef.	Coef.	Coef.	Coef.
Old PC	-4.063 (5.256)	-3.819 (3.067)	-2.812 (5.163)	-3.165 (4.495)	-1.864 (3.845)	-2.067 (3.852)
NDP only	-1.738 (5.066)	-2.422 (3.851)	-3.213 (5.008)	2.87 (7.784)	-2.397 (4.003)	3.937 (7.697)
NDP and Bill 40	-1.977 (7.495)	4.605 * (3.614)	3.339 (6.348)	5.752 (10.675)	4.606 (3.754)	12.541 * (9.051)
PC and Bill 40	.535 (11.857)	11.527 ** (7.678)	9.928 (10.066)	8.436 (13.496)	11.56 (7.979)	18.45 ** (10.716)
PC and Bill 7	7.61 (11.417)	20.108 **** (3.655)	18.22 *** (8.613)	17.066 * (12.757)	20.102 **** (3.797)	27.435 **** (8.505)
PC and Bill 31	1.708 (14.497)	16.403 **** (3.052)	14.063 (11.238)	12.532 (14.065)	16.107 **** (3.796)	23.074 **** (8.167)
Empl. Growth	1.00 (.77)	1.098 (.767)	1.0476 (.7665)	1.064 (.896)	1.164 (.891)	1.121 (.861)
Trade Ratio	.133 (.254)			.034 (.312)		
NAFTA	3.403 (8.459)			5.867 (7.743)		
CUFTA	-3.491 (5.26)			-2.054 (5.057)		
Industrial Mix				.567 (.972)		.861 (.893)
Time Trend	.03216 (.088)		.01722 (.071)			
Mean Value of Dependant Variable	35.0	35.0	35.0	34.9	34.9	34.9
Adj – R ²	.216	.219	.219	.174	.179	.178

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

The size of the coefficients on these significant variables in the both the long and short series versions of these simplified models (models 2 and 5) should also be

⁶¹ The Variance Inflation Factors from the inclusion of the Time Trend and Industry Mix variables were 43.2 and 13.2 respectively.

considered in light of the mean size of the dependant variable over the entire period. The three regime variables involving the PC government each have rather large coefficients in the range of 11-20 additional employees on average, relative to the mean value of 35 for the entire period.

Lastly, models were run in which the time series and industrial mix variables were included to see if the separate impact of the legal/political regime variables remained apparent. These models are labeled models # 3 and 6 in Table 4.5. In both of these models, the coefficients for each of the regime variables involving the PC government remain quite large. Indeed, the coefficient sizes for these three PC government regime variables seemed to have actually increased quite remarkably. In the long series model, the *PC and Bill 7* variable remains significant, and it should be noted that the *PC and Bill 31* variable was only slightly below the minimum standard of significance used throughout the analysis. In the short series models, both of the variables remained significant at the 99% level.

These results provide some support for the claim that the legal and political regime has had an impact on average bargaining unit sizes selected by unions over time, and thus provides some indirect support for the underlying theoretical assumptions that unions engage in bounded, rational calculations about where best to allocate their limited resources available for organizing, in light of shifting cost structures generated by the external environment. However, there does seem to be some evidence that average unit sizes also increased under the *NDP and Bill 40* regime, relative to the Liberal regime, albeit to a smaller degree.

The results overall in this Part provide support for the view that changes in labour laws have had an important effect on aggregate new organizing, both in terms of certification success rates and in volumes of units and employees attempted. Contrary to the neoclassical thesis, the findings here suggest that labour laws

continue to have this important impact *despite* increasing economic internationalization and shifts in industrial structure.

The results also suggest that labour law shifts have had these impacts autonomously and apart from the broader political environment. This is illustrated consistently by the marginal incremental impacts of the three separate labour law regimes under the PC government on each of the phenomena of success rates, new units certified and attempted, and the number of employees covered by certifications. Importantly, this research contains evidence suggesting that *Bill 31* has had its own independent and large effect on each of these phenomena.

The results provide certain support as well for the importance of external environmental factors like trade, industrial mix, and economic growth on different outcomes, although the models suggest that these phenomena have considerably less impact on *certification success rate* outcomes.⁶² Nonetheless, increased economic internationalization, as measured by the *trade ratio* variable, has actually been *positively* correlated with certification success rates in Ontario.

It is also possible to interpret these findings as providing somewhat of a qualification, rather than a direct challenge, to Yates' (2000) conclusion that unions in Ontario have been successfully "staying" a decline in union density since the passage of *Bill 7*. Yates' conclusion that unions in Ontario have strategically responded to the new legal environment may possibly be correct, despite these results. Conceivably, the results herein pertaining to the effect of the *Bill 7* and *Bill 31* variables might have otherwise been even stronger had unions not adjusted in the manners she identifies. Nevertheless, this research

⁶³ The actual certification process takes place at the end of a lengthier organizing process, and certification success rates only measure outcomes pertaining to target bargaining units that unions have already successfully organized to the point where the union has already achieved the minimum level of support required for the filing of the application. Success rates pertain only to a subset of aggregate organizing activities. Thus, it is certainly less intuitive that the

does reveal that unions have not fully overcome the impact of these legal shifts on *certification success rates* via strategic organizational responses.

Lastly, given that the labour law changes in *Bill 31* primarily involved the removal of obstacles and deterrents to *employer resistance*, the significant effects of *Bill 31* found in this study supports the conclusion that increased employer resistance, aided and abetted by the legal regime, has been a major underlying causal mechanism in recent declines in *certification success rates*. This suggests that the recent legal regime shifts in Ontario have been driving actual certification process in Ontario closer to the American model, where employer resistance has long been assumed to be relatively greater than in Canada (Thompson, 2000).

environmental variables would impact certification success outcomes as clearly as they may impact upon aggregate organizing activities.

Part Two – Public and Private Sectoral Patterns in Certification Activity

The theoretical framework developed in this thesis suggests that as a result of shifts in the costs of organizing activity due to labour law shifts, the relative attractiveness of organizing in the public sector versus the private sector changed, *ceteris paribus*. This assertion relies on the assumption that public sector management actors are generally less able and/or inclined to engage in union resistance to the same degree as their private sector counterparts. This is based on the views that Canadian elected officials face certain “political costs” in opposing union certification and that, despite intermittent periods of public sector austerity, cost constraints tend to be consistently more binding in the private sector than in the public sector. Swimmer and Thompson (1995) argue that even where public sector managers take a firm bargaining stance vis-à-vis union counterparts, it has generally not been considered acceptable in Canada for them to challenge a union’s right to exist. Thus, as the labour law regime shifts in the mid-1990’s adjusted the (dis)incentives facing employers of engaging in union resistance during organizing, it seems reasonable to expect a relatively stronger employer response to this new resistance opportunity structure in the private sector, since private sector employers do not face these additional, and still binding, constraints.

To see if there is any evidence to support this hypothesis, patterns of organizing behaviour across sectors were analyzed by using a set of industry categories as a proxy for the public sector. As noted in Chapter 3, data availability places certain limitations on this analysis.⁶³ Industry breakdowns are available only for the annual data from 1985-2000. Further, since data on “sector” was not actually collected by the OLRB, it was necessary to define the public sector by

⁶³ The OLRB’s Monthly Reports do not provide any information relating to industry categories, neither on a per-unit nor aggregate monthly basis. The OLRB does, however, provide a breakdown of aggregate certification activity by industry categories on an annual basis in its Annual Reports. While this suggests that the OLRB must actually collect data on industry categories on a per unit basis, it steadfastly refuses to provide this information to researchers,

aggregating those industry categories whose total employment is largely comprised of “public” employment based on the standard definition of public used by Statistics Canada. Thus, the public sector definition used here was the composite of: education (including school boards), health and welfare (including hospitals), utilities (electric, gas, and water), and local government⁶⁴.

The analysis begins with looking at the basic raw trends in annual certification levels. Figure 4.5A provides a line graph plotting the total number of employees covered by bargaining units certified in the private sector, in the public sector, and in total. The simple pattern suggested by Figure 4.5A is that up until 1996 (the first full year in which Bill 7 was in effect), private sector organizing, measured by the number of employees covered in certifications, dominated public sector organizing in aggregate size. As well, it also appears that this dominance increased during the years of the Bill 40 regime (1993-95), suggesting that the Bill 40 regime stimulated private sector organizing, both in nominal and relative terms. However, after the shift to the Bill 7 regime at the end of 1995, private sector organizing levels decreased. Public sector organizing levels under Bill 7 continued an upward climb despite the shift to Bill 7, and by 1996 they dominated private sector levels, as noted.

For a different view of these patterns, the data on the public and private organizing levels are also plotted in two separate bar graphs in Figures 4.5B and 4.5C respectively. The Bill 40 years are highlighted, allowing for easier visual comparison of the periods before, during, and after the Bill 40 era. Figure 4.5B provides a slightly clearer view of the fact that public sector certification levels in the Bill 40 and pre-Bill 40 eras do not appear to be radically different from one another. However, these volumes do appear to have increased under Bill 7.

citing a lack of financial resources available for computer database operations involved in retrieving or generating this information.

⁶⁴ Other levels of government, such as “provincial government” are traditionally included in the definition of the “public sector” as well. However, the OLRB reports no certifications at any time throughout the period of study that would fall within other levels of government, so it was more appropriate to use this more limited definition.

Figure 4.5A – Employees Certified Annually in Public and Private Sectors

Figure 4.5C also suggests that private sector certification activity has decreased under Bill 7 to levels lower on average than during both Bill 40 and the previous era.

These graphs also reveal that the year 2000 is a fairly clear outlier because of extremely high level of certification activity in the public sector in that year. Out of the 36,901 employees certified during that year in 486 bargaining units, 23,700 employees and 246 bargaining units were in the health and welfare services industry category, an increase of about 300% over the average of the 2 prior years for this industry. It appears that the CAW/SEIU raid activity which occurred

**Figure 4.5B – Employees Covered in Certifications Granted – Public Sector
(Annual)**

**Figure 4.5C – Employees Covered in Certifications Granted – Private Sector
(Annual)**

that year⁶⁵ accounts for this extraordinarily high figure. Unfortunately, there is very little that can be done to the OLRB's annual data in order to "correct" it for raid activity such as this. While it is possible to calculate the number of employees covered by raids within each year (using the monthly data and the method used in previous chapters), it is not possible to break these down and allocate them to industry categories, since the OLRB does not publish the industry category information on a per-unit or monthly aggregate basis. Therefore, the data for the fiscal year 2000-01 is treated as being unreliable.

Figure 4.5D – Employees Certified Annually (Public Sector) as a Ratio of Public Sector Employment

Other measures of organizing intensity in the public and private sectors are also employed. Figure 4.5D provides a line graph of the annual number of employees covered by new certifications in the public sector as a percentage of total public

⁶⁵ CAW/SEIU raid certifications were found to be recorded in the OLRB's Monthly Reports over the period from May, 2000 to August, 2001.

sector employment in Ontario⁶⁶. The plot line here suggest that the intensity of organizing in the public sector, measured here as a percentage of public sector employment, has increased upon the shift to Bill 7.

Another alternative measure of the relative intensity of organizing in the two sectors – the number of public sector employees certified as a ratio of total employees certified - provides a similar picture. Figure 4.5E provides a graph of

Figure 4.5E – Public Sector Employees Certified Annually as a Ratio of Total Employees Certified (Public and Private)

this ratio, and again, the relatively greater focus on organizing in the public sector since the passage of Bill 7 is apparent.

⁶⁶ This denominator here was generated using the sum of the industry categories included in the definition of the public sector used herein, based on industry employment level data from the Survey of Employment, Payroll, and Hours (SEPH). Separate calculations were also made using estimates of total public sector employment from the Labour Force Survey (LFS) based on its definition of the public sector, as the denominator. Extremely little difference resulted from the change in data source.

Of course, the analysis of these bare trends in the data in this way does not attempt to “control” for other factors that may be related to these observed patterns in the sectoral allocation of certification activity, and does not reveal the extent to which these visually observed patterns are statistically significant. Given that there are only 16 years of annual certification data broken down by industry categories, it is difficult to perform rigorous regression analysis given the limited degrees of freedom. With this understood, some modest efforts were made to use regression analysis to 1) test the statistical significance of the Bill 40 and Bill 7 variables upon public and private sector organizing, and 2) test whether these legal regime variables remain significant and with expected signs after controlling for other environmental phenomena to some extent, albeit to a more limited degree than was possible in the previous modeling based on several more years worth of data, and in monthly format.

With the analysis limited as it is to 16 points of annual data, model specification had to be guided by a strong concern for parsimony. It was not possible to use the same set of legal regime and environmental variables employed in the monthly data regression models. It should be noted again that all of the annual certification activity totals provided by the OLRB are calculated based upon the OLRB’s fiscal year, which runs from April 1 to March 31. Since the dependant variable data is based on this fiscal year, the independent variables were re-constructed for this regression exercise based on annual data so that they most correspond to the timing of the OLRB’s fiscal year.

Given the annual frequency of the data, separate dummy variables capturing shifts in the political party in power were not possible. As a result, it was decided to simply use 2 regime dummy variables, representing the Bill 40 and Bill 7 (and subsequent) labour law regimes. The Bill 40 variable takes the value of 1 during the fiscal years 93/94 to 95/96, and the Bill 7 variables takes the value of one in all subsequent years. This is a fairly close approximation to the actual timing and effect of Bill 40 and Bill 7, since Bill 40 was in place from November/1993 to

November/95, when Bill 7 came into effect. Given an expected average certification processing time of 1 to 2 months, the years in which the Bill 40 and Bill 7 variables take the value of 1 should fairly closely capture organizing activity during their respective regime periods.

As environmental control variables, each of the employment growth, trade ratio, and industry mix⁶⁷ variables were also constructed to correspond with the OLRB's fiscal year (April to March), and were used as independent variables:

In the regression estimations, these 5 independent variables were used in models for each of the following dependant variables:

- 1) *number of employees covered by private sector certifications granted*
- 2) *number of employees covered by public sector certification granted*
- 3) *ratio of private sector employees certified to private sector employment*
- 4) *ratio of public sector employees certified to public sector employment*
- 5) *ratio of private sector employees certified to total employees certified*
- 6) *number of private sector bargaining units certified*
- 7) *number of public sector bargaining units certified*
- 8) *average size of private sector bargaining units certified*
- 9) *average size of public sector bargaining units certified*

In each case, a model was run on the dependant variable using all 5 of the independent variables. Subsequently, 2 modified models were also run in each case. In the first, the trade ratio and industry mix variables were dropped, but the employment growth variable retained. In the second, the employment growth variable was dropped as well, leaving a model with only Bill 40 and Bill 7 as independent variables. Importantly, data for the fiscal year of 2000-01 was excluded from all of the models, given its unreliability.

Tables 4.5A lists the results for the models concerning the aggregate number of private and public sector employees certified, respectively. The model results concerning the private sector in Table 4.5A provides some limited support for the

hypotheses. All of the coefficient values seem to have their expected signs. Unfortunately, however, in the models containing all three of the environmental variables, the legal regime variables are not statistically significant.

Table 4.5A – Employees Covered in Public and Private Sector Certifications Granted

Variable	Private Sector			Public Sector		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Bill 40	5701.8 (4573.5)	4701.9 *** (1930.6)	4554.3 ** (2224.3)	2774.3 (3686.3)	531.4 (1498.0)	519.2 (1437.0)
Bill 7 (and post)	-1003.753 (6311.5)	-4393.1 *** (1826.6)	-3194.25 * (2012.0)	7003.5 * (5087.2)	4449.2 **** (1417.3)	4547.9 **** (1299.8)
Employment Growth (annual average)	198757.7 * (118240.6)	85915.9 *** (38623.7)		-49114.5 (95305.1)	7069.9 (29968.9)	
Trade Ratio (annual average)	-26658.1 (23032.6)			2164.3 (18564.9)		
Industry Mix (annual average)	-61814.1 (72188.9)			41821.9 (58186.1)		
Adj- R ²	.483	.511	.350	.300	.387	.435

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Tables 4.5B and 4.5C provide results for the models based on the ratio of private and public sector employees certified to employment levels in the respective sectors. Again, the results are somewhat disappointing, in that the coefficients on the legal regime variables are not significant in the models that include all three environmental variables. Table 4.5D contains the results of the models of the ratio of private versus total certification activity. Here the Bill 7 variable is significant in all three models. Table 4.5E provides results for models of the number of new bargaining units certified in each of the private and public sectors, and Table 4.5F displays results of models of the average size of these new bargaining units, in each sector.

⁶⁷ Annual values were constructed by separating the available monthly data used for these variables in the prior analysis into annual intervals based on the fiscal year of April to March, and then calculating the mean of the 12 monthly values for each such fiscal year.

