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THE CANADA LABOUR (STANDARDS) CODE:
THE EVOLUTION OF A LAW.

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THE CANADA LABOUR (STANDARDS) CODE:
THE EVOLUTION OF A LAW

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Abstract

This is the story of the evolution of a law, examined against a background of ten propositions formulated on the basis of the relevant literature. First, the development of the idea of federal labour standards is traced from the long repeated demands of organized labour and minor parties to its inclusion in major party platforms and its mention in successive election campaigns. Second, the formulation of the bill is described and the contributions of the Minister and Cabinet, the Government caucus and the civil service are assessed. Third, parliamentary passage of the bill, interrupted by a flood of interest group protests, is discussed and Opposition strategy is appraised. Finally, the manner in which the law is being administered is detailed.

This is an account of a determined Minister and his top officials who, with strong support from a group of backbenchers, were able to withstand most Cabinet and interest group pressure against the bill until it was enacted, but who then administered the law in a manner conciliatory to, and in close contact with, the industrial interest groups affected.

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Preface

The Canada Labour (Standards) Code has been selected in order to describe and analyze the interaction of the various elements of the Canadian political process in the evolution of a law. For such an examination the virtues of this law are its simplicity, its contentiousness, and its recency. The actual content of the Code can be explained briefly and simply, for while it is a significant law and breaks new ground in one sense, it is a straightforward one and deals with an age-old issue. Its contentious character ensures an element of conflict among both political parties and interest groups, and thus tends to make them act in a vigorous manner. Its recent enactment not only increases interest in the study since it deals with contemporary people, groups, and issues, but also guarantees a more accurate description since memories are fresher in recalling exactly what took place.

Nevertheless, to treat the evolution of such a recent law has two main drawbacks. First, as in this case, the evolution is not yet really complete. One link--the disposal of the deferment applications--is at the time of writing still missing. Second, participants are sometimes less willing to reveal everything that happened concerning such a recent political issue and conventions such as cabinet and caucus secrecy prevent their doing so. For that reason, I am most grateful to those who were willing and able to discuss the part they played in this story.

Among the politicians who managed to give me some of their very scarce time were Miss Pauline Jewett; Mr. Herb Gray, M.P.; Mr. Gerald Baldwin, M.P.; Mr. John Loney, M.P.; Hon. Michael Starr, M.P.; Mr. James Byrne, M.P.; and Senators Donald Smith and M. Wallace McCutcheon. Mr. Stanley Knowles, M.P. was, in addition, very generous in allowing me to go through his voluminous files concerning the labour code issue. To all of these I am especially grateful.

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Chapter One: Introduction

The Canada Labour (Standards) Code became a law on March 18, 1965.¹ An investigation of the complex evolution of this statute--from an idea to a bill to a law--provides a useful and timely illustration of the actions and interactions which compose the Canadian political process. While caution "dictates restraint in generalizing on the basis of a single legislative enactment,"² an inquiry of this sort may serve to test the validity of many assumptions and impressions about the development of public policy in Canada, as well as to present hypotheses for future verification.

It is against a background of these assumptions and impressions suggesting how, from the interaction of many forces, a piece of legislation might unfold, that the actual evolution of this law can be examined to greatest advantage. This chapter will attempt to design such a setting which can be divided into three parts: the elaboration of the idea; the formulation and passage of the bill; and the administration of the law.

1 Statutes of Canada, 13-14 Elizabeth II, Chap. 38, An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses.

2 H.H. Wilson, Pressure Group: the Campaign for Commercial Television in England (New Brunswick, N.J., 1961), 14.

I. Elaboration of the Idea

It is not always possible to trace the precise germ of an idea that is eventually embodied in law. Because of this fact and because the idea is unlikely ever to be enacted unless it is widely propagated, it is usually both more feasible and more fruitful to describe the manner in which it is disseminated and popularized. Two of the many agencies that may perform these functions, the literature suggests, are third parties and political interest groups. Both rely heavily on the mass media, of course, to assist in publicizing their views.

With respect to the former, Professor Mallory has written as follows:

New parties, with nothing to lose and everything to gain, can afford to advocate new ideas. In the process they may gain supporters, and at the same time the public receives a gradual awareness of some new policy. Then when the time is ripe, the old parties calmly adopt the more durable reforms of the third parties and carry them into law.¹

The initiative for adopting an idea may come simultaneously, or instead, from interest groups. Many such organizations in Canada, including the Canadian Labour Congress and the Canadian Federation of Agriculture, make an annual submission to the federal Cabinet which is likely to contain a number of new ideas that the group would like to see im-

¹ J.R. Mallory, "The Structure of Canadian Politics," in H.G. Thorburn (ed.), Party Politics in Canada (Toronto, 1963), 25.

plemented.¹ The idea may be turned directly into legislation at that point, but the major party is more likely first to incorporate it into the party platform or election manifesto. Professor Meisel suggests that the platform of a party in power is worked out between the leading civil servants and their ministers.² The opposition party is more likely to appropriate the idea in a national convention in which its resolutions committee plays the major role.³ Interest groups may have a direct influence on the formulation of party platforms, too, for "parties do not on the whole make their policies in a vacuum....They tend to seek advice from those who are competent to give it--the various lobbies,"⁴ as well as to secure the support of such groups. In whatever manner either or both of the major parties embrace the idea, the initiative for doing so does not appear to come from the grass roots level.

It is one thing for the idea to find a niche in a major party's platform, however, and quite another for

1 Mr. A. Andras, Director of Legislation, C.L.C., interview, November 12, 1965; Helen J. Dawson, "An Interest Group: the Canadian Federation of Agriculture," Canadian Public Administration, III (June, 1960), 141.

2 John Meisel, "The Formulation of Liberal and Conservative Programmes in the 1957 Canadian General Election," Canadian Journal of Economics and Political Science (November, 1960) XXVI, 568, at least in the pre-1957 Liberal case.

3 Ibid., 570.

4 S.E. Finer, Anonymous Empire (London, 1958), 19.

the party to proclaim it in an election campaign with the intention of implementing it if victorious. What writing has been done on this subject suggests that it is primarily the party leader who determines the election program. Meisel asserts, for example, that "...in the final analysis, the leader of the party plays by far the largest part in presenting its views to the nation. He is assisted by candidates, who, as a rule, take their cues from him and their lines from material provided by the national or provincial headquarters."¹

Propositions such as these concerning the origin and evolution of the idea embodied in the Canada Labour (Standards) Code, including the role of third parties, interest groups, party platforms, and election campaigns, will be considered in detail in Chapter II.

II. Formulation and Passage of the Bill

Mention of a proposal in a party platform is, of course, no guarantee that the party will enact corresponding legislation immediately upon achieving office. The speed with which the law is implemented and its actual content depend on many factors of which the most important would seem to be the attitude of the Cabinet and the individual minister,

¹ Meisel, 570.

the outlook and resources of the civil service, and the pressure of backbenchers and interest groups.

One of the commonest understandings about the Parliamentary system is the pre-eminent position of the Cabinet. Whatever compromises are likely to occur to reconcile the many divergent views represented in that body, the Cabinet must always give its approval to the department's initial proposal for a bill, as well as to the final draft prior to its introduction into Parliament.¹

The Minister, it may be assumed, is in a sense a messenger between the Cabinet and the Department, informing the former of what the latter claims to be administratively possible, and instructing the latter of what the former deems to be politically desirable. But the Minister surely is, or can be, much more than that. Depending on his own stature, his persuasiveness, and his grasp of the subject, the decisions of either Cabinet or civil service or both may be largely his.²

Interest groups which may previously have had a hand in popularizing the idea are likely (if they know legisla-

1 E.A. Driedger, "Memorandum on the Drafting of Acts of Parliament and Subordinate Legislation," (Ottawa, 1951), 39.

2 C.D. Howe, for example, not only dominated the Cabinet on the 1956 pipeline issue, but is also reported to have said that "nothing is administratively impossible." Peter C. Newman, Renegade in Power (Toronto, 1963), 36ff; Leslie Roberts, C.D., The Life and Times of C.D. Howe (Toronto, 1957).

tion is being contemplated) to take further action to influence the specific composition of the bill. At this stage, however, they are perhaps more inclined to make their recommendations to the individual ministers most concerned rather than to meet with the whole Cabinet. Professor Thorburn found in his study of the anti-combines legislation, for example, that several groups sent delegations to see the Prime Minister, individual ministers, or even a parliamentary secretary.¹

To the Civil Service, obviously, is left the task of drafting the bill, but in doing so, it will no doubt be required to make decisions of some consequence within the general terms which the Cabinet or minister have laid down. Hence any group that wishes to influence the terms of the legislation might profitably contact the civil service, whether by telegram, letter or interview. Indeed, as Professor Stewart emphasizes, the interest group will have its greatest effect on new legislation if it acts while the bill is being drafted, rather than after it is introduced into Parliament, when a minister's responding to such a group's suggestion "would involve withdrawing from a publicly stated position."² The literature suggests, too, that senior civil servants will sometimes on their own

1 H.G. Thorburn, "Pressure Groups in Canadian Politics," Canadian Journal of Economics and Political Science, XXX (May, 1964), 160.

2 J.D. Stewart, British Pressure Groups (Oxford, 1958), 30.

initiative consult interested groups about the general principles of the legislation, although these groups are not actually involved in drafting the bill.¹

It is generally assumed that the Government caucus does not play, as a rule, a very influential role in the formulation of legislation. The caucus is usually restricted to asking questions of ministers, making suggestions, and indicating what sort of reaction may await the bill when introduced into Parliament. Dr. Dawson asserts that on occasion, however, caucus pressure may have considerable effect on the Cabinet: "separately, or in association with other members, they may carry enough weight to bring about substantial modifications in the Cabinet's proposals."² Professor Wilson credits a group of backbenchers in the Conservative caucus with the success of the campaign for commercial television in Britain, but in emphasizing this point even he seems to regard it as a rather exceptional case.³

The bill finally enters the House of Commons. Given the customary situation of Cabinet domination of Commons' time, majority government, and strict party discipline,

1 Finer, 19, 61; Stewart, 30; H.J. Dawson, 147; M.G. Taylor, "The Role of the Medical Profession in the Formulation and Execution of Public Policy," Canadian Journal of Economics and Political Science, XXVI (February, 1960), 117.