Table 4.5B – Ratio of Private Employees Certified to Private Sector Employment

Variable	Model 1	Model 2	Model 3
Bill 40	.005139 (.006)	.00356 * (.002)	.003326 (.003)
Bill 7 (and post)	-.003118 (.008)	-.006728 **** (.002)	-.004822 ** (.003)
Employment Growth (annual average)	.208 * (.144)	.137 **** (.045)	
Trade Ratio (annual average)	-.02072 (.028)		
Industry Mix (annual average)	-.03534 (.088)		
Adj- R ²	.480	.549	.242

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Table 4.5C – Ratio of Public Employees Certified to Public Sector Employment

Variable	Model 1	Model 2	Model 3
Bill 40	.002612 (.004)	-.02307 (.002)	.0002816 (.002)
Bill 7 (and post)	.00698 (.006)	.003906 *** (.002)	.00432 *** (.002)
Employment Growth (annual average)	-.05154 (.109)	.02967 (.035)	
Trade Ratio (annual average)	.004746 (.021)		
Industry Mix (annual average)	.05884 (.066)		
Adj- R ²	.238	.315	.330

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Table 4.5D – Ratio of Private Employees Certified to Total Employees Certified

Variable	Model 1	Model 2	Model 3
Bill 40	-.01664 (.105)	.03869 (.045)	.03673 (.046)
Bill 7 (and post)	-.226 * (.145)	-.194 **** (.043)	-.178 **** (.042)
Employment Growth (annual average)	4.458 (2.721)	1.143 (.902)	
Trade Ratio (annual average)	-.440 (.530)		
Industry Mix (annual average)	-.2157 (1.661)		
Adj- R ²	.608	.619	.600

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Table 4.5E – Bargaining Units Certified in Public and Private Sectors

Variable	Private Sector Units			Public Sector		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Bill 40	191.293 * (133.834)	44.482 (61.088)	42.042 (61.939)	11.898 (22.460)	-20.802 ** (10.217)	-21.375 ** (10.896)
Bill 7 (and post)	23.396 (184.694)	-247.45 **** (57.796)	-227.63 **** (56.026)	-21.192 (30.995)	-72.782 **** (9.66)	-68.125 **** (9.856)
Employment Growth (annual average)	4093.889 (3460.11)	1420.648 (1222.117)		393.938 (580.67)	333.738 * (204.294)	
Trade Ratio (annual average)	-1130.56 * (674.01)			-144.594 (113.111)		
Industry Mix (annual average)	-968.253 (2112.485)			96.639 (354.514)		
Adj- R ²	.621	.581	.569	.813	.794	.766

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Despite limitations, the results do seem to provide some insight into the distribution of the impacts of the shifts in the labour law regime across the public and private sectors. In terms of the number of employees certified, the results in Table 4.5A suggest that the impact of Bill 40 was positive across both the private

and public sectors. However, the results are far more significant in relation to the private sector. There is less evidence that the number of public sector employees being certified was significantly affected by Bill 40. An explanation for this consistent with the theoretical model is that there was relatively less of a stimulative effect on public sector organizing given a relatively low level of pre-existing employer resistance. This interpretation is reinforced by the fact that the reference group for the legal regime dummy variables includes a number of years in which the NDP held political power during its control over the majority of seats in the provincial legislature, or during its coalition with the Liberal party. In this analysis, with such limited data, it was not possible to “control” for the separate and isolated effect of the political party in power as has been done in the prior analysis of monthly data.

Table 4.5F – Average Size of Bargaining Units Certified in Public and Private Sectors

	Private Sector Units			Public Sector		
Variable	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Bill 40	-3.094 (6.487)	6.764 *** (2.933)	6.597 ** (3.139)	12.981 (22.818)	8.189 (9.332)	8.236 (8.938)
Bill 7 (and post)	-3.741 (8.953)	10.772 **** (2.775)	12.133 **** (2.839)	56.911 ** (31.49)	57.392 **** (8.829)	57.009 **** (8.085)
Employment Growth (annual average)	143.098 (167.723)	97.534 (58.668)		-511.262 (589.941)	-27.416 (186.691)	
Trade Ratio (annual average)	30.829 (32.672)			77.505 (114.917)		
Industry Mix (annual average)	-66.311 (102.399)			301.634 (360.174)		
Adj- R ²	.637	.606	.548	.729	.759	.779

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Consistent with the theoretical framework employed herein, the results also suggest that the negative impact of Bill 7 was predominantly felt in the private sector. Interestingly, certain of these results raise the suggestion that Bill 7 may

actually have *stimulated* public sector organizing levels in *both nominal and relative* terms. The Bill 7 variable was consistently positive and significant in all of the models of aggregate public sector organizing, and consistently negative and significant in all three models of private versus total organizing. It was negative and significant in two of the three models of private sector organizing, failing to remain significant when all three environmental variables were included in this model.

When we look at the results of the models relating to the number of new bargaining units in Table 4.5E, a slightly different picture appears. The results relating to the private sector appear fairly consistent with expectations. The coefficient on the Bill 40 variable was positive and significant in the model containing all three environmental variables. The results of Model 1 are particularly interesting in that they reveal both a significant positive impact of Bill 40 and a significant negative impact of the trade ratio, suggesting a positive impact of Bill 40 despite controlling for economic internationalization. With respect to the Bill 7 variable, it is not significant in Model 1, but becomes highly significant and negative in Models 2 and 3, consistent with expectations. Given the negative sign and significance of the trade ratio variable in Model 1, this suggests that the models do support the hypothesis of the negative impact of Bill 7 on private sector organizing, but that these modest models are limited in their ability to isolate the separate impacts of the Bill 7 regime from patterns of economic internationalization over the time period. The negative coefficient on the trade ratio variable, which was positive in the models based on monthly data, is likely a combined effect of the trade ratio and trade regime variables, which were consistently negative in the models using monthly data. In these annual models, with fewer degrees of freedom, it was not possible to hold the effect of these trade regimes constant.

In terms of public sector organizing, the results in Table 4.5E provide some important insights and/or caveats concerning the results thus far. While certain

results suggest that Bill 7 may have actually stimulated public sector organizing levels in both nominal and relative terms, the coefficient on the Bill 7 variable in the models of the number of new units certified is consistently negative, and is highly significant in Models 2 and 3. This suggests that Bill 7 may be causing a reduction in the number of new units being organized in the public sector as well, but that unions have during this time period been able to organize relatively larger units on average, which has been increasing the number of public sector employees being certified.

This shift in average bargaining unit sizes is confirmed by the results in Table 4.5F which clearly illustrate a large, positive, and significant impact of Bill 7 on the average size of new public sector units. Indeed, Bill 7 seems also to have had a positive impact on the average size of private sector bargaining units certified as well, given the results of Models 2 and 3 for the private sector. This is consistent with the results from earlier analysis, and with the theoretical framework herein that predicts increasing tendencies of unions to rationalize target bargaining units away from smaller targets due to increasing fixed costs of organizing and servicing.

Unfortunately, a further caveat to these results also needs to be stated. It must be acknowledged that during the Bill 7 regime, the Progressive Conservative government engaged in various forms of public sector restructuring, including but not limited to the privatization of certain public services, as well as the consolidation of certain municipal governments. It is not known whether, or to what extent, these other aspects of the PC government's broader policy agenda influenced the distribution of certification rates across the public and private sectors. For example, in the case of the privatization of a governmental function, it is possible to conceive of this as generating a stimulative impact on certification levels in situations where union successor rights are not attached as part of the

privatization arrangement⁶⁸. In such a situation, the certification of a bargaining unit within the now “private” organization is akin to a re-certification of previously unionized employees. In other scenarios of public sector restructuring, the impact on certifications is also unclear. In varying circumstances, it is possible for the government to revoke existing bargaining rights, realign and/or amalgamate existing bargaining unit structures, and such behaviour may also have stimulated certain certification applications that are also akin to “re-certifications” of previously unionized employees. It is also unclear, even if cases revealing re-certification tendencies could be identified, whether such cases would consistently fall under the definition of the “public sector” employed in this research, which is based upon specific OLRB industry categories. Unfortunately, the author was not able to obtain any data source that identifies all of the various potentially relevant forms of Ontario public sector restructuring over time.

Overall, despite these caveats, the results herein do seem to provide support for the hypotheses being tested in this dissertation. At a minimum, the results certainly do not contradict the hypotheses to any great extent at all. Rather, there are certain results supporting the hypothesized relative impact of Bill 40 and Bill 7 in the public and private sectors. Not only do the results support the hypothesis that the stimulative effect of Bill 40 and the restraining effect of Bill 7 would both be relatively stronger in the private sector, the results even suggest that the relative differences in the effect of Bill 7 across the two sectors may have actually stimulated public sector organizing in both relative *and nominal* terms, as unions have increasingly targeted large, public sector units for certification. If these results properly capture the real world effects of these alternative regimes, then they would provide some further challenge to the thesis of Troy (2000, 2001). It should be recalled that Troy’s argument that labour laws no longer “matter” rests largely upon his argument that it is *private* sector organizing levels

⁶⁸ Under the current regime arrangements in Ontario, union successor rights exist on somewhat of a *prima facie* basis via the “sale of business” provisions in the Labour Relations Act, 1995. Where successor rights are clearly in place or are unchallenged, this would not generate a

that are most greatly affected by “market forces” and are thus no longer responsive to shifts in labour law. The impacts on private sector organizing that these models capture suggests that a less deterministic view of the role of the economic environment and internationalization is appropriate and that private sector organizing indeed remains quite potentially influenced by alternative labour law configurations notwithstanding changes to the economic environment. Further, the results also suggest that the labour law regime may *itself* be a factor in driving the labour movement’s retreat into the public sector that Troy identifies. This retreat into the public sector seems not to be solely the result of environmental factors and/or a relatively weaker cost constraint in the public sector but rather may be a function of the legal regime’s relative impact on unions’ abilities to organize in these two sectors.

certification application through the OLRB, and thus would not impact the certification levels reflected in the data.

Appendix to Chapter 4

Appendix Table A4 – Pearson Correlation Matrix for Dependant Variables

Average Bargaining Unit Size	Pearson Correlation Sig. (2-tailed) N	Average Bargaining Unit Size	Bargaining units certified (non-rad)	new BLTs disposed lead (anti-lagged) by 1 month	employees covered in new BLTs certified	success rate 1 (lead withdrawn units)	success rate 2 (lead withdrawn units)	rad units certd, excl CAV/SEIU takeover	rad disposed (all unions) anti-lagged 1 month	up cases disposed monthly (excl. dir cases)	dir cases disposed, excluding teacher dir cases
1		1									
Bargaining units certified (non-rad)	-.352** 264	-.352** 264	1								
new BLTs disposed lead (anti-lagged) by 1 month	-.298** 263	.639** 264	.639** 265	1							
employees covered in new BLTs certified	.474** 264	.522** 265	.522** 265	.250** 264	1						
success rate 1 (lead withdrawn units)	-.351** 264	.692** 264	.530** 263	.530** 263	.272** 264	1					
success rate 2 (lead withdrawn units)	-.272** 264	.724** 264	.496** 263	.272** 264	.361** 264	.871** 264	1				
rad units certd, excl CAV/SEIU takeover	.015 264	.095 264	.146** 263	.018 264	.072 265	.048 264	.028 264	1			
rad disposed (all unions) anti-lagged 1 month	.736 263	-.083 264	-.053 263	.388 263	-.048 264	-.144** 263	-.144** 263	.006 264	1		
up cases disposed monthly (excl. dir cases)	-.152** 264	.465** 265	.381** 264	.308** 263	.393** 264	.295** 263	.134** 264	-.132** 265	.033 264	1	
dir cases disposed, excluding teacher dir cases	.320** 264	-.390** 265	-.411** 264	-.025 265	-.360** 264	-.366** 264	-.119 265	.052 265	.266 264	-.026 267	1

Appendix Table A4.1 – Monthly Certification Success Rates (Non-Raid), PC & Bill 7 Era as Reference

	Success Rate 1 – denominator excludes withdrawn cases		Success Rate 2 – denominator includes withdrawn cases	
	Long Series (1981- 2002) N=262	Short Series (1983- 2000) N=214	Long Series (1981- 2002) N=262	Short Series (1983- 2000) N=214
	Coef.	Coef.	Coef.	Coef.
Old PC	.203 **** (.06)	.181 **** (.049)	.123 *** (.062)	.152 **** (.052)
NDP only	.174 **** (.042)	.159 **** (.039)	.0923 *** (.044)	.0914 *** (.041)
NDP & Bill 40	.213 **** (.025)	.208 **** (.023)	.153 **** (.026)	.154 **** (.024)
PC & Bill 40	.123 **** (.034)	.117 **** (.033)	.0446 (.036)	.044 * (.034)
Liberal	.172 **** (.047)	.143 **** (.048)	.114 *** (.049)	.125 **** (.05)
Bill 31	-.0782 **** (.023)	-.055 **** (.02)	-.085 **** (.024)	-.073 **** (.021)
Empl. Growth	-.0243 (.316)	-.227 (.338)	-.166 (.331)	-.266 (.353)
Trade Ratio	.119 (.104)	.097 (.118)	.256 (.109)	.200 (.123)
NAFTA	.022 (.035)	.031 (.029)	-.0014 (.036)	-.0095 (.031)
CUFTA	.03 (.022)	.036 * (.019)	.0078 (.023)	-.0036 (.02)
Ind'l Mix		.169 (.366)		-.0815 (.383)
Time Trend	.00014 (.000)		-.0002 (.000)	
Mean Values of Dep. Variable	.778	.792	.658	.670
Adj-R ²	.613	.587	.477	.411

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Appendix Table A4.2 – Models of Bargaining Units Certified - Data Not Corrected for Raids

	Long Series Model (1981-2002) N = 263	Short Series Model (1983-2000) N = 215
Variable	Coef.	Coef.
Old PC	-6.737 * (4.216)	-2.494 (3.416)
NDP only	1.295 (4.065)	10.211 (5.91)
NDP and Bill 40	8.473 * (6.014)	19.324 (8.106)
PC and Bill 40	-9.363 (9.517)	-1.28 (10.252)
PC and Bill 7	-28.242 **** (9.134)	-21.407 (9.693)
PC and Bill 31	-30.173 **** (11.628)	-28.872 (10.685)
Empl. Growth	196.597 **** (61.85)	221.76 (68.054)
Trade Ratio	83.414 **** (20.43)	84.305 (23.684)
NAFTA	-12.888 ** (6.789)	-16.358 (5.884)
CUFTA	-3.666 (4.221)	-3.829 (3.842)
Ind'l Mix		185.937 (73.746)
Time Trend	-.111 * (.07)	
Mean Value of Dependant Variable	52.05	53.16
Adj-R ²	.558	.533

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Chapter 5 – Quantitative Empirical Research - Raid Activity

This Chapter provides the results of the quantitative analysis of patterns in aggregate raiding activities in Ontario over time.

Figure 5.1 provides a graph of the number of raid bargaining units certified monthly over the entire period of study. While there is indeed some variation over the entire period of study, what is immediately apparent is the extraordinary volume of raid activity that took place during the years 2000 and 2001 in Ontario. During the months of May, 2000 to November, 2001 the Canadian Auto Workers union ("CAW") attempted to displace the Service Employees International Union ("SEIU") in many of its existing bargaining units after certain leaders within the SEIU failed in their attempt to merge the SEIU with the CAW under a more voluntary arrangement. The CAW then attempted to execute this "takeover" by seeking to displace the SEIU in each of the applicable bargaining units as these units

Figure 5.1 – Raids Units Certified Monthly – All Unions

Figure 5.2 – Raid Units Certified Monthly – Excluding CAW/SEIU Takeover

successively entered their legal “open periods”. This particular cluster of raid applications appears to be by far the largest single grouping of raid attempts in recent Ontario history, and can be understood as constituting one single massive raid or “takeover” attempt by the CAW.

Figure 5.2 provides a graph of the volume of monthly raid activity after removing all of the raid bargaining units associated with this large “takeover” attempt by the CAW. These particular units were identified by the definition used herein (see Chapter 3), which were filed by the CAW, during the known period of the takeover attempts, and in which the SEIU was listed as an Intervenor in the Application. Now that the units associated with this large CAW/SEIU takeover event are removed, there is far less variation in the data, with the monthly totals fluctuating over time between a minimum of zero and a maximum of twelve (12). It is somewhat difficult from the graph to determine whether there are any long

Figure 5.3 - Ratio of Raid Units Certified to New Units Certified - All Unions

term trend effects, and/or whether the timing of the legal regime periods seems to have been relevant.

An alternative useful concept is the ratio of raid activity to new, non-raided organizing activity, capturing the relative intensity of raid activity, and possibly the proportion of union organizing resources being directed towards raids. Data for this ratio were constructed, and Figure 5.3 provides a graph of this variable. Again the CAW/SEIU takeover event seems to have caused the months in that period to stand out as extreme outliers. Figure 5.4 provides a graph of the ratio of the number of raid units certified, excluding the CAW/SEIU raids, to the number of new units certified. Again, there appears to be considerable variation,

Figure 5.4 - Ratio of Raid Units Certified to New Units Certified – Excluding CAW/SEIU Takeover

although it seems that the graph does illustrate a slight growth in this ratio, on average, in the last 4 to 5 years of the period of study.

A number of regression models were subsequently run to examine raid activity volumes more rigorously. It should be noted that in this modeling exercise, it was necessary to depart slightly from the standard set of regime variables used in the rest of the work performed in this dissertation. It should be recalled from the discussion in Chapter 3 that one of the aspects of the somewhat lesser set of legal reforms that took place under Bill 139, excluded from other analysis, were reforms that directly altered the regulation of raiding activity. Theoretically, two aspects of Bill 139 have the potential to increase the volume of raiding activity, *ceteris paribus*. First, Bill 139 expanded the period of time during which raids

may be legally filed during the term of an existing collective agreement from being the last 2 months to the last 3 months of the agreement. Second, Bill 139 also mandated that every employer post a government prepared guide to decertification in every unionized workplace, and distribute similar materials annually to every unionized employee. As a result, it was appropriate to use the Bill 139 regime period as an additional and separate control variable. In the models in this chapter, the Bill 139 took values of 1 as of January, 2001, at which time the Bill 31 variable now began to take values of zero. Given the appropriateness of analyzing this post-2000 period, in which comparable industrial structure data is unavailable, models of raid activity were only run in the long series format. As well, simplified models were run throughout in which all of the environmental variables were dropped⁶⁹ and the law and policy regime variables were the only variables in the models.