2 R. MacG. Dawson, The Government of Canada, 4th. ed. rev. by Norman Ward (Toronto, 1963), 507.

3 Wilson, 14.

Parliament's influence on legislation is generally acknowledged to be minimal. It is usually the case not only that all Governmental legislation is passed, but also that only the Government's proposals are approved. The Opposition often opposes the bill in principle, and even if it is largely in sympathy with the objectives of the legislation, it inevitably proposes amendments. But the Cabinet "...is extremely sensitive about the general excellence of its own measures; and while it may at times consider and even accept suggested amendments, the overwhelming tendency is to refuse to make any important revisions in the bill as originally introduced."¹

It is mostly for this reason, and partly in order to avoid jeopardizing a close and friendly relationship with the department by encouraging Parliamentary opposition to it,² that the interest group in the British and Canadian systems does not operate upon the legislative branch with much frequency or force. Members of Parliament are, nevertheless, lobbied to a considerable extent. As Professor Eckstein writes: "they can ask parliamentary questions, press for adjournment debates, put down motions and amendments, make private representations to Ministers and officials...and exert influence within the party organizations,"³

1 R. MacG. Dawson, 228.

2 Finer, 21; Stewart, 36.

3 Harry Eckstein, Pressure Group Politics (London, 1960), 17n.

In addition, Finer has found that in Britain when a bill is about to receive its second reading "it is very common for organizations to send every M.P. a letter stating its views and asking Members to vote for or against."¹ This occurred, for example, in the case of the commercial television campaign in Britain² and in the Canadian Legion's opposition to the adoption of a new flag.³

At some point in their passage through Parliament most bills go to a committee where interest group representations again can be presented. The committee may serve several interest group purposes: to demonstrate to individual members of the group that its officers are functioning efficiently; to influence public opinion (or at least to reach a wider audience than is gained by consultations with the department or with individual M.P.'s); and, according to Finer, to change detailed provisions of the bill.⁴ Since it is often only the details that the interest group desires to change, it may take full advantage of this point of access.

If a bill is likely to emerge from the House of Commons criticized but essentially unchanged, there is even less likelihood that it will be altered in the

1 Finer, 59.

2 Wilson, 42.

3 Mr. Lorne Manchester, Associate Editor, The Legionary, interview March 10, 1966.

4 Finer, 20.

Senate. It is generally assumed that the Senate does not exercise effectively any of its three main intended functions: representing provincial interests, speaking for property and conservatism, and improving the drafting of legislation. John Turner has calculated that only 15 to 20 per cent of the bills sent to the Senate are amended or revised, mostly in detail and wording.¹ While amendments in principle or rejection of the legislation have sometimes occurred, this is unlikely when the Senate's majority is of the same party as the Government,² or when the Senate assumes that the Government has some sort of "mandate" for the measure.³ The Senate's consideration of the bill is nonetheless of interest because it often holds hearings when bills are in committee, and because of somewhat contradictory opinions about the degree of partisanship evident in its proceedings.⁴

Chapters III, IV and V will trace the drafting and passage of the Canada Labour (Standards) Code, and in so

1 John N. Turner, "The Senate of Canada--Political Conundrum," in R.M. Clark (ed.) Canadian Issues (Toronto, 1961), 65.

2 R.A. Mackay, The Unreformed Senate of Canada, rev. ed. (Toronto, 1963), 111.

3 Ibid.

4 The Senate was intended to be an independent, non-partisan body, but appointments have been made on a partisan basis. There is some disagreement in the literature about how partisan it has been in practice: Dawson, 321; Turner, 72; Mackay, 156-7.

doing they will attempt to confirm or refute the popular impressions presented here with respect to these stages of a bill's development.

III. Administration of the Law

The evolution of a law rarely ends nowadays with the perfunctory approval of the Governor General. The act usually allows the Executive to formulate detailed regulations and often to make quasi-judicial decisions in carrying it out. Here the civil service enters the process again. Its post facto quasi-legislative role of drawing up regulations for the approval of the Minister or the Cabinet is all the more significant because of the lack of effective Parliamentary supervision. The rulings the civil service is often left to make in enforcing the legislation or regulations "will force the higher officials to rely on their own discretion and to [exercise] a careful and to a substantial degree, an independent judgment on the circumstances of particular cases...."¹

The significance of the bureaucracy's decisions will almost force interest groups to inject themselves into the administrative process. They will be concerned with the content of the regulations, on which they are usually²

¹ Dawson, 289.

² Finer, 20; Stewart, 15, 17; S.H. Beer, "Pressure Groups and Parties in Britain," American Political Science Review, L (March, 1956), 8.

consulted, with the adjudications of the civil service, and with the general manner in which the law is administered. The civil service may welcome their intervention and a reciprocal relationship with the interest groups may develop. The officials may have insufficient information to draft the regulations, the most effective dissemination of information may be through group channels, and consultation on certain points with the group may facilitate their administration of the law.¹

The manner in which the Canada Labour (Standards) Code has been administered is an important part of its evolution. This aspect will be considered in Chapter VI.

IV. Summary

Not all of the suggestions mentioned above can be tested, even in a treatise of this length. For greater clarity and for later reference, the principal propositions discussed should perhaps be set out by number:

- (1) Assisted by the press and other media, two of the most significant agents in popularizing an idea of this kind are minor parties and interest groups.
- (2) Eventually one or both of the major parties adopt the idea into their own platform, with more pretense than substance of democratic initiative or control.
- (3) The party leader decides whether or not to emphasize the issue in an election campaign.

¹ Finer, 21; Stewart, 36; A. Holtzman, *Interest Groups and Lobbying* (New York, 1966), 114-21.

- (4) The Cabinet, on whom a strong minister has much influence, decides which legislation will be introduced, and approves the details drawn up by the civil service.
- (5) In normal circumstances, the Government caucus has little influence on the Cabinet.
- (6) The role of the House of Commons in this process is largely one of criticism without effecting any substantial change in the legislation.
- (7) The Senate's consideration of legislation is very rarely of any distinction or significance.
- (8) Interest groups focus their attention primarily upon the political executive in the formulation of legislation, having comparatively little contact with the legislature.
- (9) The civil service is given wide quasi-legislative and quasi-judicial powers which it exercises without much political oversight.
- (10) Interest group contact with the civil service in the administrative process is close and constant.

Against this background of what would appear to be a possible or typical evolution of a law, the development of the Canada Labour (Standards) Code itself can now be examined.

Chapter Two: Elaboration of the Idea

The Canada Labour (Standards) Code established, for workers in industries under federal jurisdiction, a legal minimum wage of \$1.25 per hour, a maximum working day and week of eight and forty hours respectively, a minimum of eight paid holidays each year, and at least two weeks' annual vacation with pay. Labour can achieve its objectives in these fields by collective bargaining with individual employers as well as by such legislative standards. The two methods are usually used in conjunction, consequently, for while unorganized workers who cannot bargain effectively with their employers generally gain most from such legislation, organized labour welcomes it too as setting a minimum from which to bargain upward. In treating the background to the Labour Code, it will be desirable to restrict discussion as far as possible to labour standards rather than collective bargaining, and to such standards within the competence of the federal Parliament rather than within that of the provincial legislatures. Even the idea of setting legislative standards for labour within federal jurisdiction, however, has a long and complex history.

I. Pre-1930 Period

This specific Canadian episode in the long struggle

to better the condition of the worker really began shortly before 1900 with the call by organized labour for a legal minimum wage.¹ Early in this century the British Columbia Labour Party and J.S. Woodsworth were repeating this request,² while Alphonse Verville was asking in Parliament for another legislative standard, the eight-hour day.³ Nothing came of these demands at that time, although the federal government did begin to regulate conditions of work for its own contract holders in 1900. The first major federal legislation in the labour field was the Industrial Disputes Investigation Act of 1907, but rather than set any standards, it was concerned with processes for achieving industrial peace in certain major industries. In 1909 a Department of Labour with a separate minister (MacKenzie King) was established.

Two events in 1919 make it a significant year in the

1 For example, by the Trades and Labour Congress of Canada in 1898. Stanley Knowles, The New Party (Toronto, 1961), 11; H.A. Logan, Trade Unions in Canada (Toronto, 1948), 399.

2 Paul Fox, "Early Socialism in Canada," in J.H. Aitchison, The Political Process in Canada (Toronto, 1963), 88; Kenneth McNaught, J.S. Woodsworth: a Prophet in Politics (Toronto, 1959), 60.

3 Knowles, 10; Logan, 427-8, 498; McNaught, 153n. In this period, too, the custom was established of organized labour's presenting an annual submission of its views to the federal Cabinet. Eugene Forsey, "History of the Labour Movement in Canada," in J.J. Deutsch et al., The Canadian Economy: Selected Readings (Toronto, 1961), 117.

development of federal labour standards. The first was the establishment, as part of the League of Nations, of the International Labour Organization, whose influence on Canadian labour legislation through the years has been considerable. It was partly on the initiative of Sir Robert Borden that the Labour Section of the Treaty of Versailles listed these measures, inter alia, to be of special and urgent importance:

The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country;

The adoption of an eight-hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained; and

The adoption of a weekly rest of at least 24 hours, which should include Sundays wherever practicable.¹

The Treaty asserted, however, that in the case of a federal state the draft convention was to be treated as a recommendation only.² Canada was such a state and jurisdiction over labour had neither been listed specifically among the enumerated powers of either federal or provincial governments in sections 91 and 92 of the B.N.A. Act, nor had the issue yet been fully clarified by the courts. The Canadian Government decided that its obligation "would be fully carried out if the different conventions and recom-

1 Treaty of Peace between the Allied and Associated Powers and Germany (London, 1919), Article 427, 205.

2 B.M. Stewart, Canadian Labour Laws and the Treaty (New York, 1926), 17.

mendations were brought to the attention of the competent authority, Dominion or provincial in each case."¹ In 1920 an order-in-council expressed the opinion that the federal Parliament was competent only "in so far as Dominion works and undertakings are affected."²

The second significant event of 1919 was the holding of a national convention by the Liberal Party of Canada, necessitated by the death of its leader, Sir Wilfrid Laurier. The occasion was also considered an appropriate one to draft a new party platform. The "Labour and Industry" Resolution which was presented to the Convention by Mackenzie King resolved to adopt all of the I.L.O. Conventions including those which dealt with the three matters cited above. The platform of which the resolution became part was referred to the next day in King's acceptance speech as Liberal leader in these now famous terms:

[It] is the chart on which is plotted the course desired by the people of this country as expressed through the voice of the Liberals assembled here. So with this chart and this compass...let us press on from this moment...ever more zealous and united, till we have reached the goal where the principles and policies laid down on this historic occasion will have become, through legislation, part of the law of our land.³

Two years later King became Prime Minister and in 1923 he called a Dominion-Provincial Conference to discuss the

¹ Ibid., 35.

² The Labour Gazette, XX (1920), 1492.

³ Liberal Party of Canada, The Story of the Convention and Record of Its Proceedings (Ottawa, 1919), 200.

I.L.O. Conventions, presumably feeling that he had then brought the conventions "to the attention of the competent authority"--the provinces.¹ Then in 1925 he submitted the question to the Supreme Court: which level of government was the competent authority in this matter?²

The constitutional situation as enunciated by the courts in that and subsequent decisions has been best summarized in this fashion:

In so far as labour relations have an independent constitutional value, they are within provincial competence; and in so far as they are merely a facet of particular industries or enterprises their regulation is within the legislative authority of that body which has power to regulate the particular industry or enterprise.³

Regulatory control at the federal level could be exerted only in respect of four kinds of activities: those within federal authority by specific enumeration, such as inter-provincial railways, shipping, and telegraph and telephone operations; those which fell within the federal general or residuary power, including radio, aerial navigation and atomic energy; those brought within federal authority by a declaration under section 92(10)(c) of the B.N.A. Act as being for the general advantage of Canada; or those involved

1 Described in The Labour Gazette, XXIII (October, 1923), 1107-12.

2 Re: Hours of Labour [1925] S.C.R., 505.

3 Bora Laskin, Canadian Constitutional Law 2nd. ed. (Toronto, 1960), 428.

in federal crown enterprises.¹ When the eighteen-year-old Industrial Disputes Investigation Act was declared ultra vires in 1925,² for example, it was amended to apply essentially to these four types of industries alone.

Mackenzie King was defeated in 1930 without having legislated for these particular I.L.O. standards within the federal Parliament's jurisdiction³ (as the Court in 1925 had said he should) and apparently having done nothing after 1923 to encourage implementation of them by the provinces--hardly the kind of action that might have been expected from a Prime Minister with such experience in the area of labour relations.⁴

II. 1930 to 1956

Although the Depression of the early 1930's might have been expected to bring some federal action in this field,⁵ nothing was done by the Conservative Government

1 Ibid., 429.

2 Toronto Electricity Commissioners v. Snider 1925 A.C. 396.

3 He had in 1924 implemented one convention in the federal sphere dealing with shipping.

4 He was Canada's first deputy minister and then first Minister of Labour between 1900 and 1911. R. MacG. Dawson, William Lyon Mackenzie King (Toronto, 1958) ch. 5-7.

5 Most provinces had female minimum wage laws before 1920 and B.C. had the first for males in 1925; B.C. also led in the 8-hour day, 48-hour week for both

of R.B. Bennett until an election loomed ahead in 1935. Bennett had, in 1930, limited working hours on public works of repair and construction to eight per day, but it was only five years later that he had Parliament ratify the I.L.O. Conventions and then pass three acts based upon them: the Hours of Work, the Minimum Wages, and the Weekly Day of Rest Acts. In this legislation Bennett went far beyond the federal government's jurisdiction, applying these standards to labour in all Canadian industrial establishments, including those within provincial authority. The Prime Minister was convinced that his action could be upheld on the basis of the Treaty Power, Section 132 of the B.N.A. Act,¹ but the Liberals maintained that the bills were unconstitutional while the C.C.F. at least hoped they were not. When King again became Prime Minister after the election later that year, he referred the three Acts to the courts and the Privy Council held them ultra vires in 1937.² The Conventions on which the Acts were based, it held, were "not obligations of Canada as part of the British Empire, but of Canada by virtue of her new status as an

sexes in the 1920's; Ontario was the first to legislate for vacations with pay in 1944. Stewart, 101, 197, 219, 230; Logan, 496; A. Kovacs, Readings in Canadian Labour Economics (Toronto, 1961), 103, 110-2.

1 Ernest Watkins, R.B. Bennett (Toronto, 1963), 217.

2 Labour Conventions Case [1937] A.C. 327.

international person." Hence section 132 did not apply and the matter became an issue of sections 91 and 92: "It had to be admitted that normally [and there was nothing abnormal in a Depression!] this legislation came within the classes of subjects by s.92 assigned exclusively to the legislatures of the provinces, namely--property and civil rights in the Province."

If in this sense the Depression may have delayed the adoption of federal labour standards, in another it may have encouraged it in providing the conditions that led to the formation of a new political party, the C.C.F. Its 1933 program called in part for a National Labor Code:

A labor code must be developed which will include state regulation of all wages...[and] limitation of hours of work....The labor code would be uniform throughout the country. But the achievement of this end is difficult so long as jurisdiction over labor legislation under the B.N.A. Act is mainly in the hands of the provinces. It is urgently necessary, therefore, that the B.N.A. Act be amended to make such a national labor code possible.¹

The C.C.F. program, the "Regina Manifesto," was drawn up at the request of the party leader, J.S. Woodsworth, by Prof. Frank Underhill, then President of the League for Social Reconstruction. The labour resolution in the Manifesto, however, was entirely revised by an associate, Prof. Harry Cassidy.² The platform was based not so much on

¹ Published as an appendix to McNaught, 325-6.

² Prof. F.H. Underhill, letter to author June 16, 1966; McNaught, 264.

Woodsworth's speeches and statements as on the drafters' own ideas, but it was likely to reflect the leader's views as well "since we had been discussing these matters with him for some time."¹ Woodsworth, after his election to the House of Commons in 1921, had indeed spoken in favour of legislative standards for labour on many occasions.² He had also suggested expanding federal jurisdiction over labour by having Parliament declare more works to be for the general advantage of Canada. Throughout this period the idea of a national labour code was generally given prominent attention in the party's election leaflets and biennial national conventions.³ Over the years the policy changed only slightly; in 1944, for example, Andrew Brewin expressed the party's position on labour in these terms:

...[the B.N.A. Act] should be amended so as to grant power to the Dominion Parliament to enact codes of minimum standards in the labour field, but the provinces should retain concurrent powers to go beyond these minimum standards and should remain responsible for much of the administration of labour legislation. The power of the Dominion Parliament effectively to ratify international treaties and conventions in this field should also be assured.⁴

1 Underhill's letter.

2McNaught alone cites three occasions: in 1922, 1924 and 1925; 172, 176, 181.

3 The N.D.P. Headquarters has a collection of C.C.F. election leaflets; the Reports of the National Conventions are in the Public Archives.

4 Planning for Freedom, published by the Ontario C.C.F. (Toronto, 1944), 124.

Meanwhile the idea of nation-wide labour standards had been championed by the Rowell-Sirois Commission. Its Report asserted in 1939 that either through delegation or constitutional amendment, the federal Government should be enabled to implement I.L.O. Conventions, and to set basic minimum wages which the provinces could later raise, and maximum hours which they could subsequently reduce.¹

In view of these developments, it is not surprising that organized labour was demanding similar action. In its annual brief to the Cabinet in 1946, for example, the Trades and Labour Congress (T.L.C.) said:

We sincerely hope, as a result of the conferences of the Dominion and Provincial representatives, that the Dominion Government will be given full authority to enact a labour code...; that a maximum 40-hour week be established without reduction in wages; that legislation be enacted guaranteeing to all employees at least two weeks holidays with pay each year in addition to all statutory holidays; that a minimum wage of sixty-five cents per hour...be established by law....²

The request was put somewhat differently in 1947: the forty-hour week and two-week vacation with pay were requested only "for all employees in corporations and undertakings coming within the jurisdiction of the Dominion Government."³ Thus, while the idea of federal labour standards was reiterated year after year, the idea of a constitutional amendment was not always included.

1 The Royal Commission on Dominion-Provincial Relations Report (Ottawa, 1954), Book II, 48-9.

2 T.L.C., "Memorandum to the Government of Canada," April 4, 1946, 5.

Canada's other major labour organization, the Canadian Congress of Labour (C.C.L.) was at the same time making like entreaties. In 1948 its brief to the cabinet proposed an annual national conference on labour legislation with the aim of unifying such laws across the country.¹ It requested a national minimum wage of eighty-five cents per hour and a maximum work week of forty hours in 1951. The C.C.L. was not so persistent in pointing to the need for a national labour code in its annual briefs to the cabinet but it did re-emphasize this request in its 1953 and 1954 submissions:

The Government is urged to take whatever steps are necessary to amend the British North America Act to provide that the jurisdiction of the Canadian Government shall extend to all matters of common interest to the Canadian people and which are of national importance and character. When this has been done, the Government is urged to establish a National Minimum Wage Act providing for an adequate minimum wage throughout Canada, and a National Hours of Work Act providing for a forty-hour work week with penalty rates for overtime work.²

During the War the Government had approved several important regulations applying to labour, most of which aimed either to prevent strikes in important industries (P.C. 1003) or to prevent wages from rising too high (P.C. 7440). Then in 1948 the Government expressed its total confidence in collective bargaining and its view that

3 Ibid., March 28, 1947, 7.

1 C.C.L., "The Congress Memorandum," March 5, 1948.

2 Ibid., December 10, 1953, 6.

federal legislative standards were unnecessary in a new Industrial Relations and Disputes Investigation Act. Later, the Liberals moved slightly away from the 1948 position with the Fair Employment Practices Act and the Female Employees Equal Pay Act, but in spite of the persistent efforts of organized labour and the C.C.F., nothing had been done to establish legal minimum standards by 1956.

In several respects the year 1956 was a significant one in the development of national labour standards: the merger of the C.C.L. and the T.L.C. into the Canadian Labour Congress (C.L.C.); the revision of the C.C.F. national platform; the beginning of Stanley Knowles' attempts to introduce such standards by means of private members' bills; and the national convention of the Progressive Conservative party. Each of these developments will be considered in turn and the consequences of each traced up to 1964.

III. The Canadian Labour Congress

With the merger of Canada's two largest labour organizations into the C.L.C., the Research Directors of both constituent Congresses "combed the records of past conventions" and developed a Platform of Principles which was adopted by the 1956 Convention. It read in part:

- A National legal minimum wage of \$1.00 an hour;
- A National Forty-hour week Act;
- A National Vacation and Holiday Act, providing for a

minimum two weeks' vacation with pay and a minimum of eight statutory holidays.¹

Here for the first time, standards in the four matters which the Canada Labour (Standards) Code was to cover were grouped together in terms very similar to those of the final statute.

Although the C.L.C. maintains rather frequent contact with the Government of the day and with various departments, especially Labour, through informal meetings and by letter and telephone, its activities with respect to implementing this part of its platform were largely confined to requesting such legislation in its annual submission to the federal Cabinet.² These issues were mentioned in every one of its briefs between 1957 and 1964, usually in almost identical terms. For example, the new organization's first brief presented in January 1957 asked for a maximum forty-hour work week, a minimum wage of \$1.00 per hour, two weeks' annual vacation with pay and eight paid statutory holidays for all employees within federal jurisdiction. It also urged that such standards be made uniform throughout the country by means of federal-provincial cooperation.³ In its first appearance before the Conservative Government later that year, the Congress apparently felt it necessary

1 The Canadian Labour Congress First Convention Report of Proceedings, Toronto, April 23-27, 1956, 103.

2 Stanley Knowles, Michael Starr and Andy Andras, Director of Legislation, C.L.C., interviews.

3 C.L.C., "Memorandum to the Government of Canada," January 23, 1957, 18-9.

to justify the practice of presenting an annual brief:

"Such meetings are part of the tradition of the Canadian labour movement. Indeed they have been going on so long that they might almost be said to have become part of the unwritten constitution of Canada."¹ In 1959 a federal minimum wage of \$1.25 per hour was requested, in accordance with a resolution passed at the 1958 national convention.² In 1960 the idea of unifying Canadian labour legislation was omitted from the brief, presumably because of a feeling that that demand was thwarting the implementation of any standards within federal jurisdiction alone. The 1962 submission was unique in adding, after the usual suggestions, a section entitled "the C.L.C. and the Government." This severely criticized the Government's lack of concern with labour matters and neglect of the C.L.C. as the principal spokesman of organized labour in the making of appointments and in the consideration of legislation. Admitting that it was primarily concerned to look after the interests of its own members just as were such groups as the Canadian Manufacturers' Association and the Canadian Medical Association the C.L.C. questioned why it alone was being ignored.³

1 Ibid., October, 1957, 5.

2 C.L.C. Second National Convention Report of Proceedings, Winnipeg, April 21-5, 1958, 10.

3 "Memorandum," March 14, 1962, 42-9.