Given the large impact of the CAW/SEIU takeover event on the data, regression models were run on data that was corrected for this event in two different ways, in order to focus the analysis on regularized raiding taking place in somewhat smaller events. Under the first correction method, the individual bargaining units that were part of the CAW/SEIU event were removed from the data. The second method involved removing entirely from the analysis the months in which these CAW/SEIU raids took place.

Table 5.1 contains the results from the set of models analyzing the aggregate number of raid bargaining units certified throughout the period of study. The results suggest that a decline in raiding activity has taken place over the period of study. The time trend variables were negative in both sets of models, and in the two simplified models, all of the post-Liberal regime variables had negative coefficients. One clear pattern that stands out is a consistently negative and significant coefficient value on the *NDP only* variable in all four models. As well,

⁶⁹ Except in the models of raid bargaining units certified in Table 5.1, where the employment growth variable was retained in the simplified model, given its statistical significance in the original model.

the *PC and Bill 31* variable is negative in each model, and is significant in both of the simplified models. The *PC and Bill 7* variable is also negative and significant

Table 5.1– Raid Bargaining Units Certified

	Raid BU's Certified (Excl. CAW/SEIU takeover Bargaining Units)		Raid BU's Certified (Excl. Months During CAW/SEIU takeover)	
	Long Series Model (1981-2002)	Simplified	Long Series Model (1981-2002)	Simplified
Variable	Coef	Coef	Coef	Coef
Old PC	-.34 (.595)	-.179 (.355)	-.618 (.631)	-.209 (.370)
NDP only	-1.231 *** (.571)	-1.039 *** (.452)	-1.014 ** (.597)	-1.07 *** (.466)
NDP & Bill 40	-.0056 (.493)	-.256 (.422)	.443 (.591)	-.286 (.437)
PC and Bill 40	.133 (1.018)	-.345 (.916)	.711 (1.11)	-.377 (.936)
PC and Bill 7	-.401 (.587)	-1.014 *** (.422)	.32 (.784)	-1.044 *** (.437)
PC and Bill 31	-.967 (.684)	-1.726 *** (.520)	-.0644 (.942)	-1.756 *** (.535)
PC and Bill 139	.129 (.805)	-.628 * (.472)	1.375 (1.181)	-.443 (.576)
Empl. Growth	.204 *** (.093)	.196 *** (.092)	.199 *** (.09)	.193 *** (.095)
Trade Ratio	-.015 (.03)		-.018 (.032)	
NAFTA	-.104 (1.057)		.0799 (1.079)	
CUFTA	.120 (.691)		.284 (.713)	
Time Trend	-.00169 (.01)		-.00826 (.011)	
Mean Value of Dep. Variable	2.35	2.35	2.36	2.36
Adj-R ²	.05	.053	.056	.052

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

in both simplified models. Overall, these results appear contrary to the hypothesis derived in Chapter 3 that raid activity would likely increase upon the transition to the PC government and its consecutive legal regimes.

As noted, these dependant variables were also transformed into variables measuring the ratio of the number of raids certified to the number of new, non-raid bargaining units certified. Table 5.2 displays these results. Again, a decline in raiding under the NDP era is apparent. Each of the variables relating to the NDP era had a negative coefficient, with the *NDP only* regime variable being significant in 3 of the 4 models, and the *NDP and Bill 40* variable being significant in the first unsimplified model. Gradually, the coefficient signs on the regime

Table 5.2 – Raid Units Certified as Ratio of New Units Certified

	Excl. CAW/SEIU takeover Bargaining Units		Excl. Months During CAW/SEIU takeover	
	Long Series Model (1981- 2002)	Simplified	Long Series Model (1981- 2002)	Simplified
Variable	Coef.	Coef.	Coef.	Coef.
Old PC	.01672 (.016)	-.01105 (.009)	.00432 (.016)	-.00572 (.009)
NDP only	-.03638 *** (.015)	-.01992 ** (.012)	-.02665 ** (.015)	-.01459 (.012)
NDP & Bill 40	-.02325 ** (.013)	-.1298 (.011)	-.00252 (.015)	-.00765 (.011)
PC and Bill 40	-.001842 (.027)	.00633 (.024)	.02487 (.028)	.01166 (.023)
PC and Bill 7	-.006342 (.015)	.0043 (.011)	.02709 (.02)	.00964 (.011)
PC and Bill 31	-.02707 (.018)	-.01316 (.014)	.0145 (.023)	-.0078 (.013)
PC and Bill 139	.00965 (.021)	.04 **** (.012)	.0642 *** (.029)	.0503 **** (.014)
Empl. Growth	.259 (.241)		.229 (.237)	
Trade Ratio	-.08443 (.08)		-.101 (.08)	
NAFTA	-.005492 (.028)		.002048 (.027)	
CUFTA	-.0002374 (.018)		.006755 (.018)	
Time Trend	.000389 (.000)		.00009 (.000)	
Mean Value of Dep. Variable	.0559	.0559	.0517	.0517
Adj-R ²	.062	.057	.057	.056

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

variables take positive signs, although not as consistently, under the PC government era. While a general pattern is less discernible overall, what seems to stand out is that the coefficients on the Bill 139 regime variable are positive in every model and are highly significant in 3 of the 4 models.

The results of the models relating to raiding *attempts* display some similar patterns. Table 5.3 displays results of the models of the aggregate number of raid bargaining units attempted (disposed). Almost all of the post-Liberal regime variables have negative coefficients, with the exception of the positive but insignificant coefficient on the *PC and Bill 31* variable. Interestingly, many of the results change quite dramatically depending upon the choice of correction used on the data to control for the CAW/SEIU takeover. When these bargaining units are excluded but the relevant months included, the size of the regime and time trend variable coefficients are consistently smaller. When the relevant months are excluded altogether, which prevents the model from taking account of the amount of other raiding activity taking place during those months, the regime variable coefficients take larger, more negative values. Correspondingly, the coefficient on the time trend variable switches signs and becomes significant. Overall, despite these shifts, the coefficient values on almost every one of the PC era regime variables are negative and the *PC and Bill 31* regime variable is significant in 3 of the 4 models.

The results for the models of the ratio of the number of raid bargaining units attempted to the number of new, non-raid units attempted are provided in Table 5.4. A few results stand out. First, there are consistently negative coefficient values on the *NDP only* variable, which is significant in 3 of the 4 models. Second, the coefficient on the *PC and Bill 139* variable is consistently positive and is significant in 3 of the 4 models. Lastly, the remaining regime and environmental variables are not significant with the only exception being the *NDP & Bill 40* variable in the first model.

Table 5.3 – Raid Bargaining Units Attempted (lagged one month)

	Excl. CAW/SEIU takeover Bargaining Units		Excl. Months During CAW/SEIU takeover	
	Long Series Model (1981- 2002)	Simplified	Long Series Model (1981- 2002)	Simplified
Variable	Coef.	Coef.	Coef.	Coef.
Old PC	-.37 (.726)	.317 (.431)	2.579 (1.444)	-.699 (.886)
NDP only	-.775 (.696)	-1.09 *** (.547)	-3.187 *** (1.366)	-2.106 ** (1.115)
NDP & Bill 40	.165 (.602)	-.126 (.513)	-5.499 **** (1.352)	-1.142 (1.048)
PC and Bill 40	-.658 (1.243)	-.913 (1.112)	-8.052 **** (2.539)	-1.929 (2.241)
PC and Bill 7	-.282 (.716)	-.674 (.513)	-9.427 **** (1.795)	-1.691 (1.048)
PC and Bill 31	-.991 (.835)	-1.569 *** (.631)	-12.293 **** (2.154)	-2.585 *** (1.282)
PC and Bill 139	.505 (.983)	-.339 (.573)	-13.28 **** (2.703)	-1.654 (1.344)
Empl. Growth	-.372 (11.305)		2.638 (21.782)	
Trade Ratio	.09089 (3.725)		6.835 (7.315)	
NAFTA	.215 (1.29)		-1.034 (2.468)	
CUFTA	-.187 (.843)		-1.549 (1.632)	
Time Trend	-.00784 (.012)		.06115 *** (.025)	
Mean Value of Dep. Variable	3.23	3.23	3.49	3.49
Adj-R ²	.013	.025	.097	.002

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Overall, the results indicate that there was not any clear increase in aggregate raiding activity as a result of recent shifts to the PC government and its legal regimes, as hypothesized. Rather, we have witnessed a decline in raiding that somewhat parallels the decline in new, non-raid certification activity. However, the models do provide some support for the hypothesis that there has been an

Table 5.4 – Raid Bargaining Units Attempted as Ratio of New Units Attempted (lagged one month)

	Excl. CAW/SEIU takeover Bargaining Units		Excl. Months During CAW/SEIU takeover	
	Long Series Model (1981- 2002)	Simplified	Long Series Model (1981- 2002)	Simplified
Variable	Coef.	Coef.	Coef.	Coef.
Old PC	.007849 (.011)	.001797 (.007)	.0505 *** (.022)	-.011 (.014)
NDP only	-.01452 (.011)	-.01094 (.008)	-.0495 *** (.021)	-.2373 (.017)
NDP & Bill 40	-.008796 (.009)	-.00385 (.008)	-.09107 **** (.021)	-.01664 (.016)
PC and Bill 40	-.01416 (.019)	-.005617 (.017)	-.122 **** (.39)	-.01841 (.035)
PC and Bill 7	.004451 (.011)	.01144 (.008)	-.129 **** (.028)	-.00135 (.016)
PC and Bill 31	-.01226 (.013)	-.00524 (.01)	-.176 **** (.033)	-.018 (.02)
PC and Bill 139	.01328 (.015)	.02318 **** (.009)	-.183 **** (.042)	.01123 (.021)
Empl. Growth	-.19 (.175)		-.15 (.335)	
Trade Ratio	-.02273 (.058)		.0748 (.112)	
NAFTA	.0087 (.02)		-.0088 (.038)	
CUFTA	.00123 (.013)		-.0184 (.025)	
Time Trend	.00006 (.000)		.00106 **** (.000)	
Mean Value of Dep. Variable	.048	.048	.051	.051
Adj-R ²	.017	.027	.097	-.012

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

increase in the ratio of raiding to non-raiding activity. This ratio seems to have increased most clearly under the most recent *PC and Bill 139* regime, even after removing the effect of the CAW/SEIU event. This increase in the intensity of raids, despite some decline in aggregate raid volumes, means that the volume of raid activity has not declined to the same extent as the volume of non-raid

activity, and has taken up an increasing proportion of union organizing resources and efforts during this most recent regime era.

However, these raid activity models should be interpreted with caution given the fairly low degree of fit revealed by the low adjusted R-squared scores throughout. This suggests that real world raiding activity is only weakly determined by the particular forces identified in these models and are likely driven primarily by other factors much more specific to historical time and place.

Lastly, alternative simplified versions of these models were also run in which the Bill 31 and Bill 139 regime periods were combined into one variable. This approach provides a somewhat simpler test of whether the most recent shifts in law and politics have had a combined effect overall on raiding activity. The results for these models, which seem to reveal a similar pattern of declining raid volumes with corresponding increases in raid proportions under the most recent regime, are provided in the Appendix to this Chapter.

Appendix to Chapter 5

Appendix Table A5.1 – Raid Bargaining Units Certified, Simplified Models

	Raid BU's Certified (Excl. CAW/SEIU takeover Bargaining Units)	Raid BU's Certified (Excl. Months During CAW/SEIU takeover)
Variable	Coef.	Coef.
Old PC	-.324 (.371)	-.324 (.376)
NDP only	-1.254 **** (.464)	-1.254 **** (.471)
NDP & Bill 40	-.404 (.437)	-.404 (.443)
PC and Bill 40	-.584 (.927)	-.584 (.941)
PC and Bill 7	-1.146 **** (.437)	-1.146 **** (.443)
PC and Bill 31	-1.207 **** (.369)	-1.363 **** (.419)
Adj-R ²	.041	.043

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Appendix Table A5.2 – Ratio of Raid Units Certified to New Units Certified, Simplified Models

	Ratio of Raid BU's Certified (Excl. CAW/SEIU takeover Bargaining Units) to New Units Certified	Ratio of Raid BU's Certified (Excl. Months During CAW/SEIU takeover) to New Units Certified
Variable	Coef.	Coef.
Old PC	-.007 (.01)	-.007 (.01)
NDP only	-.015 (.012)	-.015 * (.012)
NDP & Bill 40	-.085 (.012)	-.009 (.011)
PC and Bill 40	.011 (.024)	.011 (.024)
PC and Bill 7	.009 (.012)	.009 (.011)
PC and Bill 31	.021 *** (.01)	.016 * (.011)
Adj-R ²	.028	.011

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Appendix Table A5.3 – Raid Bargaining Units Attempted (Simplified Models)

	Raid BU's Attempted (Excl. CAW/SEIU takeover Bargaining Units)	Raid BU's Attempted (Excl. Months During CAW/SEIU takeover)
Variable	Coef.	Coef.
Old PC	.19 (.448)	.19 (.448)
NDP only	-1.218 *** (.561)	-1.218 *** (.561)
NDP & Bill 40	-.254 (.528)	-.254 (.528)
PC and Bill 40	-1.041 (1.12)	-1.041 (1.12)
PC and Bill 7	-.802 (.528)	-.802 (.528)
PC and Bill 31	-1.011 *** (.446)	-1.316 **** (.498)
Adj-R ²	.025	.034

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

✓ It was determined that the OLS estimates of this model were affected by serial correlation, so these results were obtained using the Maximum-Likelihood estimator. The Cochrane-Orcutt method was not available due to missing data in one month.

Appendix Table A5.4 – Ratio of Raid Units Attempted to New Units Attempted, Simplified Models

	Ratio of Raid BU's Attempted (Excl. CAW/SEIU takeover Bargaining Units) to New Units Attempted	Ratio of Raid BU's Attempted (Excl. Months During CAW/SEIU takeover) to New Units Attempted
Variable	Coef.	Coef.
Old PC	.003 (.007)	.003 (.007)
NDP only	-.009 (.009)	-.009 (.009)
NDP & Bill 40	-.002 (.008)	-.002 (.008)
PC and Bill 40	-.004 (.018)	-.004 (.017)
PC and Bill 7	.013 * (.008)	.013 * (.008)
PC and Bill 31	.011 * (.007)	.007 (.008)
Adj-R ²	.009	.002

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

Chapter 6 – Quantitative Empirical Research - OLRB Unfair Labour Practice Complaint and Duty of Fair Representation Complaint Activity

This Chapter has two Parts. Part One provides the results of the quantitative analysis of Unfair Labour Practice complaint activities over time, while Part Two provides the results of the quantitative analysis of Duty of Fair Representation complaint activity over time.

Part One: Unfair Labour Practice Complaint Activity

As noted in chapter 3, measurements of Unfair Labour Practices (“ULP’s”) were corrected by decomposing the data and removing all of the complaints that are actually Duty of Fair Representation (“DFR”) complaints. Figure 6.1 provides a graph of the number of ULP complaints disposed by the OLRB each month over the period of study. What is apparent from reviewing this plot of the data is that the volume of ULP complaints has declined since approximately 1995. However,

Figure 6.1 Unfair Labour Practice Cases Disposed Monthly (Excl. DFR’s)

it is difficult to determine simply from this graph whether there has been any trend since 1995, or if the timing of the other regime variables seems to have been relevant as well.

Regression models on the number of ULP complaints in both the long and short series were run using the basic set of independent variables, and the results for these models are provided in Table 6.1 in columns 1 and 3. The results suggest that the presence of the NDP and its Bill 40 may have had a small positive impact on ULP litigation, but these coefficients are not consistently significant. However, what is striking is a very large and significant negative impact from the Bill 7 regime and an even greater, highly significant negative impact on ULP litigation activity from the Bill 31 regime. Both models estimated that the impact of the Bill 31 regime was slightly larger than that of the Bill 7 regime. The size of these two coefficients in these two models range from -11.4 to -15.1 . Compared to the mean value of 37.8 over the entire period of study, these coefficient values clearly suggest that these regimes reduced the volumes of ULP complaint activity at the OLRB by about 33%.