When the Congress appeared before the new Liberal Government in 1963 and 1964, the Labour Code was again among its major requests.

IV. The C.C.F./N.D.P.

"The C.C.F. urges the adoption of a National Labour Code providing for: an adequate national minimum wage, a forty-hour week throughout industry, a minimum of two weeks' holiday with pay and of eight statutory holidays...."¹ Such was the C.C.F. labour policy laid down by the 1956 Winnipeg Convention, in which there was virtually no change. What was significant about the meeting was its adoption of the "Winnipeg Declaration of Principles," a toning down of the Regina Manifesto which facilitated the eventual union of the C.C.F. with organized labour into a new political party. After the C.C.F.'s lack of success in the 1957 and 1958 elections, in each of which the party gave some emphasis to the labour code idea,² the C.L.C. made the first formal proposal for a new party of the Left. The C.C.F. in turn welcomed this move, a Joint Committee was established to consider it, and the New Party Founding Convention was held in August 1961. The Convention was presented with a Draft Program published by the National Committee for the New

¹ Report of the Fourteenth National Convention of the C.C.F., Winnipeg, August 1-3, 1956.

² For example, its leaflets "Let's Share Prosperity," 1957, 5; "Let's Go Forward," 1958, 4.

Party chaired by Stanley Knowles and including prominent members of the C.L.C. and C.C.F. The labour resolution of this draft program read in part:

The New Party will seek the cooperation of the provinces in achieving national minimum labour standards throughout the country. Its objective is a national labour code, enacted jointly by the federal parliament and provincial legislatures, to establish:

- (a) an adequate minimum wage;
- (b) a five-day, 40-hour work week;
- (c) two weeks of vacation with pay each year;
- (d) eight statutory holidays with pay each year....

It will, furthermore, seek the agreement of the provinces in bringing under federal jurisdiction the power to ratify and put into effect all internationally-set labour standards.¹

This became the official policy of the New Democratic Party, and was patronized by it in the 1963 election campaign.

V. Stanley Knowles

As a Member of Parliament, Stanley Knowles was much more directly involved in the development of labour standards.² From 1956 to 1958 and from 1962 to 1965 he introduced a total of eighteen private members' bills dealing with labour standards, while in his four-year absence from Parliament, his C.C.F./N.D.P. colleagues introduced them again, although with less regularity.

¹ Printed as an appendix to Knowles, The New Party, 20.

² M.P. for Winnipeg North Centre, 1942-58; since 1962; defeated in 1958 but elected Executive Vice-President of the C.L.C., 1958-62.

In 1956 Knowles introduced annual vacations and statutory holidays bills covering all workers within federal jurisdiction. Although he had been a delegate to the C.L.C. Founding Convention, it was not that event which prompted him to act when he did.¹ He had long wanted to bring the C.C.F. labour policy before the House in this form, but it was only in 1956 that he realized it could be done by a private member (by excluding the government's own employees) and that he found someone who could help him draft the technical details of the legislation. The bills were introduced after being discussed and approved in the C.C.F. caucus, and were enthusiastically received by the C.L.C.² They met the fate of almost all such private members' proposals, however, in being either defeated or "talked out" by the Government. The same thing happened in the 1957 and 1957-58 sessions, in each of which he introduced the same two bills plus a third dealing with minimum wages. Later other members of his party brought in bills to establish maximum hours in works under federal jurisdiction.³

Knowles' three measures were lengthy and complex. That they were not just "pious resolutions" he pointed out several times to his fellow legislators, in pleading that

1 Stanley Knowles M.P. (Winnipeg North Centre) interview June 15, 1966.

2 Correspondence in Stanley Knowles' files.

3 House of Commons Debates, November 26, 1962.

they at least be sent to committee for further consideration.¹ The fact that another of his bills had been accepted by the Government in 1948 (and the occasional other member's since) gave him some hope that these three bills might be accorded a more favorable Governmental response. If they were presented in precise terms and complete detail, he felt his chances would definitely be increased.² This did not prove to be the case. The Liberal Government prior to 1957 took the attitude that such matters were best left to collective bargaining. The Conservatives after 1957 and the Liberals after 1963 revealed that the Government was considering similar legislation of its own which, if introduced, would necessarily be superior to a private member's bill. Such attitudes prompted this bitter response from Knowles in 1963:

...it is time that the government of the day cooperated with the private members in this house and made it possible for their proposals to receive consideration....I suggest that these [private members'] bills...represent a great deal of thought on the part of the people who have been sent here by their constituents....It is not good enough for parliament to go on like this, just because we have done it for ninety-five years, talking out practically all the proposals private members place before the house.³

Neither the Conservative nor the Liberal Government

1 For example, Debates, July 20, 1956, 6258.

2 Ibid., October 30, 1957; Interview.

3 Debates, May 30, 1963, 468-9.

varied this practice, however, and after his re-election in 1962 Knowles had doggedly sponsored ten more bills before the Canada Labour (Standards) Code was introduced.

IV. The Conservatives

The final event of 1956 which made some contribution to the development of federal labour standards was the National Convention of the Progressive Conservative Party, held to choose a new leader and to draft a new platform. For the latter task constituency organizations were invited to send in resolutions. Only two of those forthcoming concerned labour, one asking, in cooperation with the provinces, for uniform labour legislation,¹ and the other, for "fair and adequate wages, holidays with pay, and standard hours of work having regard to the industry concerned."²

The party's Research Department, which was established in 1955 on the initiative of Donald Fleming and headed by Dr. Donald Eldon, was charged with the duty of preparing material for the delegates who would draft the platform.³

1 From the Halton County Conservative Association, "Suggested Resolutions Submitted by Progressive Conservative Organizations for Consideration by the Resolutions and Policy Committee of the National Convention, 1956," 31.

2 Ibid., submitted by the Saskatchewan party leader, Alvin Hamilton, from the Saskatchewan Conservative Convention, 1954.

3 D.E. Eldon, letter to author May 31, 1966; D.E. Eldon, "Towards a Well Informed Parliament," Queen's Quarterly, LXIII (Winter, 1957), 522.

It first prepared a list of party policy statements from previous conventions, annual meetings and Parliamentary debates. In addition, the Research Department wrote an actual draft platform for the delegates to consider. In the field of labour, the Department contacted the C.L.C.¹ so that, as a result, the draft resolution "reflected the views of the Canadian Labour Congress." Besides this, an economist in the Research Department had prepared a study of federal labour legislation which cited the latest briefs of both the C.C.L. and the T.L.C. and which also reported a discussion with the Assistant Deputy Minister of Labour. The study concluded: "The Fair Wages and Hours of Work Act [a much amended version of the 1900 policy covering labour on Government contracts] is badly in need of 'tidying up'. In addition, the unions would like federal legislation providing minimum working conditions in industries under federal jurisdiction."²

The draft program dealing with labour was then discussed prior to the Convention itself in the twenty-five-member Labour Sub-committee of the Resolutions and Policy Committee, after which it was reported to the full Committee.³

1 Eldon letter, "and possibly other organizations".

2 Progressive Conservative Research Department Report 58, "Federal Legislation on Labour Relations and Working Conditions," November 5, 1956.

3 It may have been amended in the Labour Sub-committee. Eldon letter.

The labour resolution passed by the Convention was in fact identical in form to the one submitted to it by the Resolutions and Policy Committee. Its principal relevant points here were as follows: "We shall cooperate with the Provinces to promote uniformity of labour legislation, and enact legislation to provide minimum wages, hours of labour, and vacations with pay for all workers under Federal jurisdiction."¹ The resolution omitted the provision for statutory holidays but was otherwise very close in content and wording to the C.L.C. Platform. As John Meisel has written, "the Research Department's influence on the Committee [and the Convention] was immeasurably greater than were the resolutions passed by the various Conservative organizations in the country."²

In the 1957 election campaign "the pamphlet on Labour in the party's Talking Points series...contained an almost verbatim repetition of the labour resolutions passed by the Convention."³ During its first year in office the Conservative Government did enact the Annual Vacations with Pay Act, providing for one week's vacation with pay after one year's employment and two weeks after two years for all

1 "What the Progressive Conservative Party Stands For," Report of the Committee on Resolutions and Policy, 1956, 19.

2 "The Formulation of the Liberal and Conservative Programmes in the 1957 Canadian General Election," CJEPS, XXVI (November, 1960), 568.

3 Ibid., 568.

workers within federal jurisdiction. At last a first step had been taken to implement a national labour code.

In discussing the bill, the Minister of Labour, Michael Starr, made no reference either to the Conservative platform or to the C.L.C. The bill was criticized by the C.C.F. for not going as far as the Labour Congress had requested, or as provided for in Knowles' bills. Starr expressed the hope that he would in the future have the opportunity to bring forward legislation setting the other standards which the Opposition had suggested, most of which were actually in the Conservative program. This he never did, although he remained Minister of Labour until 1963. He had, however, instructed his officials to prepare a minimum wage bill on which considerable progress had been made by the time the Conservative Government was defeated.¹ It was, again, not entirely in line with the C.L.C. platform, but rather, like a recent American enactment, was to reach the \$1.25 per hour minimum that that organization was now requesting in three stages. As Minister, Starr kept the 1956 Conservative program before him continually and crossed off its provisions as they were implemented.² The party program

1 Michael Starr, M.P. and Harris J. Johnstone, Director, Labour Standards Branch, Canada Department of Labour, interviews.

2 Michael Starr interview. This is in contradiction to Peter C. Newman's assertion in "The Lack of Conservative-Liberal Differences in Canadian Politics" in G. Hawkins, Order and Good Government, that it was never seen again.

obviously carried more weight with him than did the demands of the C.L.C.,¹ but the party's 1958, 1962 and 1963 election propaganda said nothing about legislative labour standards other than that the Government had already implemented the Vacations with Pay Act.² The Conservatives eventually might have enacted an entire labour standards code if they had remained in power. Starr, at least, holds this belief.³

VII. The Liberals

Of the three largest Canadian political parties, only the Liberals were not committed to legislating for national labour standards by 1956. The collective bargaining provisions in their I.R.D.I. Act of 1948 were evidently considered sufficient. After only one year in opposition, they changed their stand, however, and their 1958 National Convention adopted, among others, these resolutions concerning labour:

Cooperation with the provinces to secure the greatest possible uniformity in labour legislation across Canada....Legislation for a national minimum wage and working hours in all work under government contract and all industries under federal jurisdiction.⁴

1 Michael Starr, M.P. interview.

2 For example, the 1958 Talking Points series, "Labour".

3 Starr interview.

4 "New Statements of Liberal Policy," Resolutions Adopted by the National Liberal Convention, Ottawa, January 14-16, 1958, 28.