However, since it is possible that fluctuations in ULP activity are merely determined by the *extent* of related organizing activity, separate models were run in which the monthly volume of new bargaining units attempted entered the model as an additional control variable. These results, for both the long and short series, are also listed in Table 6.1, in columns 2 and 4. In these models, the coefficient of organizing activity was highly significant, as expected, and the inclusion of this variable increased the overall fit (R-squared) of these models. Despite this, there were similarities in terms of the size, sign and significance of the legal regime variable coefficients. After controlling for fluctuations in underlying organizing, the coefficients on the *PC and Bill 7* and the *PC and Bill 31* regimes were both very large and significant negative values, with the *PC and Bill 31* coefficient being relatively larger in both models. The results of these models capture a purer impact of the legal regime shifts upon ULP complaint

Table 6.1 – Unfair Labour Practice Complaint Activity

	Long Series Model (1981-2002) N = 263		Short Series Model (1983-2000) N = 215	
	Basic Model	Modified	Basic Model	Modified
Variable	Coef.	Coef.	Coef.	Coef.
Old PC	- 7.542 **** (2.701)	-6.021 *** (2.657)	-2.111 (2.258)	-1.185 (2.194)
NDP only	4.830 ** (2.604)	4.015 * (2.542)	6.191 * (3.907)	3.501 (3.834)
NDP & Bill 40	2.246 (3.853)	.848 (3.766)	5.533 (5.359)	1.824 (5.26)
PC & Bill 40	-3.64 (6.096)	-3.344 (5.932)	-1.566 (6.777)	-2.684 (6.552)
PC & Bill 7	-13.616 *** (5.851)	-10.708 ** (5.742)	-11.443 ** (6.408)	-9.212 * (6.215)
PC & Bill 31	-15.097 *** (7.449)	-12.282 ** (7.283)	-14.277 *** (7.064)	-10.818 * (6.878)
Empl. Growth	1.493 **** (.396)	1.18 **** (.394)	1.352 **** (.45)	.964 *** (.445)
Trade Ratio	.323 *** (.13)	.228 ** (.129)	.141 (.156)	.029 (.153)
NAFTA	8.583 *** (4.349)	10.458 *** (4.259)	5.635 * (3.89)	8.659 *** (3.834)
CUFTA	5.623 *** (2.704)	6.413 *** (2.639)	2.726 (2.54)	3.766 * (2.467)
Ind'l Mix			64.068 (48.753)	.261 (.481)
Time Trend	-.09049 *** (.045)	-.068 * (.44)		
New BU's Attempted		.124 **** (.032)		.145 **** (.037)
Mean Value of Dep. Variable	37.8	37.8	39.5	39.5
Adj R ²	.334	.370	.255	.306

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

activity, and suggest a decline in ULP activity in the range of 9.2 to 14.2 complaints per month relative to the Liberal reference period.

Consistent with the theoretical model, these results are not interpreted as a decline in underlying levels of employer resistance, but rather as evidence that,

in the face of an expected increase in employer resistance, given a reduction in both union resources available and the potential remedies expected from ULP litigation, union propensity to pursue ULP complaints was greatly reduced by the shift to the Bill 7 and 31 regimes. It is noteworthy as well that the significant, negative impacts of the Bill 7 and Bill 31 labour law eras on ULP litigation diverge from previous research results on this question, and seem to reinforce the importance of correcting the data by isolating and separating the DFR cases (which have been *increasing* in volume, see below) from the traditional ULP cases.⁷⁰

The results pertaining to the other labour law regimes are also interesting and largely consistent with expectations. In both models, the coefficient on the *Old PC* regime variable was negative, and was significant in the long series model. As well, all models similarly captured a positive effect of each of the two NDP regimes. The coefficient on the *PC and Bill 40* variable was also negative in all models, suggesting that the shift in the political party in power alone had an impact on the volume of unfair labour practice complaints being filed, although this result was not statistically significant.

The coefficients on each of the trade related variables consistently had a positive sign, with all three being significant in the long series models, and the *NAFTA* variable being significant in the short series models. The remaining environmental variables were also found to be significant in the long series models, with the *NAFTA* variable being significant in the short series model. These results suggest the potential for liberalized trade to increase the volume of ULP complaint activity, holding the incentive structuring effects of the legal regime constant, perhaps as a result of increased conflict under intensified market forces.

⁷⁰ The results in Martinello (2000) suggests that ULP activity had *not significantly increased* upon the passage of Bill 7, but did not reveal the *very significant negative* impact found in this analysis.

Finally, this important finding concerning the dramatic decrease in ULP activity associated with the Bill 7 and Bill 31 regimes, reinforces the argument put forth in chapter 3 that using ULP complaints as an independent variable proxy for underlying employer resistance is inappropriate.

Part Two: Duty of Fair Representation Complaint Activity

Figure 6.2 provides a graph of the number of DFR cases disposed by the OLRB in each month over the period of study. The plot reveals that DFR activity has been growing over time since approximately 1990. It is difficult however to determine whether there are any pre-1990 trends in the data, and also whether the timing of the separate regime variables has been relevant.

Figure 6.2 Duty of Fair Representation Cases Disposed Monthly

DFR complaints are filed by employees in unionized bargaining units, and typically concern the representation of the employee by the union in a grievance concerning the employer's administration of the collective agreement.⁷¹ While unions generally retain the ultimate authority to decide on the resolution to individual grievances filed by bargaining unit employees, the OLRB scrutinizes their representation, through the DFR complaint mechanism, to ensure that unions do not act in a manner that is "arbitrary, discriminatory, or in bad faith" towards any bargaining unit worker. It is important to understand therefore that DFR activity is restricted completely to the already unionized portion of the workforce. Since the phenomenon under study in this model is something that only takes place within the already unionized sector, there are different theoretical considerations at play. As a result, in specifying the model of DFR activity, it was decided that it was not appropriate to use all of the environmental variables used in the remaining modeling exercises. It seems particularly inappropriate to include the Industry Mix variable, or its Time Trend proxy, since there is no clear theoretical linkage between shifts in aggregate industry structure and the DFR activity of bargaining unit employees in the *already existing unionized* sector of the economy.

Thus, a regression model was run on the number of DFR complaints disposed in each month, without the *industrial mix* variable or its *time trend* proxy, and the results of this model are found in the first column of Table 6.2. Each of the coefficients on the regime variables was found to be significantly positive with the exception of the Old PC regime variable, which had a small negative value. Thus, each of the regime eras following the Liberal reference period has witnessed a larger volume of DFR cases. Each of the PC government regime eras also seems to have been associated with a larger volume of DFR activity

⁷¹ Under section 74 of the *Labour Relations Act, 1995*, a DFR complaint may be filed by an employee in a bargaining unit, regardless of whether he or she is a union member or not. Although a small portion of DFR complaints relate to matters such as the union's behaviour during negotiations over a new collective agreement, most DFR complaints concern the union's representation of an employee with respect to a grievance filed under an existing collective agreement.

than the two NDP regime eras. This pattern of results could alternately be explained by a time trend. In order to test this possibility, two further models were run. The first model includes the standard time trend variable as an

Table 6.2 – Duty of Fair Representation Complaint Activity

	DFR Cases Disposed (1981-2002) N = 263			DFR Ratio - DFR Cases Disposed / # Employees covered by Collective Agreements, Ontario (x 1000) (1984-2000) N = 203		
	Model # 1	Model # 2 (Add time trend for entire period)	Model # 3 (Sample limited to post-Liberal era)	Model # 1	Model # 2 (Add time trend for entire period)	Model # 3 (Sample limited to post-Liberal era)
variable	Coef.	Coef.	Coef.	Coef.	Coef.	Coef.
Old PC	-.157 (1.444)	2.356 (2.015)		-.000971 (.002)	.0002332 (.002)	
NDP only	5.109 **** (1.675)	3.335 ** (1.943)		.003103 **** (.001)	.001539 (.001)	
NDP & Bill 40	6.097 *** (2.378)	3.196 (2.874)	-1.675 (2.899)	.002868 ** (.002)	.000528 (.002)	-.0013 (.002)
PC & Bill 40	11.336 **** (4.094)	7.745 ** (4.548)	3.122 (4.686)	.005911 *** (.0003)	.00301 (.003)	.0016 (.003)
PC & Bill 7	8.633 *** (3.517)	3.996 (4.365)	-1.172 (4.766)	.003449 * (.0003)	-.0002402 (.004)	-.0015 (.003)
PC & Bill 31	12.252 **** (3.847)	5.088 (5.557)	1.353 (6.437)	.004887 * (.003)	-.0000392 (.005)	-.0008 (.004)
Empl. Growth	.844 **** (.297)	.828 **** (.296)	.9469 *** (.4722)	.0059 **** (.00023)	.00058 *** (.00023)	-.065 ** (.033)
Trade Ratio	.057 (.098)	.054 (.098)	.2875 *** (.1354)	.01229 (.008)	.0001 (.00008)	.0002 * (.00013)
NAFTA	-1.243 (2.84)	-4.074 (3.244)		-.001709 (.002)	-.004124 ** (.002)	-.0024 (.002)
CUFTA	-.207 (1.705)	-2.147 (2.017)	3.225 (2.818)	-.0001232 (.001)	-.001929 (.002)	N/a ✓
Time Trend		.06 ** (.034)	-.0082 (.049)		.0000525 (.000)	.000001 (.000)
Mean Value of Dep. Variable	21.9	21.9	29.9	N/a	N/a	N/a
Adj R ²	.400	.405	.215	.337	.341	.182

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

✓ Given the shortened time period of the model, it was not possible to use both the NAFTA and CUFTA dummy variables, and thus the CUFTA variable was omitted.

additional control variable. The second model tests whether there is a post-Liberal era time trend by including a time trend but only running on the shorter sample beginning in the *NDP only* era, with this regime serving as the reference group for the remaining dummy variables.

The results for these two alternative models are also provided in Table 6.2. The second column ("Model # 2") provides the results for the model with the time trend that runs for the entire period of study. This time trend was found to be positive and significant in this model, and its inclusion reduces the size and the significance of each of the regime variable coefficients subsequent to the Liberal reference period. Despite this, each of these variables maintained a positive sign and the *NDP only* and the *PC and Bill 40* variables were both significant. The coefficient on the *Old PC* regime variable switched from a negative to a positive sign. Overall, these results suggest that an ongoing upward time trend was exacerbated by the regime variables in the latter half of the period of study.

The third column of Table 6.2 (Model # 3) contains the results for the model based on the shorter sample. Neither the legal regime variables nor the time trend were significant in this model, and it had a much lower Adjusted R-squared than the models run on the full sample. The coefficient on the trade ratio variable also took a positive and significant value. This model provides little support for the proposition that a post-Liberal trend has arisen, and its results overall are quite weak.

For easier reference, the data for the *DFR Ratio* variable was multiplied by 1000, so that the coefficient values represent the number of monthly DFR complaints per 1000 unionized employees. The results for the initial model (Model #1) are provided in the fourth column of Table 6.2. Despite transforming the data to control for growth in the unionized workforce, each of the post-Liberal regime

variables had a positive sign and was found to be significant. The coefficient on the *employment growth* variable was again positive and significant, and none of the trade related variables were significant. Once again, the two alternative versions of these models were tested (Models 2 and 3) and the results are listed in columns 5 and 6 of Table 6.2. In the model with the full period time trend variable, none of the variables was significant except the employment growth variable. In the model based on the shortened sample, neither the regime variables nor the post-Liberal time trend variable was found to be significant. This latter model also had a much lower Adjusted R-Squared score than the prior two models and its results overall are quite weak and provide little support for the existence of a post-Liberal time trend.

Overall, these models provide only qualified support for the argument that the post-Liberal regime eras have been associated with an increase in DFR activity. The analysis here finds that some of the models are consistent with this hypothesis, and in some models the positive effect of these regime eras appears, despite holding different potential trend effects constant. As well, it should be remembered from the basic graphs in Figures 6.1 and 6.2 that there appears to have been little trend effect in the dependant variables prior to this post-Liberal era. However, despite this qualified support, given that the models were not able to isolate significant effects for each of the regime variables when the longer trend effect was included, it remains difficult to rule out the possibility that increased DFR activity has been driven by a longer trend effect. A combined trend and regime effect also remains as a possible explanation. Further, the results for the models of the ratio of DFR cases to unionized employment seem even weaker overall. Thus, the models provide even weaker support for the contention that the observed growth in DFR activity relative to unionized employment that seems apparent in the graph in Figure 6.3 has been correlated with the timing of shifts in the legal and political regime.

Figure 6.3 –DFR Cases Disposed Per 1000 Unionized Employees

DATE. FORMAT: "MMM YYYY"

Chapter 7 –Qualitative Case Studies

This Chapter provides the final body of empirical analysis in the dissertation, in which the results of two qualitative case studies of individual unions are provided. This additional research had a number of objectives. Hopefully, it would provide supplemental relevant evidence towards the accuracy of some of the hypotheses described in chapter 3, and also provide an assessment of the accuracy and usefulness of the underlying theoretical model of bounded rational union behaviour. A further objective was to address how union behaviour interacted with and mediated the effect of labour law on organizing outcomes, by attempting to identify whether union behaviour was determined by the law, as opposed to it being strategically/morally chosen by the union.

As noted in chapter 3, given these theoretical objectives, the unit of analysis ought to be the individual union. A purposive sampling approach was developed with case selection being driven by criteria consistent with these theoretical objectives. First, candidate unions should display a historical commitment to *some* volume of organizing activity and thus be consistently engaged in organizing activities across the entire period of study. Secondly, candidate unions should be fairly large “general” unions operating primarily in the private sector. While this reduced the ability to analyze behaviour across sectors, this potentially increased insights limited to organizing within the private sector, and the selection of two *large general* unions somewhat complements the quantitative analysis taking place at the level of aggregate activity. Thirdly, candidate unions should seemingly embody characteristics of strategic and/or moralistic behaviour as understood in the literature so that the two unions would be less likely to act in accordance with the model. By selecting candidate unions with arguably stronger *a priori* potential for being inconsistent with the theoretical model, this created the strongest “test” for the model. Consistent with the arguments of Robinson (1990) and Swartz (1993), traditional economic

rationalities would be subsumed to a greater extent within these unions by alternative logics of behaviour, and there would be the greatest chance of departure from the theoretical framework's predictions about the impact of labour law on behaviour. Second, as an exercise in "analytic induction" (Palys, 2003) this approach of selecting theoretically problematic cases would be most likely to suggest useful revisions to the theoretical model overall. There is, of course, great difficulty in attempting to categorize union organizations according to the extent of their strategic/moral commitments, but there is some anecdotal evidence and/or arguments about this issue in existing literature.

Preliminary statistical analysis on OLRB annual data was performed to generate a subset of specific unions which have consistently engaged in organizing in each year over the period of study⁷². Analyses summarized in Tables 7.1 and 7.2 revealed a great deal of regularity in the fluctuation of individual unions' organizing activity as between the different labour law regime eras. In terms of the impact of the shift from the pre-Bill 40 to the Bill 40 era, for example, of the 16 unions in the sub-sample, 14 unions certified a greater number of employees under Bill 40, and 10 unions certified a greater number of new bargaining units under Bill 40. The comparison of outcomes for these 16 unions under the Bill 40 and Bill 7 eras⁷³ reveals somewhat more divergence in terms of the number of employees certified, since only 8 unions organized relatively fewer employees under Bill 7. However, there was again a strong regularity in terms of the number of new bargaining units, since 14 of the 16 unions certified fewer units under Bill 7.

⁷² OLRB data pertaining to individual unions was available in annual format for the OLRB's fiscal years 1985/6 to 2000/01. CAW was included in this subset despite the fact that there were no bargaining units organized by the CAW in the first year of this analysis, which was perhaps related to the fact that the union had only recently disaffiliated itself from the UAW.

⁷³ As with the analysis of public/private sector outcomes, since annual data alone was available, the Bill 7 era was defined to represent all of the years from 1996-2001 inclusive, thus including the Bill 31 era.

Table 7.1 - Employees Certified By Unions Under Different Regimes - Results of T-Tests⁷⁴

Union	Pre Bill 40 vs Bill 40			Bill 40 vs. Bill 7		
	Mean Change	T-Score	Change Consistent with Expectation	Mean Change	T-Score	Change Consistent With Expectation
CAW ✓	+1782	.744	Yes	-3067	-1.288	Yes
CUPE	+27	.065	Yes	+1573	1.565	No
UFCW	+959 **	2.512	Yes	-808 *	-1.930	Yes
Hotel	-424 *	-1.442	No	+11	.183	No
Office, Prof'l	+187	.785	Yes	+104	.285	No
OPSEU	+648 **	2.337	Yes	+210	.380	No
SEIU	+127	.328	Yes	+710	.927	No
USWA	+1147 ****	5.003	Yes	+581	.570	No
Carpenters	-79	.426	No	-133	-.730	Yes
Christ'n Labour	+115 ***	2.567	Yes	-43	-.603	Yes
IBEW	+162	.761	Yes	-140	-.672	Yes
Labourers	+323	.927	Yes	-336	-.742	Yes
Nurses	+122	.708	Yes	-148	-.607	Yes
Teamsters	+408	1.117	Yes	-538	-1.259	Yes

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

✓ The figures for the CAW are based on the years 1986/87 to 1999/00, due to irregularities caused by the breakaway from the UAW and then the subsequent massive raid attempt on the SEIU.

Based on these considerations and the following discussion of individual union behaviour, the CAW and the UFCW were selected as candidates. Both these unions have been consistently identified by prior researchers as exemplifying commitments to certain strategically aggressive and/or moralistic modes of unionism. The CAW has seemingly earned a reputation amongst some analysts of displaying both aggression and a commitment to social "movement unionism". The CAW was chosen based on this reputation and the theoretical possibility that such behaviour would coincide with the kinds of strategic/moral organizing

⁷⁴ T-scores and estimates of level of significance are those calculated without the assumption of equality of variances.

Table 7.2 - New Bargaining Units Certified By Unions Under Different Regimes - Results of T-Tests⁷⁵

Union	Pre Bill 40 vs Bill 40			Bill 40 vs. Bill 7		
	Mean Change	T-Score	Change Consistent with Expectation	Mean Change	T-Score	Change Consistent With Expectation
CAW ✓	+17.7 *	2.046	Yes	-17.7	-2.667	Yes
CUPE	+4.2	.930	Yes	-14.2 **	-2.197	Yes
UFCW	+14.2	1.139	Yes	-20.6	-1.658	Yes
Hotel	-11.6	-1.648	No	-2.5	-1.332	Yes
Office, Prof'l	+4	.143	Yes	-0.8	-.276	Yes
OPSEU	+5.4	.904	Yes	-14.0 ***	-4.165	Yes
SEIU	-8.2	-1.639	No	-6.5	-1.032	Yes
USWA	+25.9 *	1.768	Yes	-39.1 **	-2.697	Yes
Carpenters	-22.2 ***	-2.743	No	+4.3	1.953	No
Christ'n Labour	+28.9	1.129	Yes	-32.4	-1.266	Yes
IBEW	+3.4	.684	Yes	+2.5	.493	No
Labourers	-3.1	-.139	No	-52.4 *	-2.508	Yes
Nurses	-7.2	-1.270	No	-5.5 **	-1.951	Yes
Teamsters	-1.6	1.408	No	-6.5 ****	-4.963	Yes

Notes: Standard Errors are in Parentheses.

**** indicates significance at the 99% level (2-tailed)

*** indicates significance at the 95% level (2-tailed)

** indicates significance at the 90% level (2-tailed)

* indicates significance at the 90% level (1-tailed, where appropriate)

✓ The figures for the CAW are based on the years 1986/87 to 1999/00, due to irregularities caused by the breakaway from the UAW and then the subsequent massive raid attempt on the SEIU.

behaviour discussed herein. Robinson (1990) provides evidence of the UFCW exemplifying a moralistic approach to union organizing behaviour in the more hostile organizing environment in the United States. As well, the UFCW has also committed to a massive, highly publicized struggle to organize Ontario agricultural workers, arguably amongst the most disadvantaged workers in society, in the face of specific labour laws aimed at thwarting such attempts, which outward characteristics may be reasonably be interpreted as *prima facie* evidence of moralistic unionism. As well, both the CAW and the UFCW have been shown statistically to be two of the most important contributors, amongst a small group of six large and active unions, to the aggregate volume of organizing

activity in Ontario (Yates, 2000; Perlmutter, 2004). The selection of these two specific unions was also potentially beneficial in that there appear to be some significant organizational structural differences between them. By most accounts or definitions, the CAW is a much more centralized organization, with the parent National union having a relatively larger role and proportion of overall the budget than in the case of the UFCW. Local unions within the UFCW seem to operate more autonomously from their parent organization, retain a larger share of their underlying dues base, and certain locals are massive composite organizations representing numerous bargaining units at several locations. During the interviews, the researcher inquired into the accuracy of these *a priori* beliefs as a “check” on the research design, and the evidence not only confirms these general assertions about the organizational differences between these unions, but also revealed the extent to which *organizing functions* are similarly more centralized in the CAW as compared to the UFCW (Aman, 2004; Shimmin, 2004; and Fuller, 2004). These organizational/structural comparisons are discussed in greater detail later in this chapter.

Within each union, interviews were performed with various staff members engaged directly in organizing as well as with senior officers and executive members of the union organization responsible for the organizing function overall. Union documents were also reviewed, where possible. In the case of the CAW, since organizing responsibilities are almost entirely centralized within the National Union, interviews were limited to staff within that office. In the case of the UFCW, which operates under quite a different, more decentralized structure, interviews were carried out with staff and executive both at the National union and at the union’s two largest locals that have consistently performed the greatest amount of organizing activity within the broader UFCW organizational structure: Locals 175/633 and 1000A. Interviews were conducted on numerous occasions for a period of approximately 6 months, with eleven (11) participants in

⁷⁵ T-scores and estimates of level of significance are those calculated without the assumption of equality of variances.

total. Interviews were conducted with both current and retired staff/executive from both unions, such that overall, the participants interviewed had knowledge of the union's organizing behaviour and environment dating back to the early 1990's. Table 7.3 provides a complete list of all of the participants interviewed in this process.

Table 7.3 – Interviews Conducted

<u>The UFCW</u>	<u>The CAW</u>
<u>UFCW Canada:</u> Mr. Mike Fraser, President, 1998-2004 Mr. David Watts, Assistant to the President	<u>CAW National Office:</u> Mr. John Aman, Organizer, CAW National Office Mr. Paul Forder, Organizing Director, 1998-2004 Ms. Maureen Kirincic, Organizing Director, 1992-1998 Mr. Richard Vann, Assistant to Director of Accounting
<u>UFCW Local 175/633:</u> Mr. John Fuller, Executive Assistant to the President Mr. Mark Flanagan, Organizing Director, 1995-2003 Mr. Kevin Shimmin, Organizer	
<u>UFCW Local 1000A:</u> Mr. Kevin Corporon, President Mr. Dan Gilbert, Director of Research and Education	

An initial list of interview questions was at first created to assist the collection of similar information from both unions. However, given the different personal and organizational contexts involved in each interview, the interviews departed significantly from the list of questions, although the list continued to serve as an intuitive guide for the general areas of inquiry that needed to be covered, in an aggregate sense, within each of the unions overall. Relevant union documents were also reviewed at various times, including internal financial records where the union was willing to provide them (discussed below). At the end of the

interview process, transcripts were prepared and were reviewed and analyzed for patterns in union responses to key areas of inquiry. The analysis was divided into the following 4 key areas of inquiry:

- 1) General perceptions about the independent impact of labour law shifts on union organizing in the 1990's.
- 2) The impact of labour law shifts on organizing costs and the relevance of cost-benefit calculation.
- 3) Unions *responses* to shifts in the legal environment in terms of:
 - a) Organizing Techniques and Practices;
 - b) Resource Allocation Responses;
 - c) Other Strategic Responses.
- 4) The relationship between labour law shifts and raiding activity.

1) General perceptions about the independent impact of labour law shifts on union organizing in the 1990's.

Although there was some difference of opinion amongst certain participants about the importance of laws vis-à-vis other factors⁷⁶, there was essentially unanimity in the belief that labour law shifts in Ontario have had a significant, observable and independent impact.

There were also some differences in opinion about which laws mattered most and least. Most participants⁷⁷ believed that the two major shifts in law were the

⁷⁶ Overall, it seems that most participants felt that labour law shifts have had a very important effect. Notably, CAW organizer John Aman believed that free trade has had an even larger impact, but agreed that labour law also had an effect.

⁷⁷ Since not all participants were asked the same questions about the same topics, given their different positions and expertise, there are few topics on which I can say there was unanimity amongst participants. I have refrained from making references to numbers of participants at times throughout this chapter given that participants were not generally asked identical questions, but rather the interviews were guided intuitively by a set of questions that pertain to different interview contexts. For example, certain participants were/are not involved in organizing directly and thus, it often made little sense to refer to the number of, or the percentage of total

imposition of the mandatory vote system in 1995, and the removal of the OLRB's power to grant Remedial certification in 1998. Also considered amongst the other important changes was the removal of other OLRB remedies, such as the power to grant interim re-instatement of discharged employees in organizing contexts. Participants expressed doubts about the importance of some other legal reforms. For example, certain participants did not believe that there was any significant observed effect resulting from the rule requiring posting of decertification guidelines by employers⁷⁸ (Shimmin, 2004).

Consistent with the theoretical model, there was essentially unanimity amongst the participants that the shifts in labour law in 1995 and 1998 stimulated employer resistance and that this was a primary causal mechanism through which legal changes effected organizing. Participants uniformly believed that employers became much more aggressive in their responses to unionization efforts and the degree of resistance increased and intensified significantly. The types of employer resistance strategies and tactics also changed significantly, and participants believed that these shifts in strategies and tactics were indeed causally related to shifts in labour law, although other environmental factors were acknowledged as having causal effect on employer resistance strategies as well.

Staff within both unions believed that the shift to a mandatory vote system in 1995 stimulated employer aggression, and led to more uniformity in the types of resistance strategies across different employers. Many expressed the belief that this commonality in employer response was the product of new strategies being available to employers under law (since law provided insufficient disincentives for engaging in these strategies) and to the dissemination of strategic legal advice provided by management-side labour lawyers concerning the new legal (dis)incentive structures facing employers.

participants with certain views. Rather, the claims are based on the researcher's assessment of the evidence overall.

⁷⁸ This was part of the reforms under Bill 139, passed in December 2000.

One specific example relates to employer communications prior to the representation vote. UFCW participants, in particular, were convinced that the regressive shifts in labour laws have coincided with more aggressive employer communications strategies, which would seemingly take advantage of the more liberal scope for employer communication afforded by specific changes to the wording of the Act, the reduced scope for providing remedies for such, and by shifts in decision making by the OLRB. Staff and Officials from Local 175 point to predictably consistent delivery of quasi-standardized letters to employees within a few days of the vote. Local 175 has retained a sampling of such letters, believed to be drafted by legal counsel, which they refer to as “Ye Olde Love Letter” in a mock “album” satirizing the portions of which resemble an emotional outpouring from employers (Fuller, 2004; Shimmin, 2004). Organizers make it a routine habit to warn potential members that the “love letter” is coming, and to show them examples clearly predicting the form it will take, although on the target company’s corporate letterhead. Predicting the delivery and content of such a “love letter” before the employees is a useful organizing tool, since it reinforces the mechanical and insincere nature of the employer’s statements, and reinforces the view that the union is at least aware of employer tactics (Shimmin, 2004).

Also consistent with the theoretical model, participants also uniformly agreed that the removal of OLRB remedial powers, including the power to grant remedial certification in 1998 had another independent effect on employer behaviour, and that this further increased employers’ propensity to terminate pro-union personnel during organizing drives. Several participants believe that employer behaviour became much more a product of a rational costs-benefit analysis of the impacts of this formally illegal behaviour. Mark Flanagan, former Organizing Director for UFCW Local 175 explained how the financial costs involved in the reinstatement of fired organizers, even if the employer is required to pay all retroactive lost wages, is a particularly weak disincentive when dealing with all but “really small companies”:

It's pocket change. If a company can get rid of the union for 50 grand or whatever, what is that to them? They don't care. They could care less about that. Now, really small companies, it hits them hard. But the big corporations with say 50 to 100 or 200 employees, it is chump change. They will spend that on going to a ball tournament. It is nothing but pocket money to them. Meanwhile, they have done what they want to do. Not only that, they have made sure of one thing more, that they are union free for a year, because no union can make an application within 12 months. So a union puts in an application, unfair labour practices happen, the company fires a bunch of people, unfair labour practices happen over the next 2 or 3 months, then another vote. The other vote happens, the union loses again, by the time the decision is out and everything probably it is just about the next January. So from January to January is one year, then there is a time bar not from the date of the application, from the date of the decision. So that is a year later. That company has remained non-union guaranteed for 2 years for what, 50 grand? The math is easy. (Flanagan, 2004).

Overall, most participants believed that labour law changes in 1995 and 1998 have had an important effect on organizing by stimulating employer resistance and encouraged much more aggressive, coercive and intimidating forms of communications and behaviour in response to organizing efforts. The clear consensus is that this new environment, since the shift to Bill 7 in 1995, and exacerbated by Bill 31 in 1998, provides employers with relatively more effective opportunities to defeat organizing campaigns relative to earlier periods. Indeed, those participants with experience in organizing during the Bill 40 era stated that they believed that this legislation had the opposite, stimulative effect on organizing, in part because it bolstered union efforts and encouraged unions to "invest" more heavily in the organizing function (Fuller, 2004; Kirincic, 2004). These general observations are essentially consistent with the theoretical model and the set of deductions outlined in chapter 3.

2) The impact of labour law shifts on organizing costs and the relevance of cost-benefit calculation.

Given the stimulus provided to employer resistance by legal changes, most participants reported that in their experience, the costs of organizing activities, whether considered in terms of efforts or resources, were increased by shifts in law. The interviews overall confirm that the new additional vote period generally

results in a longer, costlier and more intensive campaign on average, although participants pointed out that in certain cases the mandatory vote system may well result in a shorter process compared to the smaller category of cases in which a pre-hearing vote was held under earlier legislation. Nevertheless, participants from both unions referred to the vote period as being akin to a “second campaign”, in which the employer has the advantage of having much greater access to the employees. Thus, organizing staff consider that they need both a strong initial campaign to initially organize the workers into supporting the union, and then a second campaign which takes place during the vote period. Generally, the vote period requires far more intensive union efforts, personnel and resources than any other time in the process (Shimmin, 2004). Indeed, the full time staff organizer with UFCW Local 175 opined that more organizing personnel available during vote periods would be the greatest use of any new resources devoted to organizing (Shimmin, 2004).

The interviews also provided some evidence in support of the more specific claim that the shift in labour laws increased the *fixed costs* of organizing any particular bargaining unit of a given size. Most participants felt that there were indeed costs associated with organizing any new bargaining unit that could be described as being of a fixed or quasi-fixed nature⁷⁹. These are the costs associated with assigning organizing personnel, whether they be full or part-time personnel, for periods of time, along with compensation for associated expenditures such as travel, accommodation, and *per diem*.⁸⁰ The belief that a unit of an organizer's

⁷⁹ As discussed in chapter 3, the phrase “quasi-fixed” or “fixed” costs is used in this dissertation in a somewhat more relaxed manner than is typically found in economics. While the strict economic definition of fixed costs implies that there is no variability in costs as size changes, here, it is understood that there is both a fixed and variable component, and that the fixed component may even vary slightly along bargaining unit size ranges. The simple point is that there is *some* fixed aspect to the organizing costs, they do not simply vary according to bargaining unit size.

⁸⁰ It should be clarified that the hiring of personnel by the union is *not in itself* understood as being a fixed cost of organizing. Rather, the theoretical model in this thesis understands the fixed cost as the *assignment or allocation* of staff to the *organizing of target bargaining units*, whether the staff in question happens to be hired as a full time organizer, a temporary organizer, or a servicing/administrative staff. Personnel may be hired and assigned to various duties, although it is possible that to the extent that a union hires dedicated full time or temporary “organizers”, their flexibility to allocate them to non-organizing work is reduced.

time must be considered a “resource expenditure” was consistently held amongst all participants. Other organizing resource expenditures that participants identified as being of a fixed or quasi-fixed nature included costs of producing campaign leaflets and literature, and the rental of store-front campaign office space in some larger campaigns. As well, participants stated that expenditures on more sophisticated forms of communication during organizing, including internet and VHS video products, have become common in recent years. As well, certain participants stated that they have been allocating increasing amounts of resources to consulting fees paid to communications experts they have retained both for general organizing purposes and for specific campaigns. The following discussion with Mr. Kevin Corporon, President of UFCW Local 1000A, captures the general character of the evidence suggesting that legal shifts have caused increases in both the quasi-fixed and variable costs of organizing per campaign:

Mr. Corporon: ...I guess the best answer that I can give you on that is that our organizing programs were much more aggressive and more costly in turn during Bill 40 and prior to Bill 40. Because, although Bill 40 was a great piece of legislation for organizing, even before Bill 40, the fact that we had the right to automatic certification, that was the single most devastating change in legislation under Bill 7, the elimination of the right to automatic certification. Until then, we invested and we invested successfully in many cases, because you knew once you signed 60 percent, you applied and it was an automatic certification...

[After Bill 7 came into effect]

...it almost became a license to fire people when they got wind of an organizing drive. And that got out and people got very frightened to talk to unions, so our organizing slowed down simply because you can only drop so many leaflets and you can only make up so many attempts for contacts. And when they are just not happening, we tended to pull back and put our money into steward training and other things, and just work on leads as they came to us, because it just became very hard. In the past, we would always generate our own leads. It got to the point where, unless you had a committee and a commitment inside that was coming to you, it was very hard to do anything. And even then it is hard to win a vote. Votes are very hard to win. So our costs went down, but when we do organize and take a campaign it is much more costly than it used to be ... Because not only do you have to get them certified, you have to win a vote. And winning a vote costs more than to organize... We're talking dollars and cents. When you've got to produce videos like these here...this one is a 27 minute feature, this is a 12 minute feature...and you have got to produce 2,500 copies to put one in everybody's hand and maybe 800 copies to get one spread around inside. And then you produce leaflets of the quality that you have to have to

make sure things are readable and understandable and you have to have the number of manpower to get that stuff out. That is a much greater investment than we would have done when we had automatic certification.

Overall, based on extensive discussions of costs with various participants, it seems difficult to consider any specific form of costs to be of a *purely* fixed or variable nature. The closest analogue of a pure variable cost is likely the postage costs per worker involved in an organizing campaign that relies heavily upon mailings. Most other costs seem more accurately described as having both a fixed and variable component to them. Organizer time, for example, seems to be of a quasi-fixed nature, in that there are fixed tasks involved in organizing that must be done by the external organizer, be they full time staff or rank-and-file member (as opposed to the internal activists), the size and scope of which may only be slightly influenced by unit size. Indeed, organizers cautioned about assuming any simple relationship between organizing costs or efforts and bargaining unit size. While size may increase costs/efforts on average, costs/efforts are also driven by various other factors (see discussion below).

The interview evidence suggested as well that the fixed costs involved in organizing any particular target unit will often vary quite dramatically across different targets, and that this variation exists regardless of bargaining unit size (Aman, 2004). While unit size may be one determinant of the total investment required, the amount of effort required to convince employees to support the union in different contexts, and the extent of employer opposition, are also important, if not the primary determinants, of the amount of efforts and fixed resource expenditure required. However, since the evidence gathered supported the thesis that employer opposition has increased along with shifts in law in 1995 and 1998, and also that quasi-fixed organizing costs vary with the extent of employer opposition, it is still logical and reasonable to believe that these quasi-fixed costs have increased along with legal shifts on average, regardless of the fact that other factors identified by participants also create variation in costs across different target units.