A perusal of the resolutions sent in by Liberal Associations across the country fails to uncover any proposal remotely similar to the labour policy adopted.¹ It must then have originated within the labour sub-committee of the 156-member Resolutions Committee, made up mostly of M.P.'s and Senators which met prior to the Convention.² When the Convention met, sub-committees of it were established, each of which considered the policy statements previously prepared by the Resolutions Committee, together with the relevant resolutions submitted by the various Liberal Associations. While these Convention sub-committees were free to amend or reject the Resolution Committee's statement, that body had a second opportunity to approve the resolutions before they were sent forward to, and adopted by, the whole Convention.³

Prior to the Convention, in fact, when the Liberals first assumed the role of Opposition in 1957, the party's labour spokesmen, James Byrne and Allan MacEachen, had supported Knowles' bills. Later, a non-Liberal labour leader, William Mahoney, was invited to speak at the party's 1960 Kingston Conference where he repeated labour's requests for

1 Resolutions submitted to the Fourth National Liberal Convention, Ottawa, January 14-16, 1958. The Toronto and Yorks Liberal Association submitted a resolution calling for vacations legislation but that labour standard was not included in the final platform!

2 Hon. George C. Marler, Chairman of the Resolutions Committee, letter to author.

3 Marler letter.

nation-wide standards.¹ His suggestions were apparently to little avail, for the 1961 Liberal Policy Rally passed this resolution: "We should decide whether or not the adoption of a National Labour Code would be desirable."² From that equivocal position it may have been wondered if the policies adopted in 1958 were to be treated with the same abandon as those adopted in 1919.

Such was not the case. "The Liberal Programme", published for the 1962 election, went beyond even the 1958 resolution: "[A Liberal Government will] institute a federal labour code. This will apply to all industries under federal jurisdiction and work done under federal contracts. It will establish a minimum wage, maximum working week, pay for vacations and statutory holidays...."³ The party's 1963 election manifesto went further still. The federal labour code, it said, "will establish a minimum wage of \$1.25 an hour, maximum working week of 40 hours, pay for two weeks' vacation, and seven statutory holidays...."⁴ A small committee of Pearson's advisers including Tom Kent, Maurice Lamontagne and Allan MacEachen had decided prior to the first election that a national labour code was desirable,

1 The Kinston Conference, Vol. II, (available from the National Liberal Federation, Ottawa).

2 "Policy Statements," the National Liberal Rally, Ottawa, January 9-11, 1961.

3 "The Liberal Programme," 1962, 15.

4 "The Policies of the Liberal Party," 1963, 16.

and prior to the second, what its specific contents should be.¹

Other party pamphlets contained the same commitment, and on March 25 Pearson spoke in Hamilton, reaffirming his party's intention, if elected, to implement the Code as set out in the election manifesto.² Shortly after the Liberals were elected on April 8, they went about formulating such legislation.

VIII. Conclusions

It is highly likely that the idea of legislative labour standards for workers within federal jurisdiction actually originated with an interest group--organized labour. Certainly its persistent advocacy by the T.L.C., the C.C.L., and later by the C.L.C. did much to popularize the concept. This was done both through submissions to cabinets, which are usually well publicized in the press, and, at least in the case of the Conservatives in 1956, through direct influence on a party platform at the party's request.

Third parties, the C.C.F. and N.D.P. also did much to

1 Mr. Paul Lafond, Executive Secretary, National Liberal Federation, interview.

2 Ottawa Citizen, March 26, 1963.

disseminate the idea in their conventions, in election platforms, and in Parliament. The Labour Code idea had been in the C.C.F. platform from the party's inception; it had been publicized in its election literature, and the union of the party with labour into the N.D.P. could serve only to re-emphasize the issue. Woodsworth had spoken for federal standards even prior to 1932, as had his colleagues on frequent occasions since. Knowles' private members' bills not only demonstrated how the idea might actually appear in legislative form, but served to remind the Government of the day that it had supported the measure while in Opposition, or that it had promised it in election campaigns. However little likelihood his bills had of passing, they were regarded by the proponents of the idea as an excellent way to popularize it, and were noted with concern by some of the industries which would have been affected.¹ Knowles himself feels that his bills and the C.L.C. submissions had a mutually reinforcing effect such that the absence of either would probably have delayed enactment of the Code.²

The validity of the first proposition set out in Chapter I concerning interest groups and minor parties has thus

1 Knowles interview and correspondence in his files; Interviews with officials of the Railway Association of Canada, the Air Transport Association of Canada, and the Canadian Trucking Associations. The first two named submitted briefs to the Labour Department opposing these bills.

2 Knowles interview.

been demonstrated. It is, however, incomplete. Another agency which had a large part in originating or providing moral support for the idea was the International Labour Organization. It was the direct source of the plank in the 1919 Liberal platform, which came to nothing, as well as the Conservative legislation of 1935, which came to little more. In addition, though, frequent references to I.L.O. recommendations were made in the debates right up to the formulation and passage of the final Labour Standards Code. Another important foreign influence was the development of federal labour standards in the United States. Such legislation is kept under constant review by officials in the Labour Department¹ and Starr's minimum wage proposal, which was never introduced into Parliament, was modeled directly after it.

This discussion has also revealed several things about party platforms, the subject of proposition two. They are, as predicted, largely the work of party officials, either in Parliament or in the national office. Platforms have usually been formulated when the party is in opposition, and, with the C.C.F./N.D.P. and 1961 Liberal exceptions, only when it met to select a new leader. Ratification of the platform by a large national convention is very much an

¹ Miss Edith Lorentsen, Director of the Legislation Branch, Canada Department of Labour, interview.

automatic procedure.

Observers sometimes have a disposition--certainly justified in the case of the Liberal platform of 1919--not to take party platforms very seriously. It should be emphasized for that reason that upon obtaining office, the Conservatives rapidly implemented the vacations with pay provision of their 1956 platform, and, while they were rather slow to legislate for the other provisions of their labour policy, they had at least begun to work on the minimum wages aspect before their defeat. Similarly, as will be noted below, the new Liberal Government in 1963 lost no time in beginning to prepare the Labour Code to which their platform had committed them. It is quite true, on the other hand, that at least in so far as the labour code idea was concerned, there was virtually no difference in the platforms of the Liberals, the Conservatives, and the C.C.F./N.D.P. in the 1958, 1962 and 1963 election campaigns. This is not to say, of course, that there would have been no difference in the speed with which the victorious party would have implemented the Code, or the detailed provisions of it.

Finally, as Chapter I suggested, a party's election manifesto does appear to be largely the work of its leader and his advisers. The national headquarters of each party publishes some sort of "Speaker's Handbook" and other literature for its candidates. Even where, as in the Liberal

case, this was prepared under the direction of the leader, the press, the candidates, and the party officials apparently take an actual statement from him as the only sure sign of party policy. The Conservatives in 1957, for example, virtually suppressed the convention resolutions and relied instead on the piecemeal publication of their program as it was announced by Diefenbaker. Such a procedure allowed the leader to depart somewhat from traditional party principles and in some cases from the platform itself,¹ although Diefenbaker did refer at least once to a labour code.² Similarly, when the Minister of Labour introduced the Code into Parliament in 1964, he made no mention of the Liberal program, but declared that the legislation was fulfilling the undertaking made by Pearson in his Hamilton address.³

1 John Meisel, The Canadian General Election of 1957 (Toronto, 1962), 170.

2 The Globe and Mail, Toronto, April 26, 1957.

3 It is interesting to note in this connection that when the Financial Post published a list of party policies in the 1963 election campaign, it was based on the leaders' statements and included the labour code in the Liberal column only after Pearson's announcement in Hamilton.

Chapter Three: Formulation of the Bill

Lester B. Pearson became Prime Minister on April 22, 1963 and on that date appointed Allan J. MacEachen as his Minister of Labour. Shortly afterwards, MacEachen instructed his officials in the Labour Department to begin work on a labour standards bill.¹

I. Policy Memorandum

The first stage in the drafting of any bill is the preparation of a policy memorandum for the Cabinet. According to a widely used civil service guide:

Departments and agencies of government wishing to have legislation introduced should submit for each measure proposed, an explanatory memorandum to the Cabinet setting forth the intent and purpose of the proposed bill and describing the main questions of policy involved....

Such explanatory memoranda to the Cabinet should not be in the form of a draft bill but should provide a brief and clear outline of the substantive amendments or new proposals recommended.²

The Deputy Minister of Labour, George V. Haythorne, set up a small committee of top Departmental officials including

1 One week later, according to a Time Magazine report, October 9, 1964.

2 E.A. Driedger, "Memorandum on the Drafting of Acts of Parliament and Subordinate Legislation," Department of Justice (Ottawa, 1951), 39.

himself to draft this policy memorandum.¹ The Minister's instructions were very general and much preparatory work had to be done before the actual standards could be decided upon.

A Departmental paper entitled "Background Considerations and Possible Alternatives," dated July 19, 1963 and preceding the Cabinet memorandum by nearly a month reveals something of civil service thinking at that time. It claimed that federal labour standards were overdue and that four such standards might all be put into one piece of legislation. (The question of whether to proceed at once with a single bill covering all four fields or at intervals with separate bills was indeed one of the most important to be settled at this early stage). The paper outlined how such a composite bill might be organized and an appendix listed the existing provincial standards, the probable expense to the federal government that such a bill would entail, and the current hours of work in such industries as air and motor transport, the railway running trades, and the grain elevators. With respect to a minimum wage, it said:

If the principle of a standard minimum wage is accepted, it becomes a question as to what the minimum should be. In more recent years the minimum proposed in private members' bills has been \$1.25 an hour.²

1 Dr. George V. Haythorne, Deputy Minister, and Miss Edith Lorentsen, Director, Legislation Branch, Canada Department of Labour, interviews.

2 "Labour Standards Legislation - Background Considerations and Possible Alternatives," Department of Labour, July 19, 1963, 2.

If it is found that the cost effect may be too severe for the implementation of an hourly rate of \$1.25 at one time, consideration might be given to introducing an hourly rate of \$1.00.¹

The hours of work section was also indefinite:

The 8-hour day is a generally accepted standard where hours of work are controlled by legislation. It is in the area of weekly hours which vary from 40 to 48 where a decision needs to be made.²

It would appear desirable to enact legislation to bring into effect in respect to federal industries an 8-hour day and a 40-hour week.³

The paper then suggested three alternatives for regulating overtime work. Regarding holidays with pay, it pointed out uncertainly that it would "be necessary to decide the number of prescribed days."⁴ The vacations with pay section, however, was quite specific: "In considering the inclusion of annual vacations with pay in the present proposal...the question becomes largely one of expanding the principle of two weeks' vacation with pay from the second year of employment to two weeks' vacation with pay for the first year of employment."⁵

The two most noteworthy features of this early paper were its lack of commitment to definite standards, including

1 Ibid., 3.

2 Ibid.

3 Ibid., 4.

4 Ibid.

5 Ibid., 5.

those of the Liberal platform which was not directly alluded to at all, and its recognition of the difficulty of applying such standards to some of the industries within federal jurisdiction and of the consequent need for flexibility in the bill.

The policy memorandum, which may have been more definite than this earlier paper, went to the Cabinet on August 13, 1963. Both the memorandum itself, and the Cabinet's discussion of it are, of course, confidential. It was widely speculated in the press, by Liberal backbenchers, and among interest group representatives, however, that either at this or a later stage, the Minister of Transport, J.W. Pickersgill and certain other members of the Cabinet were strongly opposed to the Code and proposed several ways to weaken it. Whether or not any changes were made, the memorandum was approved.