Some participants took *strong exception* to the suggestion that their union might actually decide upon specific target bargaining units based upon any so-called “rational calculation” of economic costs and benefits to the union organization. The following excerpt from the interview of CAW organizer John Aman illustrates this point:

Mr. Aman: ... We never, ever, ever, ever...at least nobody has ever said to me, I don't know about the leadership, but nobody has ever said to me "You can't organize that workplace because we are not going to get enough dues out of them". Nobody has ever said that to me.

Mr. Bartkiw: Okay. But on the other hand, you don't deny that there are significant costs involved in organizing any unit up to the point of getting a collective agreement?

Mr. Aman: Oh ya, sure there is.

Mr. Bartkiw: And is that the case even with a small group or a large group⁸¹?

Mr. Aman: For sure....

On the other hand, there are various examples of rational behaviour that may not be necessarily characterized as such by the participants themselves. One example is the previous quote from Mr. Corporon suggesting that since fixed costs of organizing have increased, the union has reduced its attempts at locations where they don't already have leads, and have instead diverted their resources into membership servicing. While participants consistently acknowledged the existence of quasi-fixed costs involved in organizing any particular unit, they nevertheless claimed that decisions about whether or not to pursue a potential bargaining unit were based primarily on other factors⁸². A central criterion is whether there appears to be much “good” that could be accomplished for the employees in question. This includes an assessment of the

⁸¹ The somewhat “leading” questions here were atypical, although intended to probe the interviewee's basis for rejecting the suggestion of any rational calculation taking place.

⁸² It should be noted that a rational cost-benefit analysis would not necessarily be limited to the issue of whether or not the union would “get enough dues out of” the new unit, as suggested by Mr Aman. Also relevant are the costs of organizing and administering the unit, as well as the

union's ability to obtain a useful collective agreement for the employees, the anticipated employer response to the certification attempt, and the corresponding risks to the employees from the employer's response. These questions are greatly affected by industry context, the degree of industry competition, the structure of the workplace, turnover rates, and unit size. Interestingly, participants admitted that unit size was indirectly relevant under this view since they felt that the risk to union activists was *much greater in a smaller firm*. Overall, organizing personnel are keenly aware that in selecting targets, they have to be mindful of the possibility of causing "more harm than good" to the employees (Aman, 2004; Fuller, 2004). John Fuller explains that unit size *does* play an important role in his union's choices about target selection, although he describes the importance of size, not in terms of a resource-driven calculation, but rather in terms of the increased threat to employees and the increased "difficulty" in organizing smaller groups. Yet, Mr. Fuller, does agree that this increased difficulty, regardless of how he characterizes it, increased as a result of the change in the law, and that the union responded by becoming more conscious of this relative difficulty in deciding whether to devote attention to smaller target units:

So if somebody came in and said 'there are 20 of us that want to organize' we would generally say to them, and it was an industry that we weren't in or an employer that we didn't know, we would generally say to them 'here is our track record...if you can't tell us that 17 or 18 of those people will sign a card, almost questions unasked, we can probably tell you that you are not going to be successful at organizing.' It is a bit of a shock [but] these are the stats. If they tell me 17 or 18 out of 20, I can almost guarantee it is 14 or 15. And if its 14 or 15 in a small group like that, the chances of the employer identifying the 14 or 15 are better. And on top of that, as soon as one of those 14 or 15 leaves, you can bet that employer is going to replace that person with somebody who is more to their liking. So all of a sudden, your 14 or 15 becomes 11 or 12, 10 or 9, and closer to the de-cert down the road. We always tell people that our job is to make it better for them and not worse. *We have started to be more conscious of that because under the old automatic, you could go and sign up 14 out of 20, with much more confidentiality with respect to cards and signing ... So that was one of the changes.* It wasn't for not organizing small groups, it was to understand that, if there was 100 people and they said to you they could sign 65 out of 100 people,

impact of organizing the new unit on the union's overall bargaining power in its existing jurisdiction(s). Rational behaviour would potentially take these additional factors into account.

then you would be better there than 13 out of 20, because the employer wouldn't be able to identify 65 out of 100 as easy as they can identify 13 out of 20. (*emphasis added*) (Fuller, 2004).

It is reasonable to question the extent to which participants' rejection of "bald" rational calculation as the basis of their behaviour is evidence that they do not behave in this manner or simply evidence that they do not *characterize* their behaviour this way. For example, the role of unit size described by Mr. Fuller could also be understood as a rational calculation based upon increased risks and lower expected returns to such organizing. As well, one major factor identified by participants as affecting the decision to pursue a particular target is the impact of targeting that particular firm on the union's already existing membership. Here, the cost/benefit analysis suggested by the theoretical framework is supported in that organizer staff from both unions admitted that they would be far less likely to attempt to organize new target units that appear to be very difficult or "marginal" units in circumstances where this would have a limited positive impact on their existing membership via increased density within their jurisdictions. Indeed, what is also supportive of the theoretical model is that organizers and officers in both unions agreed that this shift away from certain difficult, marginal targets is related to the impact of labour law shifts. Both unions agreed that they would have been more likely to attempt to organize certain historically difficult and marginal targets unrelated to their existing jurisdictions, under the Bill 40 labour law regime. Personnel cited extreme examples like organizing workers at McDonald's restaurants (Aman, 2004) or Tim Hortons' outlets (Shimmin, 2004) as being targets that they are less likely to attempt to organize currently under more difficult labour laws than under the Bill 40 regime. This is an important finding in that it identifies the weakness in some analysts' claims that unions have been or should be attempting to expand more aggressively into such "uncharted territory" as part of their renewal and growth strategies. Indeed, the evidence gathered here suggests that regressive shifts in law in Ontario may be forcing unions to reduce their efforts in certain marginal

contexts.

Nevertheless, participants consistently insisted that they do regularly attempt to organize groups of employees that they firmly doubt could be justified on any cost-benefit analysis, and could offer examples where the efforts and resources expended on organizing certain small groups would not be recaptured by the union for a long period of time, if ever. Participants asserted that their union's behaviour is driven both by the decision criteria discussed above, and by an underlying philosophical and moral commitment to the principle of organizing the unorganized, and the researcher admittedly saw little reason to doubt the veracity of these claims. Yet, while philosophical commitments may indeed be important, and it is reasonable to conclude that cost-benefit analysis is certainly not the *only* factor affecting union behaviour, the interview data provide evidence supporting the existence of real resource costs, how these have been increased by shifts in law, and includes various admissions by unions consistent with the theory that their behaviour is indeed constrained by these resource constraints regardless of philosophical commitments.

3) *Union responses to shifts in the legal environment*

The case studies provide some interesting evidence of both commonality and divergence in union responses to shifts in labour law regimes over time. Patterns concerning organizing techniques and practices, resource allocations, and other responses, are discussed in separate sections below.

A) Organizing Techniques and Practices

Participants in both unions described a need to completely “re-think” their organizing practices as of the mid to late 1990's, at least partly because of shifts in labour law. Both unions sought to improve their “access” to potential new members through similar methods, including an effort to be more sensitive in organizing practices to cultural and gender differences of employees, and greater

use of organizing personnel with similar personal characteristics, from similar industries and geographic communities. Developments in such new organizing techniques has been discussed in previous literature (Bronfenbrenner, 1998; Yates, 2000). Earlier analyses have focused primarily on the qualitative benefits from using rank and file organizers, arguing that it has been an important ingredient in recent successful union growth and renewal strategies. Benefits include increased credibility and solidarity in relation to target groups, and the fostering of an overall “organizing culture”. The evidence gathered in this research provides an additional perspective of these techniques in terms of the *economic efficiencies* that they provide to unions in managing the increased costs of organizing. Given that the evidence confirms the increased costs of organizing overall, the shift to the use of rank and file activists has the additional and complementary benefit of assisting unions in managing the necessary resource expenditures over time in a more efficient manner⁸³. As is discussed below where further details of each union’s rank and file organizer program are provided, these programs are structured to allow unions to use the services of rank-and-file members - *on a temporary but paid basis* - for relatively short periods of time towards specific organizing targets. These arrangements provide unions with greater resource allocation flexibility over time, enabling them the possibility of injecting larger volumes of organizing resources intensely into campaigns at times when they are most required, while minimizing the longer term fixed cost⁸⁴ to the union of keeping a complement of organizers available. The evidence is that in both unions’ case, the rank and file organizer program predates the shifts in labour laws in Ontario in 1995. However, staff from both unions stated that the use of rank-and-file organizers in this manner has become increasingly important as the organizing environment has become more difficult (Shimmin, 2004; Forder, 2004; Watts, 2004, Fuller, 2004). Other evidence of the

⁸³ My intention here is not to challenge the claims of prior researchers concerning the various qualitative benefits derived from using rank-and-file organizers, but rather only to put forward this argument about an economic efficiency benefit as an additional and complementary effect.

⁸⁴ The use of the phrase “fixed cost to the union” refers to a long term salary cost and should not be confused with the definition of “fixed cost” employed in the theoretical model, which is concerned with the fixed costs of organizing individual bargaining units.

increasing importance of these programs comes from patterns of resource allocations within both unions, which is discussed in the next section.

As noted above, organizers stressed the need for a much more intensive organizing campaign in most instances for there to be a real chance of success, relative to organizing targets under earlier labour laws. Participants stated that following the shifts to Bill 7, the campaign is now longer, and as noted, seems to involve a “second campaign” - the vote period - which is often extremely intensive and demanding upon union resources. An organizer for the UFCW stated that he universally anticipates a significant reduction in the percentage of employee support during the vote period as a result of aggressive employer resistance strategies (Shimmin, 2004). While Ontario labour law entitles unions to apply for certification with evidence of 40% support from the proposed bargaining unit, an organizer for the UFCW stated that he is “extremely nervous” when applying with 60% support and believes that success is usually only probable when the union applies after having obtained closer to 70% support (Shimmin, 2004). While this places significant pressure upon the union to obtain as much support as possible prior to filing its application, the available time is often restricted by the fact that the employer will eventually become aware of the organizing drive and begin its response strategies.

Overall, participants claimed that the new legal regime requires a much more aggressive and intensive campaign in most instances, with a need to generate a much higher degree of employee support at the “front-end” and to make the employees as “bulletproof” as possible. Interestingly, CAW organizer John Aman stated that the required organizing approach as being somewhat of a *reversal* of his previous approach. That is, rather than getting certified by the OLRB first and *then* developing an effective union culture and organization subsequently, Mr Aman now believes that there is a strong imperative to extensively develop a culture of and commitment to unionization, through more extensive education and outreach to target employees, in order to ensure both the creation of a

bargaining unit and ensure that it has a good chance of achieving a first collective agreement (Aman, 2004).

B) Resource Allocation Responses

The CAW:

CAW organizing expenditures within the broader organizational structure are very highly centralized in that the parent union performs and manages organizing activities almost exclusively on behalf of the broader organization. All full time union organizer staff personnel in Ontario are employed by the union's National office in Toronto. There are no full time organizers employed by any CAW local union in Ontario. As well, this centralized structure has been constant throughout the entire period of study (Forder, 2004). Thus, the financial burden of organizing expenses is born almost entirely by the National union. Concurrently, new organizing is performed in the "name" of the National union; applications for certification are filed by the National union and the National union holds all of the legal bargaining rights granted by certifications in its name. This structure magnifies the importance of the specific strategic choices about organizing that are made at the National union level. Conceivably, centralization of this burden at the upper parent union level, *ceteris paribus*, spreads the costs of what may in economic terms be considered a quasi "public good" across the broader organizational structure. Local unions are not prevented from hiring full time organizers, and their personnel do often participate in organizing activities, but there is little official encouragement from the National union for them to hire full time dedicated staff, the cost of which would be born wholly by the local union under current structural arrangements (Aman, 2004). CAW participants also stated that this centralized structure assists in maintaining consistent standards in organizing expertise (Aman, 2004).

CAW resource expenditures on organizing follow a pattern over time that in some ways conforms to the expectations derived from the theoretical model, and in other ways contradicts this model. The CAW's response to the advantageous

shift in labour laws under Bill 40 seems largely consistent with the model, in that the CAW Organizing Director at that time stated that the union consciously chose to significantly increase its roster of full time organizers at the time, and decided to hire ten (10) new full time organizers, on a temporary basis, during the Bill 40 labour law era (Kirincic, 2004). She advises that this was a conscious strategic decision on the part of the union to “really take advantage of the timing of the legislation” (Kirincic, 2004). In terms of the model, this is akin to an increased “investment” in organizing at the time, given the increased returns at the time from the investment.

Interestingly, however, CAW participants denied any retrenchment in their fixed full time organizer complement following the shift to Bill 7. Internal CAW financial records provided did not isolate Ontario-specific expenditures prior to 1995. The CAW was willing to provide such information, but the union’s computer-based accounting system does not contain pre-1995 Ontario-specific records (Vann, 2004). Ontario-specific data for 1995 however was provided, which quite closely indicates the organizing expenditures on full time organizing staff in the year that immediately preceded the Bill 7 era⁸⁵. Interview responses were available as evidence concerning pre-1994 and previous years. The financial records provided clearly indicate that full time organizing staff expenditures for the years 1995-98 inclusive remained very constant, essentially confirming the interview statements denying any retrenchment in the full time organizer complement. Interestingly, beginning in 1999, this category of expenditures actually increased, and there was positive growth in full time organizer salary expenditures in each subsequent year. Figure 7.1 provides a graph of fluctuation in CAW Ontario-specific full time organizer staff expenditures, presented as fluctuations of the 1995 base amount. Both the continuity from 1995-98 and the steady post- 1998 growth pattern is readily apparent. By 2002, CAW full time organizer staff expenditures in Ontario were more than 110% greater than their 1995-98 levels.

⁸⁵ Bill 7 came into legal effect in November of 1995.

CAW participants also stated that their Community Based Organizer (“CBO”) program was significantly expanded in the province of Ontario for a number of consecutive years following the Bill 31 labour law reforms in 1998 (Forder, 2004). The CAW advises that these increases in CBO expenditures were the result of a strategic decision made by union leadership in 1998, following the appointment of Paul Forder as the new organizing director within the organization (Forder, 2004; Aman, 2004). Mr. Forder stated that the new difficulties associated with organizing under revised Ontario labour laws, which at that time included the Bill 31 reforms, formed part of the impetus for this strategic decision to increase expenditures on and utilization of rank and file organizers through their CBO program (Forder, 2004).

Internal financial records provided to the researcher confirm that in the years 1995–1997, CAW expenditures on its CBO program were quite stagnant. As with the CAW expenditures on full time organizers however, CBO expenditures grew significantly as of 1998. In each of the years 1998 to 2001 inclusive, the CAW’s CBO expenditures were dramatically higher than in the years of 1995–1997. Figure 7.2 provides a graph of fluctuations in the CAW’s annual expenditures on Ontario-specific CBO activities, relative to the 1995 expenditures (1995 = 100). The substantial increase as of 1998 is readily apparent. During the years 1998–2001, Ontario-specific CBO expenditures were consistently greater than 100% above their 1995–97 levels. During 2000 in particular, they were more than 5.5 times their 1995–1997 levels.

Figure 7.1 – CAW Organizing Staff Expenditures, Ontario, 1995-2003, Relative to 1995 (1995=100)

Figure 7.2 CAW Community Based Organizer Expenditures, Ontario, 1995-2003, Relative to 1995 (1995=100)

When CAW expenditures on organizing staff and CBO's are combined, the overall pattern is fairly clearly one of stagnation until 1998. Significant growth subsequently occurred such that by 2000, and during all subsequent years, these annual combined expenditures were consistently over 100% greater than they were in 1995. Figure 7.3 provides a graph illustrating this pattern.

Figure 7.3 – CAW Combined Staff Organizer and Community Based Organizer Expenditures, Ontario, 1995-2003, Relative to 1995 (1995=100)

It should be noted that these patterns revealed in Figures 7.1 through 7.3 do not change significantly when the expenditures are calculated on a per-member basis, using estimates of Ontario membership provided by the union. Appendix Figures A7.1 through A7.3 illustrate that the fluctuations in these expenditures follow essentially the same pattern when calculated on a per-member basis.

Lastly, CAW participants stated that the increases in CAW organizing expenditures in 1998-2001 were in fact the product of strategic decisions made at the parent union level and were not due to any “inheritance” of organizer staff from any of the numerous mergers between the CAW and other unions. As well, other than the fact that organizer staff were somewhat involved in the protracted and massive SEIU “takeover” attempt, the data provided for each of these years does not include any of the specific expenses associated with this event, since the CAW took steps to record all of the SEIU related expenditures in a separate account (Vann, 2004).

The UFCW:

The broader organizational structure of the UFCW, in terms of local-parent relations, is significantly more decentralized than that of the CAW, and the administration of organizing activities within the union is also significantly more decentralized than in the case of the CAW. Local unions within the UFCW operate with relatively greater autonomy and responsibility vis-à-vis the National union than in the CAW. UFCW officials claim that a significantly larger percentage of the revenues from the dues base remains with the local unions than in the case of the CAW (Shimmin, 2004; Fuller, 2004) and there seems to be little grounds for doubting this claim.

Organizing activities within the UFCW are carried out by both the local and National union bodies for the entire period of study. A significant portion of organizing activities have been carried out by the individual local unions themselves, independent from the National union. Certain of the larger local unions have maintained a staff of full time organizing personnel, and the two largest local unions, Locals 175/633 and 1000A, have maintained a full time organizer complement over the entire period of study. The financial burden of this organizing function is somewhat decentralized in that the fixed costs of hiring full time organizers to work for the local union is born entirely by the local union.