II. The Drafting Committee

Once Cabinet approval has been given to the principle of proposed legislation, a committee of departmental officials is generally established to work out the details of the bill. The drafting committee in this case was chaired by the Assistant Deputy Minister of Labour, Gordon C. Cushing. A former Vice-President of the Canadian Labour Congress, he had been brought into the Department in 1958 by the then

Minister, Michael Starr.¹ The members of the committee, selected by Dr. Haythorne and essentially those who had worked on the original policy memorandum, were chosen to represent all the relevant resources available in the Department. The principal participants were Miss Edith Lorrentsen, the Director of the Legislation Branch; Mr. W.B. Davis, the Departmental Solicitor; Mr. M. Spalding, of the Economics and Research Branch; and Mr. Harris J. Johnstone, of the Industrial Relations Branch, who was later to become Director of the new Labour Standards Branch.² The official of the Department of Justice who eventually put the bill into its legal form frequently attended the committee's meetings as well. The entire process was conducted in English and only after being drafted was the bill translated into French.³

The first task of the drafting committee was to survey existing labour legislation.⁴ Note was made of provincial standards, and in the federal sphere it was clear that the 1958 Annual Vacations Act would have to be amended or repealed. The private members' bills on the subject were

1 Hon. Michael Starr, M.P. (Ontario), interview. Mr. Cushing died shortly after the bill was passed.

2 Since Departmental officials were reluctant to reveal who made up the committee, there may have been others.

3 Mr. W.B. Davis, Departmental Solicitor, interview.

4 Ibid.

examined, as were relevant judicial decisions. (Wherever possible, for example in distinguishing between federal and provincial jurisdiction, the wording of court decisions or previous legislation was used).

The committee was apparently not left much discretion in determining the actual standards to be included, but two significant questions it did have to decide were the coverage of the legislation and the date it should come into effect. Several major decisions were taken with respect to which workers within federal jurisdiction would be included under the Code. Although all labour in the Yukon and Northwest Territories could have been placed under the bill, the committee decided instead to apply it only to the same industries there as in the provinces. To allow the Territorial Councils to regulate local labour conditions, it argued, was only consistent with their assumption of increasing autonomy. Then it was decided to exclude the government service itself and those employed under federal government contracts from the bill since they were regulated under other Acts. The same standards, however, would shortly have to be applied to them. Managerial personnel were excluded, as were apprentices and those under seventeen years of age, for whom the committee inserted special provisions.

The date on which the legislation would become effec-

tive was the other major area of discretion left to the drafting committee. It recognized from the outset that this was a vital point. After much discussion, the committee decided that certain industries should be allowed up to eighteen months after the Act became effective to comply with the hours of work and minimum wage provisions. The general holidays and vacations sections could be implemented with much less difficulty, the drafters felt, though not without some.

There were myriad details of the Code which the committee also had to determine. These included the method of enforcement, the penalties for violation, the rates of overtime pay, and, in the case of industries operating on a continuous basis, the provision for alternative ways of complying with many aspects of the bill. The fact that so many industries included in the Code such as railways, airlines, shipping and inter-provincial trucking operated on an unusual hourly or remunerative basis presented special problems for the drafters. In view of this and in the light of later criticism by the industries affected that the drafting committee had not understood the peculiar nature of their operations,¹ it is worth noting what information

¹ This is the view of almost all the industrial interest group spokesmen interviewed; for example, Capt. P.R. Hurcomb of the Dominion Marine Association and Mr. John Magee of the Canadian Trucking Associations.

the Department had available. According to its leading officials,¹ they were very well acquainted with labour contracts in the industries under federal jurisdiction and fully understood their method of operation.

Officials of the Department did not formally consult any of the industries affected.² Only the Canadian Manufacturers' Association, as the nation's largest employer interest group was approached and only on the broad objectives of the bill.³ The Canadian Trucking Associations was asked for some information on the hours of work in the industry and officials of the C.N.R. and C.P.R. discussed the Code with Departmental officials on the day before it was introduced into Parliament. The latter offer four reasons for their lack of further discussion with those affected. First, representations which had been made by labour over the years, as documented in Chapter II, were reviewed by the committee, but since it was proposing to enact precisely what the C.L.C. had requested, it saw no reason to consult further with organized labour.⁴ Second, some of the industries involved had made their views known

1 Miss Lorentsen and Dr. Haythorne, interviews.

2 Miss Lorentsen, interview. According to Mr. Johnstone, Director, Labour Standards Branch, some of the industries submitted their views on the bill shortly before it was introduced into Parliament, but according to interviews with them, only the railways did so.

3 Dr. Haythorne, interview. This contact was not mentioned in my correspondence with the C.M.A.

4 Miss Lorentsen, interview.

to the Department at the time various related private members' bills were under discussion so that the committee members felt that they were well enough aware of these opinions.¹ Third, since it feels its major responsibility is to Parliament and not to such groups, the Department could not first reveal the specific standards decided upon to these industries and it would have been difficult to discuss the proposed legislation with them without reference to its standards. This difficulty was compounded by the fact that the legislation would affect both labour and management and it was most unlikely that a prior consensus between them would be reached.² Finally, the officials feared that the legislation might never emerge at all if the industries affected were consulted at this early stage. They knew such industries would be opposed and they were sure that in due course they would be so informed.³ None of the officials interviewed was opposed in principle to the practice of conferring with interest groups about the general principles of proposed legislation, however, and the Deputy Minister does believe that it is becoming more common to do so.⁴

When the committee had completed its drafting instruc-

1 Ibid.

2 Dr. Haythorne, Miss Lorentsen, interviews.

3 Harris J. Johnstone, Director, Labour Standards Branch, interview.

4 Haythorne interview.

tions they were forwarded to the Department of Justice where an official of that Department composed the clauses of the bill in proper legal terms.¹

III. The Liberal Caucus

At the same time that the civil service drafting committee was meeting, the idea of federal labour standards was being discussed in the Liberal party caucus. The Liberals, like the other parties, have a number of caucus committees (which they prefer to call "study groups") one of which deals with labour matters. After a notice was circulated to the entire caucus that such a group would be established, about thirty backbenchers attended the first meeting shortly after Parliament convened in May, 1963.² By virtue of the fact that he was Parliamentary Secretary to the Minister of Labour, James A. Byrne was selected as the group's convener.³

No attempt was made to have the group representative of the whole caucus or of the country, so that most of its members were young, progressive Liberals from urban constituencies. They were those most interested in new labour legis-

1 Lorentsen and Davis interviews.

2 Miss Pauline Jewett (formerly M.P. for Northumberland), interview.

3 Mr. J.A. Byrne, M.P. (Kootenay East), interview.

lation and most sympathetic to those it would benefit.¹ Pauline Jewett, John Munro, Herb Gray and Joseph Macaluso were four of its leading members.² An average of twenty M.P.'s attended the weekly or bimonthly dinner meetings of the group, at which the Minister himself was frequently present.

The labour code was not the first issue to engage the group's attention, but it became their primary concern late in 1963 or early in 1964.³ The group made a thorough study of the federal labour standards question. It discussed the extent of federal jurisdiction, the effects of national standards in regions of low wages and living standards, the question of whether such standards should be applied to workers on federal government contracts, and the cost to the government of putting its own employees under such legislation. The group was given access to the thoughts of the civil service drafting committee through the Minister, through certain administrative memoranda and draft proposals, and apparently also through actual meetings. The caucus group did not, however, usurp the drafters' functions; they restricted themselves to criticism and suggestion. Some of their comments led to changes in detail, such as in the

1 Pauline Jewett interview and interview with another member of the group who wishes to go unnamed.

2 Pauline Jewett, J.A. Byrne, and Miss Lorentsen, interviews.

3 This account is based on interviews with three of the most active participants including Miss Jewett and Mr. Byrne.

title.¹

The greatest contribution of the Liberal caucus labour study group lay, however, in another area: in pressing the Minister and the Cabinet for the highest standards and for the quickest implementation of the bill. As one of its leading members asserted, "Just because the main elements of the Code were part of the election platform, it could not be assumed that the Cabinet would necessarily implement them, or without change."² The caucus group was very determined to implement without either change or delay the platform on which its members had been elected.

This support gave the equally determined Minister an important element of leverage when he ran into substantial Cabinet opposition, for he could threaten a caucus split if the Cabinet did not go along.³ One caucus study group member felt that the group "influenced the Cabinet to bring forward the legislation as soon as it did and helped to make sure that it covered the whole area to be regulated and reflected the policy on which the party campaigned."⁴ This is presumably what another member meant when he said that the bill "was constructed on the basis of the caucus group's discussion."⁵

1 Pauline Jewett interview.

2 Ibid.

3 Ibid.

4 Anonymous member of the group, interview.

5 Mr. J.A. **Byrne**, interview.

IV. Parliament

This matter was raised in the House of Commons in four different ways during the period in which the labour code was being drafted. Between May 1963 and September 1964 a total of nine opposition private members' bills were introduced proposing parts of what became the Labour Code. These were "talked out" as usual, but in doing so Liberal speakers promised that Governmental legislation in this field would shortly be forthcoming.

The Labour Minister made a definite commitment to such action in the debate on his Department's estimates in November 1963. Asked by both Liberal and N.D.P. members if Government action were in the offing, MacEachen replied: "...the Department of Labour has already undertaken very extensive preparations in the direction of the development of a national labour code....It is under consideration not only by the Department of Labour but by the government as a whole at the present time."¹

The 1964 Speech from the Throne was the next occasion on which the Labour Code was promised by the Government. It read: "A measure will be placed before you to establish minimum wages, maximum working hours, statutory holidays and other labour standards for work under federal jurisdic-

¹ House of Commons Debates, November 8, 1963, 4605.

tion."¹ Both the Prime Minister and the Minister of Labour reaffirmed the Government's intentions in this regard in their speeches on the Address in Reply.

From the date of the Throne Speech until the end of September, Stanley Knowles inquired of the Minister on nine occasions,² mostly in the daily question period, when the legislation would be forthcoming. The question was also raised twice by a Crditiste M.P., Raymond Langlois. On one such occasion the Minister said it would be before October, and it was introduced October 1.

V. Consultation with the Provinces

Speaking in the Throne Speech debate, the Prime Minister mentioned that there would be consultations with the provinces with respect to the Labour Code:

We recognize of course that what is done in these matters in the area of federal jurisdiction can have important repercussions for industries under provincial jurisdiction. Therefore...because we are always anxious to consult the provinces on matters of this kind, my colleague the Minister of Labour will shortly be discussing his proposals in detail with his opposite numbers in the provincial governments.³

The Federal-Provincial Conference of Labour Ministers was held March 9 and 10, 1964, the first such meeting since

1 Ibid., February 18, 1964, 2.

2 Ibid., April 21, June 3, July 13, August 4, August 21, September 4, September 10, September 14, September 28.

3 Ibid., February 20, 1964, 57.

1946. The object of the conference, it was stated, was not to come to any agreement or to make any decisions, but "to acquaint provincial ministers with what the federal Government was doing or planning to do in the labour field and to obtain provincial ministers' thoughts on matters of mutual interest."¹

Labour standards was only one of six items on the agenda for each of which the Department prepared a background paper which was intended "to serve as a basis for discussion rather than as an indication of any final position in the federal department."²

Assistant Deputy Minister Gordon Cushing, the chairman of the drafting committee, introduced the Labour Standards discussion at the Federal-Provincial conference. He pointed out that "the absence of federal legislation in three of these fields has created problems for both the federal and provincial Departments of Labour because it has left an area of employment where neither federal nor provincial authorities were assuming responsibility."³ The federal Minister's concluding statement said that there was "general agreement"⁴ on the need for progressive labour standards

1 The Labour Gazette LXIV (April, 1964), 264.

2 Ibid.

3 Ibid., 267.

4 Ibid., 325.

and a recognition of the gap in the federal government's jurisdiction. Press reports of the meeting indicated that there was no general enthusiasm among provincial ministers for such high federal standards. One spoke of "spirited wrangling over minimum wages"¹ and another asserted that all but the Saskatchewan minister had misgivings.² The federal and provincial deputy ministers of labour discussed the matter again at the October 1964 meeting of the Association of Administrators of Labour Legislation, and have continued to do so since.³

VI. The Cabinet

The final and decisive stage in the formulation of any bill is the approval of the completed draft by the Cabinet, first by a Cabinet committee and then by the whole. Since the then Minister of Labour, Allan MacEachen, refused to discuss the Cabinet's consideration of the Labour Code, this stage of the bill cannot be reported in any detail. It appears⁴ that the Minister had great difficulty in persuading his colleagues to accept the measure with the relatively high standards it proposed. It may have been only by

1 The Montreal Star, February 23, 1965.

2 Ibid., March 11, 1964.

3 Haythorne interview.

4 From press speculation and interviews with caucus members.

claiming substantial caucus support, by receiving the endorsement of the Prime Minister, and by threatening to withdraw the bill entirely (or possibly to resign) if it were substantially changed, that MacEachen was able to get it through. It was then ready to be introduced into Parliament.

VII. Conclusions

The formulation of a bill is the most difficult stage to describe, shrouded as it is in secrecy: cabinet secrecy; caucus secrecy; and civil service secrecy. Whatever written records were kept are confidential so that the story must be pieced together from interviews with those involved (some of whom are unwilling to discuss their part) and from contemporary press reports. Unfortunately such participants are extremely busy still; their memories are short; their revelations, selective; and such journalism, rather speculative. In spite of such difficulties, it is possible to draw certain tentative conclusions about the formulation of the Canada Labour (Standards) Code.

The Minister and Cabinet

The initiative for beginning work on the bill came from the Minister of Labour. A measure of this significance is apparently not the kind which originates with the civil service, however aware it may be of the need for such legislation. Before action on it could progress too far,

the Cabinet had to approve the policy. At this stage or later, the Minister was able to override considerable Cabinet opposition to have the bill introduced into Parliament in essentially the same terms as the party platform, the terms which he himself preferred. This is evidently a case of a strong Minister getting his own way in spite of much Cabinet opposition.

The Government Caucus

MacEachen would not likely have been so successful, however, had not a sizable portion of the Liberal caucus, the labour study group, been solidly behind him. The members of that group feel from their discussions with him that their pressure accounted for a good deal of the Minister's success. The combination of a determined group in caucus and a competent Ministerial spokesman in Cabinet is obviously of considerable influence in the formulation of legislation.

The Civil Service

While not proposing such legislation to a minister on its own, the civil service was left to make almost all decisions regarding the content of the bill. Even if it was greatly influenced by the Liberal party platform in setting the four standards, these were not adopted without extensive discussion and the consideration of many alternatives. The Labour Department worked with the project for

over a year before producing a bill many of whose intricate provisions had to be explained to the Minister himself.

The Department was reasonably well equipped to formulate the bill and largely for fear of arousing opposition to it, deliberately did not consult the interest groups most directly concerned. Such groups should have known, at least after the Throne Speech in February 1964 that such a bill was forthcoming, though all but one of the few that did know decided not to act until it was introduced into Parliament.

Chapter Four: The First Draft Runs into Difficulty

The Canada Labour (Standards) Code, Bill No. C-126, was introduced into the House of Commons by the Minister of Labour, Allan MacEachen, on October 1, 1964. Its automatic acceptance on first reading belied the protracted passage through Parliament which followed. That course can best be treated in two parts. Discussed here will be the Commons' consideration of the first draft and the resulting flurry of interest group protests. Chapter V will describe the ratification of the revised bill by both the Commons and the Senate, and draw conclusions about the whole legislative process.

I. The House of Commons and Draft One

On October 13, nearly two weeks after it was introduced, MacEachen moved second reading of the bill. The Minister made the customary major speech in order to outline the background and to explain the various provisions of his proposed legislation. He claimed, in his only reference to the Liberal platform, that the bill "expressly implements the undertaking given by the Prime Minister (Mr. Pearson) in the city of Hamilton on March 25, 1963, outlining the labour policy of the present government."¹ He

¹ House of Commons Debates, October 13, 1964, 8998.

then reported to the House with "delight" that the bill's first reading had been received with approval by the Canadian Labour Congress and the Confédération des Syndicats Nationaux (C.N.T.U.).¹ Among other things, MacEachen revealed that he and his officials had discussed "the general effects of the legislation with some of those who [would] be affected by it...."² This had enabled them, he said, "to take account of some of the concerns expressed by making the provisions flexible enough to take care of unusual situations without affecting the essential standards or excluding any classes of employee."³

As former Minister of Labour, Michael Starr replied on behalf of the official Opposition. In expressing his approval of the principle of the Code, he casually proposed a few changes, briefly referred to his own Vacations Act of 1958, and predictably alluded to the "great deal of opposition" to the bill within the Liberal Cabinet.⁴ Genuine Conservative opposition to any part of the bill did not appear to be in store. Starr was followed by Stanley Knowles of the N.D.P. (The general practice in his party and with

¹Ibid.

² Ibid., 8999; apparently in reference to the C.M.A. and to the Railway Association.

³ Ibid.

⁴ Ibid.

the Conservatives is to have the chairman of the relevant caucus committee make the principal speech on second reading. Knowles spoke instead of David Orlikow, however, because he was the father of so many related private members' bills).¹ Although he "heartily welcomed" the bill, Knowles was constrained to point out that the Liberals had first promised such legislation in 1919, and that it had frequently been advocated by the C.C.F. leader, J.S. Woodsworth. With passing reference to his own bills, he recommended that several improvements be made in the Government's legislation: the minimum wage should be raised from \$1.25 to \$1.50 per hour; the rate of overtime pay should be increased; three weeks' vacation with pay after three years' employment should be introduced; and he preferred nine statutory holidays to seven. The veteran M.P. also felt that provision should be made in the bill to prevent any reduction in take-home pay as a result of working shorter hours. Nevertheless, he concluded by praising the legislation, "speaking if I may on behalf of the trade union movement, with which I am happy to be associated."² The speeches of Robert Thompson of Social Credit and Gilles Gregoire of the Raillieement Crditiste both began by indi-

¹ Stanley Knowles M.P. (N.D.P., Winnipeg North Centre) and Gerald Baldwin M.P. (P.C., Peace River) interviews.

² Debates, 9009. A Liberal M.P. later thought Knowles overextended himself with this remark.

cating general support for the bill and then treating distantly related or irrelevant matters.

After this first round of Opposition comment, each party could put forward further speakers on second reading and all but Social Credit did. Four Liberals were alternated with two Conservatives, two New Democrats and one Crditiste. As is usually the case, the whips arranged beforehand who would speak, both within each party and among parties, and the Speaker was so informed. (There are several ways in which any party's list of speakers can be determined: the whip may inquire about who wishes to speak, individual M.P.'s may express to him their desire or willingness to do so, or the chairman of the caucus study group or committee may actually deploy the party's forces).¹ In this case, typically, the bulk of the speakers in the debate on second reading were members of the caucus labour committee of the various parties. In these speeches several additional questions and criticisms were raised which the Minister attempted to answer in closing the debate. In spite of them, second reading--approval in principle--followed without a vote.

Having previously decided that the bill would not go to a standing committee, (probably because he felt it might never re-emerge) MacEachen moved on October 19 that the house go into committee of the whole to consider the

¹ Stanley Knowles M.P., Gerald Baldwin M.P. and a Liberal M.P. who wishes to remain anonymous, interviews.

details of the bill. Clause 2 immediately provided Stanley Knowles with an opportunity to move an amendment to include an eighth general holiday, Remembrance Day. He actually favoured nine holidays, but calculated that the House might more readily concede to adding only one. This would be especially true of Remembrance Day, he felt, since most M.P.'s were already concerned about offending the country's veterans in Parliament's decision to adopt a new Canadian flag.¹ Eleven members from three opposition parties supported the amendment but the Minister, in admitting that he had given consideration to an additional holiday, replied, "I regret that I cannot accept [it]."² Whether because too many Government supporters were absent by accident or because some had intentionally stayed out of the chamber to avoid having to oppose either the Government or Remembrance Day, Opposition members outnumbered Liberals in the vote, and the amendment was approved.

Knowles' colleague, David Orlikow, sought to capitalize on this situation by moving an amendment to extend application of the bill to all types of labour in the northern territories. (As introduced, the bill applied only to the same industries in the north as it did in the provinces). A long discussion ensued, led by the Conservative North-

¹ Knowles interview.

² Debates, 9207.

west Territories M.P., Gene Rhéaume, but the amendment was defeated 57 to 51.

Although no further amendments were proposed at that time, a series of questions was put to the Minister about the coverage of the bill. In answering such questions, the Minister was assisted by a "book" prepared by the Department which explained for his benefit the reasoning behind each clause, as well as by some of the officials themselves in the gallery who could easily transmit messages to him.¹ One legal point he admitted "is rather baffling to me,"² but MacEachen otherwise encountered no real difficulty. At the end of the day "progress was reported," but four months were to pass before the bill was again considered in the House. This was partly due to the prolonged debate on a new Canadian flag, but mainly because of the intense opposition to the Labour Code expressed by many of those it would directly concern.

II. The Interest Groups Protest

Practically all of the industries affected by the bill as well as several of the employee groups involved were opposed to at least some provisions of the proposed legislation. Many were enraged and made the most vigorous remon-

1 W.B. Davis, Solicitor, Canada Department of Labour, interview.

2 Debates, 9207.

stances. A summary will be attempted here of both the substance of these protests and of the manner in which they were expressed.

The Railways¹

The Railway Association of Canada, composed of fourteen Canadian railway companies, usually acts as the official spokesman for the industry in matters of common interest. All official written representations to governments, for example, are theoretically to be made by the Association.² In practice this is not always true, for even though the Association is dominated by the C.N.R. and C.P.R., those very companies took joint action separate from the Association on several occasions to protest against the Labour Code.

The Railway Association had first made its views known to the Department of Labour in this matter when private members' bills were being discussed some years before.³ It was not until September 1964, however, when the Minister raised the issue with a Vice-President of each of the two main companies, that the railways became aware of how far the Government had gone in preparing its own legislation.