However, organizing within the UFCW is certainly not entirely decentralized. The National union is also heavily involved in organizing activities in several important ways. The National union has also retained a large full time organizer complement during a large part of the period of study, and has been entirely responsible for the financial burden of this large fixed cost. Another important function performed by the National union is the administration of the UFCW's rank-and-file organizer program, referred to as the Special Project Union Representative or "SPUR" program. Under this program, both the local and parent bodies utilize rank and file organizers who are recruited from existing bargaining units where leave-of-absence arrangements are made with unionized employers. The SPURS are assigned for fixed short term periods to assist in previously specified, large campaigns, involving employers in industries similar to that in which the SPUR normally works. Local unions are entitled to apply to the parent office requesting that a fixed number of SPURs be assigned to their local for fixed periods of time, to attempt specific targets. The parent union also subsidizes the local unions' use of SPURs in that it pays 80% of the salary cost paid to the SPURs. The local union pays the remaining 20% of this salary, as well as other incidental costs (Fraser, 2004; Fuller, 2004).

The UFCW's organizational responses during the 1990's also provide some evidence of behaviour that conforms to the theoretical framework, as well as some evidence of behaviour that contradicts it.

At the local level, there is fairly strong evidence that following the shift to the more difficult legal environment, the size of the full time organizing staff devoted to organizing in Ontario was decreased. In particular, the largest local was employing six (6) full time organizers during the Bill 40 regime, but after 1995 this staff complement was gradually reduced to two full time organizers by the end of the decade. Local 175/633 explained that other than SPUR expenses, these full time salaries comprise close to all of their fixed costs of organizing (Fuller, 2004). Mr. John Fuller, the official responsible for the Local 175/633's organizing

activities overall stated that the Local increased its full time organizer complement during the Bill 40 era due to the large volume of organizing opportunities available to the union at that time (Fuller 2004). Similarly, the retrenchment in full time organizers resulted from the reduced return on these expenditures. Mr. Fuller stated that it became increasingly difficult to justify these large fixed expenditures, given an increasingly apparent risk that these expenditures would not yield enough organizing success, relative to their size, and that part of their revised strategy was to increasingly rely upon SPURS to address the increased costs per campaign:

So we will actually pour more money at things on a concentrated campaign by bringing in some SPURS.. But we don't have 6 full-time people in our organizing department anymore, we have two. We knew that organizing was going to die off to the point where we couldn't keep six people busy in the organizing department without just having them spinning their wheels. So we changed our strategy, using some systems in our international union where we can bring SPURS out of units and use them for a 2 or 3 or 4 month period on a focused campaign. ... So in fact our overall costs of organizing have dropped significantly ... As have the results. Last year I think we organized somewhere around 500 people compared to 3000. So obviously we can't continually pour money into organizing and not produce something out of it. Year one, maybe. Year two, maybe. Year three, you have to start taking a look at it.

Yet, Local 175/633 officials stated that aggregate SPUR expenditures have also declined, given the general reduced volume of organizing activities being undertaken by the Local after Bill 7 and Bill 31 (Flanagan, 2004; Fuller, 2004). In addition to finding internal efficiencies, such as increasingly hiring in-house legal counsel, the local union also chose to strategically re-allocate resources elsewhere, including an increased servicing level of existing bargaining units (Fuller, 2004). Another related use of these funds was a decision to experiment with a reduced dues structure for all newly organized bargaining units, which is aimed at improving organizing success within the now smaller volume of campaigns carried out by the now smaller group of full time organizers (Shimin, 2004; Fuller, 2004). Theoretically, this might stimulate employee interest in or

“demand” for representation by the UFCW.⁸⁶ However, there might also be a potential distortion effect on organizing patterns by making certain types of units less feasible on a cost-benefit analysis, given the reduced benefits from those units. Mr. John Fuller, the Official primarily responsible for the organizing functions overall at Local 175, stated that there is not yet any clear evidence as to whether this experiment with reduced dues has been a success (Fuller, 2004).

Fixed organizer expenditure patterns at Local 1000A also followed a similar pattern, although without a clear fluctuation in the number of full time employees. Local 1000A President Kevin Corporon explains that during the Bill 40 regime era, the Local was investing more “heavily” and engaged in more “aggressive” efforts in an aggregate sense. He explained that the more aggressive and expensive effort overall at that time was largely a product of the opportunities provided by the legislative environment (Corporon, 2004). This more expensive organizing effort overall during the earlier Bill 40 era should not be misunderstood as implying that organizing itself was a more expensive activity at the time. On the contrary, consistent with the theoretical framework, Corporon advises that subsequent to the Bill 7 and 31 regime shifts, the fixed costs involved in organizing new bargaining units have clearly increased on average and the union accordingly allocates more resources to each campaign on average, but to significantly fewer campaigns, resulting in reduced organizing expenditures overall relative to during the Bill 40 era (Corporon, 2004, and see quote from Mr. Corporon on this point earlier in chapter).

Interestingly, this general retrenchment in organizing expenditures has not occurred at the UFCW national office. In fact, the parent union advised that its full time organizing staff assigned to Ontario has exhibited steady growth since the mid 1990's (Fraser, 2004; Watts, 2004). The national office has employed full time organizers that it manages independently from the local unions' activities,

⁸⁶ Theoretically, If we considered union representation as a service, then if demand is elastic (>1), then reducing its price (dues) will yield a net positive economic benefit overall to the union.

although there is some co-operation and negotiation between the national and the locals in terms of the types of organizing targets that the national office sets for itself (Fraser, 2004). Organizing operations managed at the national level include certain very large scale campaigns, two of which – the Wal-Mart campaign and the agricultural workers campaign – appear to have been among the largest of these for several years, and have accounted for a significant component of overall organizing expenditures at the national level. The national union currently employs approximately 15 full time organizing staff; approximately 3 to 4 of them work almost exclusively on the agricultural program, while about 5 of them work almost exclusively on the Walmart campaign (Fraser, 2004).

The UFCW national office denies any retrenchment in its resource investments in organizing following the shift to more restrictive labour laws in Ontario. In the case of the Walmart campaign, the union has continuously pursued certification at several store locations in numerous cities across Canada, often simultaneously, in very expensive, resource intensive campaigns. These are large “up front” expenditures as the union has sought its first Walmart certification in Canada. However, what appears consistent with the theoretical framework is the fact that the national union stated that it made a conscious and strategic decision to prioritize Walmart target locations in provinces with more supportive labour laws. While targets in Ontario have been pursued, based on other factors such as the extent of union culture in the local community, labour law has played an important role in selecting the particular store locations in Canada to target (Fraser, 2004). Further, the choice of Walmart, which is clearly a difficult target according to various secondary sources⁸⁷, is based on the fact that Walmart is poised to have a significant impact on the retail and grocery industries which are areas of primary UFCW jurisdiction. Thus, if the campaign is successful, the extension of unionization to Walmart has significant potential for positive

⁸⁷ See for example the accounts provided on the website of Reclaim Democracy at http://reclaimdemocracy.org/weekly_article/wal-mart.html.

economic effects upon existing UFCW membership.

With respect to the agricultural workers program, the shift in labour laws clearly increased the fixed costs of organizing any new bargaining unit, given that the Bill 7 legislation withdrew legal access to unionization for these workers altogether. However, following Bill 7, the UFCW chose to absorb very large “up-front” expenses to continue struggling for legal certification rights for these employees. The national office points out that the UFCW has voluntarily and single-handedly absorbed the large expense involved in its protracted constitutional legal challenges and political struggles to obtain these certification rights, which has included a legal challenge that has been before the Supreme Court of Canada on two separate occasions thus far. The president of the national union conceded that there is some hope that with eventual success, the union would begin to receive dues contributions from this large body of workers. Nevertheless, he insisted that there is a great risk that the union will never recoup the resources that it has invested in this project. Even if the law eventually changes in favour of these employees, other unions may well organize the employees in place of the UFCW, while essentially free riding on the long-term struggle conducted by the UFCW (Fraser, 2004). In the circumstances, it does reasonably appear that this significant portion of the parent union's overall organizing strategy is at least partially, if not largely, the product of a moral decision to target these very disadvantaged employees, based on the philosophical principle that these workers deserve assistance and are morally entitled to the same unionization rights held by other employees.

The national union also claimed that general organizing activities in Ontario outside of these specific programs have increased as well. Its own SPUR utilization and expenditures have increased, relative to the Bill 40 era, and the SPUR program has taken on an increased importance as a result of the harsher legislative environment. Unfortunately, the parent union was not able to provide internal data to confirm these claims, but more than one participant insisted that

growth in these activities and expenditures had indeed occurred (Fraser, 2004; Watts, 2004). The Assistant to the President stated that part of the increased importance of the SPUR program is the increased resource efficiency involved in using SPURs. That is, SPURs provide both a more effective and efficient means of organizing, and thus have assisted the union in managing the increased organizing costs demanded by the new legal environment (Watts, 2004).

Overall then, the experience of the UFCW seems to be characterized by an expanding role for the parent union in Ontario-based organizing. On the other hand, there has been retrenchment in employment of full time organizers at the local level, and evidence of a general retrenchment in aggregate organizing investments at both of the largest two Ontario locals. There are two possible explanations for these conflicting trends at the local and national levels. The first is that increased costs of organizing imposed by the legal environment may have pressured the union to centralize these costs at the higher level. In this view, the legal shifts exacerbated the economic risks of organizing, and centralization helps to spread the costs and risks to a broader base. The increased costs exacerbate the externality faced by the local unions, increasing the pressures for centralization of the financial burden. Alternatively, the changes could result from strategic choice and individual leadership within the union. The Assistant to the President of the national union points out that, throughout the period of study, there were periods of increases in organizational expenditures on organizing at both the Local 175/633 level and at the parent level, and that both of these upward shifts in organizing investments took place under the leadership of Mr. Fraser, the current president of the parent union (Fraser was previously the president of Local 175/633 during its upsurge in organizing investments). Mr. Watts suggests that the strategic prioritization of organizing by Mr. Fraser was a very important factor in explaining the common increases in investments during his leadership at both organizations, and that following his term with Local 175/633, the subsequent leader consciously embarked on a different strategic agenda (Watts, 2004).

Lastly, the evidence reviewed above provides support for the increased importance of the use of rank and file organizers in both unions during the harsher legal environment. The evidence reveals both a sociological benefit, which has been cited previously, and an additional economic benefit. The additional economic benefit, beyond the possibility of achieving a qualitatively “better” organizer, is the greater ability to control the increased quasi-fixed costs of organizing in the harsher organizing environment, by enabling unions to reduce full time organizer expenses while pouring their resources into campaigns much more intensively, during shorter, strategically selected time periods.

C) Other Strategic Responses

Participants from both unions identified two other forms of strategic behaviour and tactics that they claim were at least partly caused by shifts in labour laws that made organizing more difficult. The first may be characterized as the avoidance of the certification procedure, or, in other words, conscious efforts to find ways of expanding membership without the necessity of having to proceed through the certification procedure. The second response was a more judicious or selective use of the unfair labour practice complaint procedures of the OLRB.

A) Alternatives to Certification:

In the case of the UFCW, participants stated that since the mid-1990's, there has been increasing pressure to use collective bargaining as a means to achieve expansion, and that they regularly employ this method (Corporon, 2004; Fuller, 2004). This includes increased use of voluntary recognition agreements, as well as attempts to negotiate expansions of scope of, and accretions to, existing bargaining units. A few years ago, the UFCW entered into a very significant and large voluntary recognition agreement with Loblaws that affected the membership of both Locals 175/633 and 1000A. This agreement granted the UFCW with bargaining rights to all new Loblaws “super-stores” that the company was planning to launch in order to compete with Walmart in its foray into the

grocery industry. In exchange, certain concessions from the primary Loblaws contract were agreed to, but would be subject to future negotiations, and the union insists that the overall terms and conditions of employment at all Loblaws were highly favourable, relative to those of competitors like Walmart. Meanwhile, erosion of union density in the grocery industry was mitigated, while the union continued its struggle to organize Walmart at numerous locations. At the time of entering the arrangement, an alternative option would have been to reject this arrangement and seek certification rights to new Loblaws stores as they opened. While many factors affected this decision, UFCW officials did agree that the increased difficulty of organizing workers under the new labour law regime in Ontario was a conscious factor in this decision, and that the union would have been somewhat less likely to agree to this arrangement during the Bill 40 era (Fuller, 2004). Mr. Fuller qualified these statements by saying that the union is not “shopping around” for new companies with whom to seek voluntary recognition, but rather this has been primarily important with respect to companies to whom it already holds bargaining rights, as a way to protect and/or expand its membership base.

CAW participants similarly identified increased pressure to use collective bargaining in support of organizing and expansion (Aman, 2004; Forder, 2004). One key technique has been the negotiation of “neutrality letters” in bargaining with automotive employers, in which the automotive employers provide a written statement addressed to the employees of the supplier companies advising of their positive relationship with the CAW and that unionization would not adversely impact the relationship between the supplier and the automotive company. CAW officials believe strongly that these letters have been of great assistance in organizing campaigns involving automotive suppliers (Aman, 2004; Forder, 2004). One of these campaigns involving Magna International resulted in a voluntary recognition agreement pertaining to a plant of Magna International, an event which has not been widely publicized (Forder, 2004).

Theoretically, avoidance of the certification process can be understood as a response to the higher costs of organizing through the certification procedure created by shifts in labour law. The above certification avoidance tactics are all efforts to negotiate issues of expansion with employers directly, in exchange for other benefits, while avoiding the higher costs of expansion via the certification procedure.⁸⁸

B) Role of the Unfair Labour Practice Complaint Mechanism

Participants from both unions also stated that, largely due to changes in labour laws under Bill 7, and particularly Bill 31, their union has become relatively less inclined to file a ULP complaint in cases where they believe the Employer has violated the Act.

Both of the previous and current organizing directors of the CAW described a conscious shift on their part towards avoidance of the ULP procedure. Both claimed that the CAW was relatively more likely to abandon potential ULP allegations in favour of moving on with other organizing efforts or attempting to reconstitute the organizing campaign with that particular target so that they might re-apply for certification following the expiry of the one year bar after the failed attempt. Both believed that the decrease in ULP complaints was due to union avoidance, and not due to any increased Employer obedience to the law and/or any decrease in Employer resistance. The previous Organizing Director, Ms. Kirincic, identified an important legal “technicality” as a second important reason explaining union avoidance of the ULP process. She pointed out that the timing of the one year bar on re-applications for certification actually does not start to run until the OLRB technically “dismisses” the Application, and not simply after the failed attempt has occurred in fact. This means that any litigation at the OLRB not only extends this current organizing campaign but also delays the

⁸⁸ While it might be asked whether there is a relationship or a contradiction between the reported necessity of developing relatively higher levels of employee support under the recent labour law regimes and the increased use of voluntary recognition (which potentially requires less employee

union's reapplication by the full amount of the time spent litigating any matters relating to the original certification application. Thus, wherever the union expects that it would like to continue with its attempt to organize the new unit over the long term, it is usually better off having its own application dismissed quickly. This is an important additional aspect of the legal regime that reinforces the importance of the law as suggested in the theoretical framework, which was not identified *a priori* by the researcher, and was only revealed through this qualitative research.

UFCW participants also advised of tendencies to rationalize their use of the ULP procedures following the shift to Bill 7 and Bill 31. Mr. Fuller, the organizing director for Local 175/633 stated that the local was definitely less likely to file a ULP complaint in any particular case where it believed that an employer had violated the Act, and that this was related to the changes in the labour laws:

"Our theory is that as soon as you file an unfair labour practice, you start to lose. Because unfair labour practice equals delay. Delay since 1995 equals longer and delay equals good for the employer. If you read any of the books on an organizing campaign from an employer's perspective, it's 'delay, delay, delay. Take as long as you can, let it cool off, give's you a better chance to give you a handle on things, get rid of the troublemakers.' I'm going back to 1993 when I took over the organizing department. We used to have a habit of, as soon as the employer stepped out of line, filing charges. And as soon as you filed charges, the people would automatically go 'we better wait to see what happens with those charges'. So, I am a believer in going in, sign the cards up, apply and certify the people. If you've got problems, file some charges, but I think that is the last thing you should do, not the first thing."

4) The relationship between labour law shifts and raiding activity

The interviews yielded very conflicting responses as to patterns in raiding activity; the causes of raiding activity; and whether there is any connection between labour law shifts and raiding activity.

support), the explanation based on increased costs suggests that these responses are not necessarily contradictory.

A pattern that seems to have emerged in the responses is that those from CAW personnel generally conflicted with those from UFCW personnel. Most CAW respondents rejected the theoretical framework's assertion that raiding activity has been positively impacted by shifts in labour law (Forder, 2004; Aman, 2004). Rather, these participants believed that raids occur where a union fails to motivate and educate its members, where it is insufficiently democratic, and where it fails to provide quality servicing to its membership, and these characteristics are not heavily determined by the prevailing labour laws (Forder, 2004).

UFCW participants were more inclined to put forth the existence of a causal relationship between raiding and labour law, as described in the theoretical framework. UFCW participants generally believed that raiding activity "on the ground" had increased even if the large CAW/SEIU event was excluded from analysis, and that this has been driven partly by the relative attractiveness of raiding as a result of the increased costs and employer resistance in organizing new bargaining units in the tougher environment (Fuller, 2004; Flanagan, 2004; Shimmin, 2004; Corporon, 2004; Fraser, 2004). Other factors driving raiding include job/membership losses experienced by specific unions, in their traditional jurisdictions, causing them to become more "desperate" for growth opportunities. UFCW participants uniformly identified the CAW as falling under this description and complained of having to defend against numerous CAW raid attempts in recent years.

Supportive of the theoretical framework is the fact that participants from both unions agreed that raiding activity is generally a distraction from, and may cause a *diversion of resources* away from new unit organizing. Importantly, this unfortunate side effect occurs within both the raiding and the target union. In the case of the UFCW Local 1000A, this phenomenon appears to have been particularly acute. Its President, Kevin Corporon, explained that Local 1000A had been forced to defend repeated displacement applications filed by the CAW

during the past several years concerning a large distribution centre in Cambridge. The CAW filed a displacement application concerning these employees with the OLRB in 2001, and then again in the summer of 2004. Mr. Corporon stated that since 2001, the CAW continued a campaign to displace the UFCW at this very large location and that as a result, it became necessary for the local to channel all of its normal organizing resources, as well as some its servicing resources, strictly into its efforts to prevent the local from being displaced by the CAW, which it was recently successful in doing (Corporon, 2004). If correct, this is an extreme example of raiding activity generating a very severe diversion of organizing resources, in this case in the target union.

Interestingly, although the CAW does not agree that the CAW/SEIU event was a “raid”, CAW personnel did agree that this event was somewhat of a distraction from new organizing, given that both full time organizing personnel and rank and file organizers were necessarily assigned to work on the numerous individual applications for certification filed by the CAW following the failed merger attempt (Aman, 2004).

A further interesting insight was acquired relating to raiding. Certain participants discussed their observation of a fairly new practice that Mr. Fuller referred to as “indirect raiding.” Under this practice, profit-seeking intermediaries or “agents” seek to bring together disgruntled bargaining units with alternative unions and are financially remunerated by this alternative union for their efforts. In a decision entitled *Maple Leaf Meats Inc.* involving a unit that was previously represented by the UFCW, the OLRB referred to the alleged behaviour as “shopping” the unit around⁸⁹. Further, in order to avoid sanction by the CLC under its new raiding protocols, the intermediary establishes a legal union “shell” organization, with a constitution, in accordance with the elements required for obtaining union “status” established by the OLRB. The “shell” union, directed by

⁸⁹ See *Maple Leaf Meats Inc.* [2004] O.L.R.D. No. 1223, a decision of the OLRB dated June 2, 2004.

the profit seeking intermediary as the current “leadership”, files the displacement application, and if successful, subsequently merges with the alternative union. The UFCW has formally alleged that this is not only raiding by proxy, but that it is also akin to a legal fraud on the employees and the OLRB. Interestingly, in its *Maple Leaf Meats Inc.* decision, the OLRB ruled that when it receives an application from a union that meets the normal “union status requirements”, it will not inquire into allegations that some other union and/or intermediaries are in essence engaged in indirect raiding.⁹⁰ This decision signals a lack of willingness on the part of the OLRB to extend its current practices to further restrict these indirect raiding practices, and effectively sends a “green light” to these intermediaries that these practices may continue as long as this behaviour takes the form it took in the *Maple Leaf Meats Inc.* decision. Some UFCW participants stated that they believe that this new style of “indirect raiding” may be in part causally related to the relative attractiveness of raiding created by shifts in labour law (Fuller, 2004).

Lastly, there was some support for the proposition that as a result of regressive shifts in labour law in 1995 and 1998, unions face an increased risk of losing any existing bargaining unit to either a raid or a decertification, in part due to shifts in labour law, and that this risk has increased the pressure upon unions to channel additional resources into servicing their existing bargaining units. Mr. Fuller of UFCW Local 175 stated that this at least partly explains his local union’s shifts in strategy towards an increased investment in servicing activities (Fuller, 2004).

Overall, the evidence gathered is mixed as to whether it is supportive or not of the theoretical framework’s suggested relationship between law and raiding activity. Certainly, the evidence reinforces the view that raiding is affected by many causes other than labour law, which may well be a “minor” factor as compared to some other qualitative characteristics of individual unions and the culture of the labour movement overall. However, certain evidence, particularly

⁹⁰ Ibid.

from interviews with UFCW participants, supports the theoretical framework in various ways. The contradictory evidence was primarily gathered from interviews with CAW participants, an organization most heavily invested in an alternative viewpoint about the causes of raids, given that it has benefited significantly from some recent large displacements, and has come under intense criticism from much of the labour movement for this behaviour. The evidence concerning the general diversion of resources involved in raiding from both unions, is important in conjunction with other evidence reviewed elsewhere in this chapter concerning pressures on organizing resources and increased costs of organizing, since it suggests that even if raiding has not increased with shifts in laws, its impact on organizing resources may be more acute as organizing costs increase and unions face increasing pressures to rationalize their organizing resources.

Summary and Conclusion:

Overall, the qualitative research yielded much evidence that was consistent with theoretical framework, as well as certain evidence that was inconsistent with the theoretical framework and which suggest potential revisions.

There was fairly strong evidence confirming the basic point that labour law shifts in the 1990's indeed have had an important independent impact on organizing during the 1990's, largely through effects on the extent and forms of employer resistance. From the unions' perspective, these effects caused an increase in organizing costs, primarily of a quasi-fixed nature. This necessitated a shift to a style of organizing demanding a more intensive investment of resources and efforts per campaign, *ceteris paribus*, as well as a need for generating higher levels of employee support "up front" and earlier in the process. The interviews also revealed evidence of the cost-benefit rationality implied by the theoretical framework, interacting with and/or mediated by philosophical commitments. A caveat here was the rejection by participants of the notion that they would engage in such calculations in an explicit or overt manner.

With respect to union *responses* to the effects of labour laws, there was some commonality in behaviour that was consistent with the theoretical model, as well as some contradictory evidence suggesting refinements to it. The evidence illustrates a common increased “investment” in organizing during the Bill 40 era to “take advantage” of the improved legislation at the time. The evidence illustrates a common shift to an increased reliance upon rank and file organizers, and that this increased reliance was somewhat correlated with the shift to a more hostile legal environment. Reduced organizing expenditures discovered within Locals 1000A and 175 of the UFCW are also consistent with the hypotheses generated from the model. In addition to identifying increased levels of employer resistance and greater propensity to terminate insider activists (consistent with the theoretical framework) the interviews also indicate a common conscious avoidance of the OLRB’s Unfair Labour Practice complaint mechanism, given reduced remedies at law (also consistent with the theoretical framework). Lastly, there was somewhat limited and conflicting evidence concerning the impact of law on raiding, suggesting that this question likely requires further research.

As discussed earlier, certain behaviour may be consistent with both the strategic and rational choice models of behaviour given that they are not entirely mutually exclusive. Some of these responses noted above may well fall into this area of overlap. However, the evidence that appears to most strongly contradict the bounded rationality theoretical framework is the increased organizing expenditures of the CAW and the UFCW at the National level, subsequent to 1998. The evidence here more firmly favours the interpretation based upon the strategic choice model of union behaviour, as argued by Yates (2000), since these dramatic increases in organizing expenditures were a product of specific decisions made by union leaders to transform these organizations in the direction contrary to that predicted by the rationality model. Thus, acknowledging the mediating effects of strategic and moral behaviour, and their interaction with economic rationality, is important. However, it should be re-iterated that the

structure of this qualitative analysis involved a conscious attempt to create the strongest test for the economic rationality model by selecting two unions which *a priori* seemed the least likely to conform with the model, and thus this model may fit quite well for many other unions in Ontario.

Appendix to Chapter 7**Figure A7.1 – CAW Staff Expenditures, Ontario, Per Ontario Member, 1995-2003, Relative to 1995 (1995 = 100)** **Figure A7.2 – CAW Community Based Organizer Expenditures, Ontario, per Ontario Member, 1995-2003, Relative to 1995 (1995 = 100)**

Figure A7.3 – CAW Combined Organizing Staff and CBO Expenditures, Ontario, Per Ontario Member, 1995-2003, Relative 1995, (1995 = 100)

Chapter 8 – Conclusion

The empirical research performed in this dissertation and presented in the previous 4 chapters provides some important evidence concerning the impact of labour law on organizing behaviour. While there were certain qualifications, overall there was substantial evidence confirming the usefulness and accuracy of the theoretical model, and the deductions and hypotheses employed.

The results suggest that certification success rates in Ontario were greatly affected by shifts in the labour law regime, particularly by the Bill 7 and Bill 31 regimes, although there was also evidence of a relative stimulative effect of Bill 40. The significant and independent effect of Bill 31 revealed by these and various other results discussed below are very important findings.

The models also suggest that aggregate organizing levels were also greatly affected by labour law shifts. In terms of both new bargaining units granted and attempted, the models show large fluctuations consistent with the hypotheses with respect to each regime, with significant positive increases due to Bill 40 and significant decreases under Bill 7, which were further magnified by Bill 31.

These results show that the negative effect of the labour law regime shifts has not only operated through a decrease in success rates but also through an effect on the number of new bargaining units attempted by unions. The results show a fairly similar pattern in terms of the number of employees organized, given the large negative and significant coefficient values on the Bill 7 and 31 regimes, and again the model indicated that Bill 31 had a significant independent impact.

When the number of new employees certified was modeled as a percentage of Ontario aggregate employment, similar results with respect to Bill 7 and 31 reinforce the conclusion that these fluctuations were not simply the result of underlying employment dynamics, but rather were sizeable impacts on the percentage of the labor force being organized over time, and the magnitudes of the coefficients raise the concern that the major decline associated with the

recent regime shifts threatens to have a significant effect on union density rates fairly quickly.

It is also possible to interpret these findings as providing somewhat of a qualification, rather than a direct challenge, to Yates' (2000) conclusion that unions in Ontario have been successfully "staying" a decline in union density since the passage of *Bill 7*. Yates' conclusion that unions in Ontario have strategically responded to the new legal environment may possibly be correct, despite these results. Conceivably, if Yates is correct about an aggregate union response to the new environment, the results pertaining to the effect of the *Bill 7* and *Bill 31* variables might have otherwise been even stronger had unions not adjusted in the manners she claims. Nevertheless, this research does reveal that Ontario unions during this time period have certainly not managed to fully overcome the impact of these external regime shifts.

The theoretical model's prediction that target bargaining unit sizes would be affected by regime shifts' affects on fixed costs of organizing and administering new bargaining units was directly supported by the quantitative results revealing a large positive effect of the *Bill 7* and *Bill 31* regimes on the average size of new bargaining units.

Similarly, the hypothesis concerning the different effects on organizing in the public and private sectors was essentially confirmed by the set of results illustrating significant fluctuations in activity in the private sector being positively correlated with the *Bill 40* and negatively correlated with the *Bill 7* regime shifts, and by the increase in the proportion of aggregate organizing taking place in the public sector as a result of the *Bill 7* regime shift.

The quantitative models of ULP complaint activity provide support for the claim that ULP activity has indeed fluctuated with regime shifts. The models suggest that there has been a positive effect of *Bill 40* on ULP complaint activity, a larger

negative effect of Bill 7, and a further negative effect of Bill 31. These fluctuations are consistent with the assumption that the volume of ULP complaints is driven more by union expectations concerning the costs and benefits of filing these complaints rather than by underlying levels of employer resistance, and therefore ULP activity is not a useful proxy for unobserved levels of employer resistance. This interpretation is not only more consistent with the theoretical model, but was given further confirmation by the qualitative evidence where union officials stated clearly that they are consciously avoiding and rationing their use of the ULP complaint mechanism in Ontario.

On the other hand, the results provided less support for the hypotheses concerning raid activity and DFR activity. The results do not clearly indicate that shifts in the legal regimes have caused corresponding fluctuations in raiding activity. The evidence rather suggests the possibility that a simple, gradual decline in raiding activity has taken place over the period of study. However the results of the model measuring raids as a proportion of aggregate organizing does suggest that this proportion was significantly, positively effected by the recent Bill 139 regime. In terms of DFR activity, the models did provide some qualified support for the claim that the “state-downloading” aspects of the legal regime from Bill 40 onwards had caused an increase in DFR complaint activity, but the models were not able to rule out an alternative explanation based on a simple time trend effect that may be potentially related to some other phenomenon. Conceivably there may be some combined effect between the legal regime and some other trend effect, although a stronger conclusion here would require further research on this specific issue.

It should be recalled that these important results concerning the predicted impacts of labour law shifts held throughout the quantitative analysis despite controlling for important environmental phenomena of employment growth, economic internationalization and industrial structure. While several of the models confirmed the independent importance of these environmental

phenomena, which was not theoretically challenged by this research, the results overall nevertheless confirm the key conclusion that the labour law regime in Ontario continued to “matter”, to a very large extent, independently from these environmental phenomena.

Similarly, while the results at times revealed the importance of shifts in the broader political climate, proxied in the quantitative models by shifts in political party in power, the results quite clearly confirm the importance of the timing in shifts in the labour law regime independently from shifts in the party in power. As a strong example, numerous results identify an incremental effect of each shift in labour law during the tenure of the PC party. Again, while it was not an objective of this research to challenge the importance of the broader political environment beyond the labour law regime, this research confirms that regardless of any importance of broader politics so defined, the labour law regime was highly, independently important.

Major findings from the qualitative research include the confirmation of employer resistance as a key causal mechanism underlying the effect of labour law shifts, as well as evidence confirming the existence of various fixed costs of organizing and some qualified evidence concerning the impact of these fixed costs on union behaviour via bounded rationality.

As noted above, the qualitative research suggested that ULP activity has fluctuated with legal regime shifts (as revealed in the quantitative research) primarily because of the impacts of the regime on filing decisions, and that the unions studied have been increasingly avoiding or rationing their use of the ULP complaint mechanism as a result of the reduced remedies available. There was also evidence that these unions have increasingly sought membership expansion through alternative means other than the certification procedure, as a result of shifts in the legal regime.

The qualitative research also provided insights concerning the increased reliance of these unions upon rank-and-file organizers measured in economic terms, and also laid the basis for an argument as to how these programs may well have an economic as well as a sociological “logic”.

Lastly, the qualitative research provided mixed evidence concerning a central deduction in the model of bounded rationality, that unions would divert fewer resources into organizing as a result of Bill 7 and 31. This deduction seems consistent with the evidence concerning the local levels within the more decentralized UFCW, but is contradicted by the evidence about the responses of the National offices of both unions. There was indeed evidence that both the CAW National union and UFCW Canada did in fact “re-invent” themselves by significantly adjusting their techniques and substantially increasing their resource commitments after, and as a result of, the harsher environment. This evidence overall suggests that these unions were not previously operating in accordance with any rationally defined “optimum” beforehand and that the external environment did not strictly dictate the necessary response.

These latter results do tend to confirm the importance of the “mediating” effect of union strategic/moral choices on organizing behaviour, although the analysis shows that while this perspective put forth by Yates (2000) seems accurate in certain contexts, the bounded rationality model's predictions about the impact of law seemed to accurately describe union behaviour in other contexts. It should be reiterated as well that this analysis was arguably a strong test for the model, given the effort to select union cases that would be least likely to confirm the accuracy of the model. As well, there is the evidence from the quantitative research suggesting that *in the aggregate*, the number of new bargaining units attempted did decline under these regime shifts, which may be consistent with a general or aggregate decline in resource commitments across Ontario unions. This question of shifts in aggregate resource commitments from all Ontario

unions was not part of this dissertation's research design, but is a potential avenue for further research.

The qualitative research also resulted in some limited evidence that these increased resource commitments were associated with centralized efforts, or at least with high levels of resource support from higher or central levels of union organizations. This is intuitively consistent with the theoretical model since it may conceivably become necessary to attempt to mitigate the exacerbated resource constraints at the lower levels of the union resulting from the legal regime shifts.

Overall, the research performed in this dissertation supports the general institutionalist thesis of the importance of labour law, despite the separate importance of other factors emphasized within the neoclassical and political economy literature. Contrary to the suggestions of Troy, labour law not only matters a great deal in this so-called "Age of Adam Smith", regardless of the importance of other environmental phenomena, but it also seems to matter mostly or primarily in the private sector. On the other hand, it has been shown that labour law has mattered significantly in both an aggregate sense, as well as in certain micro-contexts, despite the admitted importance of union strategic and moral choices.

From the perspective of the Ontario labour movement as a whole, since the research suggests the importance of both labour law and strategic behaviour, this leaves the reality of there being no simple choice as to whether to focus their scarce energies and resources towards political activities aimed at labour law reform or towards increased organizing resource commitments within the current harsh environment. At the very least, this research strongly rejects the simplistic suggestion that labour law reform would not assist the movement's expansion objective, and thus suggests that labour law reform must at least be considered as a high priority.

This chapter has also identified a number of possible avenues for useful future research, including an analysis of aggregate union resource allocation across all unions, in order to further test the usefulness of the model, and track the state of aggregate union efforts over time. Further qualitative research concerning the economic logic underlying the use of rank-and-file organizers within the new environment might also contribute to our understanding of the impacts of labour law and to the literature on union renewal. Lastly, since further changes in the Ontario labour law regime are being debated in the legislature at the time of writing⁹¹, portions of which would reverse certain aspects of the Bill 7 and Bill 31 reforms, this new regime shift stands to provide the potential for further investigation and refinement of the analysis of the effects of labour law on union organizing.

⁹¹ As of the time of writing, Bill 144 received First Reading on November 3, 2004, but no further treatment.

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