1 This section is based on an interview with Mr. G.A. Richardson, General Secretary of the Railway Association of Canada, and a senior official of the C.N.R. who wishes to remain anonymous.

2 Senior C.N.R. official, interview.

3 G.A. Richardson and Miss Edith Lorentsen, Director, Legislation Branch, Canada Department of Labour,

Then on September 30, the day before first reading, these two men met with Messrs. Haythorne and Cushing, the Deputy and Assistant Deputy Minister of Labour, to discover the general contents of the bill and to express their opposition to it.¹

A letter was sent to the Minister on October 13 over the signatures of the C.N.R. and C.P.R. Presidents taking exception to the bill and six days later the two Vice-Presidents again journeyed to Ottawa to present a joint brief to the Minister, the Deputy Minister and Mr. Cushing. In the months that followed there continued to be correspondence and meetings between officials of the Railway Association or of the two major companies and those of the Department. The Association sent no representations to members of Parliament, but at least one small railway complained to the local member as well as to the Minister. Meanwhile, the C.N.R. President, Donald Gordon, had also criticized the bill in a speech to the Economic Council of Canada. He referred to some "utterly impractical situations" it appeared to produce.² The Railway Association then sent a twenty-page brief from its office in Montreal to the Minister of Labour, the Prime Minister, and all other members of the Cabinet on January 11, 1965. From this sub-

¹ For the substance of their opposition, see below.

² The speech was tabled in the House on November 23, 1964.

mission it can be readily seen exactly what the railways' objections were.¹

They felt that the limitation of an eight-hour day and a forty-hour week was wholly inappropriate for certain groups of employees, the running trades, whose operation of the trains must be on a continuous basis. They contended that no recognition was given to the very intricate "Dual basis" upon which such employees' pay was calculated, a method which had been worked out over many years to mutual satisfaction with "mature, powerful unions." Furthermore, it was argued, the Code would severely interfere in the collective bargaining process, and place an "excessive cost burden on railway operations." The minimum wage was too high for some kinds of work and the general holidays provision was not only more generous than that in the existing contracts for office personnel, but was unworkable in the running trades. The brief concluded by recommending certain exemptions from the hours of work and holidays provisions, and a gradual implementation over two years of the minimum wage.

Canadian National also prepared a brief protesting against the inclusion of its hotels in the legislation. This was sent to the Minister on February 11, 1965. How discriminatory it was to place only that company's hotels

¹ Railway Association of Canada, "A Submission to the Minister of Labour Regarding Bill C-126," January 11, 1965.

under the bill, and how the minimum wage envisaged would impose prohibitive additional costs in its already marginal financial position were the two points emphasized.¹

Replies from the Minister generally dealt with the provisions of the bill that allowed for flexibility of application. He also indicated at one point that he was considering certain alterations to increase this flexibility. This did not satisfy the railways: they wanted exemption.

The Motor Transport Industry

The provincial associations to which most Canadian trucking firms belong have combined to establish the Canadian Trucking Associations with an office in Ottawa to deal with federal matters. The provincial associations are strong and jealous of this strength, but according to a 1953 C.T.A. memorandum, they may not make representations in the federal field without the consent of the national board of directors.²

Although not consulted by the Labour Department in the preparation of the bill, the chief officials of the Canadian Trucking Associations were conscious of the fact that it was being drafted. John Magee, its Executive Secretary,

1 See its brief to the Senate Banking and Commerce Committee, Proceedings, March 4, 1965, 75-9.

2 This account is based on an interview with Mr. John Magee, Executive Secretary, Canadian Trucking Associations.

consequently inquired of the provincial associations and the board of directors whether he should act at once or wait until the bill was introduced. Since it was expected that there would be some latitude in the legislation, the consensus was to wait.¹ Soon after first reading, the officers of the organization had two meetings with top Labour Department officials, one of which was attended by the Minister. Magee returned from the second meeting convinced that nothing would be gained by dealing further with the Department in this way. He decided to telephone every provincial trucking association and to instruct them to tell their individual firms to make the most clamorous protest--to write, telephone, wire or meet their local member of Parliament and any other M.P.'s they knew, as well as the Minister and officials of the Department. The firms responded admirably and both the Minister and M.P.'s were deluged with letters and telegrams. The first flood of objections requested the exemption of the trucking industry from the bill, or failing that, at least the opportunity to present its case before the Standing Committee on Industrial Relations. About one week later the order went out again from the Ottawa office to the provincial associations, this time to urge firms to request only that the bill be sent to the Standing Committee. Thus one M.P.

¹ Magee interview. He thinks now it would have been better to have taken immediate action at that time.

received fifteen similarly worded telegrams on October 22 from trucking firms in his constituency, fifteen identically worded wires on November 2, and between these two dates, an equal number of letters, many of them of a form type, also urging that the bill be sent to the Standing Committee.¹ All M.P.'s interviewed reported that the letters and telegrams from the trucking industry far outnumbered the protests they received from other sources.

While M.P.'s were being contacted from the constituency level, the Ottawa office wrote to the leaders of all parties in the Commons. This resulted in a meeting with the Leader of the Opposition, John Diefenbaker, and a question asked by him in the House on October 20: would the Minister hear further representations from the trucking industry "whose claim it is that adopted in its present form, this bill would have a detrimental if not disastrous effect on the industry?"² Also in the Commons, at least three Conservative members asked the Minister if he would send the bill to a standing committee so that the truckers could be heard, three others asked if he would consider exempting that industry from the Code, and Diefenbaker raised the matter again on November 3 in a question to the

¹ Stanley Knowles' files.

² Debates, 9221.

Prime Minister: "In the interests of all Canadians [would this matter] be permitted to come before a committee so that evidence might be placed before it to support their request for exemption?"¹

The objections of the trucking industry were basically two: the Code was discriminatory and unworkable. A 1954 Privy Council decision had ruled that any firm doing any inter-provincial trucking would place all of its operations under federal jurisdiction.² The Code, it was claimed, discriminated against such companies whose operations might still be mainly within any one province, because the provincial firms did not impose such high standards. In any case, it would be impossible to apply the hours of work provision because, for reasons of cost to the companies and service to their customers, long distance hauling had to be done as quickly as possible. To limit the hours to eight or ten per day, they argued, could not be done.

A different line of attack was used by the Quebec Association. That organization asked Premier Jean Lesage to intervene in the issue on the ground that the Labour Code impinged upon provincial rights. Lesage rejected

¹ Ibid., 9698.

² A.G. Ontario v. Winner (1954) A.C. 541.

their invitation with the terse reply that it was based on an incorrect interpretation of the law.¹

At least two other motor transport organizations raised opposition similar to that of the C.T.A. One of these was the Canadian Warehousing Association, which represents the country's long distance movers of household goods.² It repeated the arguments of the Trucking Associations and stressed the problems which would result under the Code because of the seasonal nature of its business. The great demand for household moves during the summer months, the Association asserted, could not be accommodated with such a limitation on their hours of work. When the Association's officials became aware of the bill for the first time on second reading, these objections were communicated by wire and mail to the Minister of Labour, the Prime Minister, and the leaders of opposition parties. The Association also forwarded to the Minister petitions signed by its employees protesting the inevitable loss in pay if the hours of work provision were to be implemented immediately. In addition, many of its individual firms sent representations to local M.P.'s. The Canadian Motor Coach Association expressed many of the same reservations on behalf of the country's bus lines. The Association

¹ Magee interview.

² This account is based on an interview with Mr. H.C. Rhodes, Executive Vice-President of the Association.

estimated that the Code would increase the industry's costs by fifteen per cent.¹

Shortly after their intensive pressure on the Department and M.P.'s, the Canadian Trucking Associations' officials were informed by Haythorne that the Minister was considering the addition of an element of increased flexibility to the bill. After such an unusually vociferous campaign, MacEachen also felt it necessary to issue a special press release on November 5 to deal with the trucking situation. He emphasized the flexibility already in the bill, but quoted a statement he had made in the Commons on October 28:

I have under consideration a change under which, in certain circumstances and following appropriate inquiry, an extension of the time would be granted beyond the present terms of the legislation. I think if this change is put into appropriate form it will meet the major objections of those operations which will find it difficult to implement the hours of work provision at once, or even [as provided in the bill] over a period of eighteen months.²

The Minister also promised to invite provincial labour departments to consider jointly steps to "bring about a common approach in the two fields of jurisdiction."³ However much

1 W.J. Crichton, "The Labour Code: An Act of Violence?" Canadian Transportation (December, 1965), 33.

2 Debates, 9517.

3 Ibid.

such assurances, if implemented, might ameliorate their situation, the Canadian Trucking, Warehousing, and Motor Coach Associations were still all resolved to be completely excluded from the hours of work portion of the bill.

The Shipping Industry

The Canadian shipping industry has no single spokesman; rather, there are a number of more specialized associations within it. Among these it was the Dominion Marine Association which took the initiative in connection with the Labour Code. It represents twenty-one firms operating Canadian-owned ships in inland and coastal waters.¹

On initially becoming aware of it on first reading, the Ottawa-based General Manager of the Marine Association, Captain P.R. Hurcomb, was at first disposed to accept the bill but to try to influence the regulations which would be issued under it. However, when he notified the firms about the legislation, they demanded that he make an immediate protest. As a result, the Association wrote in this vein to the Minister of Labour on October 23 and a meeting was subsequently held with the Deputy Minister and other officials. Hurcomb reported a lack of progress to the firms on November 3 and thought it might be helpful "if some of the members were to send telegrams to the Minister

¹ This account is based on an interview with Capt. P.R. Hurcomb, General Manager, Dominion Marine Association.

recommending that the bill be referred to a committee of the House so that representations could be made by those concerned."¹ At least one company had previously protested to the Minister and at least four firms complied with this request. The Ottawa office also asked members to send it, for forwarding to the Department, "factual and statistical data...presented in a way that would impress upon officials the impact this bill would have upon our industry."²

At the Association's annual meeting on February 3, 1965 a resolution was passed protesting the application of the bill to the shipping industry and a further meeting was held with the Deputy Minister of Labour on February 12. So unsatisfactory was the Department's response to the Association that it decided to try its luck with the Prime Minister. A letter to him was followed with a brief prepared by one of the member firms with some consultation with Hurcomb, which was presented to the Prime Minister, the Ministers of Transport, Finance and Labour, and to Mr. Cushing. Individual M.P.'s were not contacted by the Association but member firms may have made representations to them.

The Dominion Marine Association was convinced that the Labour Department had never studied the impact of the Code on the shipping industry and that it was not feasible

1 Dominion Marine Association files.

2 Ibid.

to legislate for hours of work in that industry on the basis of regular fixed-plant employment. It calculated that in the hectic summer season on the St. Lawrence and Great Lakes some thirty per cent additional employees would be required. This would not only increase costs, but also necessitate construction of additional crew accommodation on board--a financial or physical impossibility. The Association also contended that shipping employees preferred existing conditions (usually fifty-six hours per week including sixteen paid at overtime rates) to those under the Code, which would only result in less take-home pay and more enforced idleness aboard ship.

Other representations, all of which took a similar position to the Marine Association, were made to the Labour Department by the Shipping Federation of British Columbia, the B.C. Tugboat Owners' Association, the Canadian Shipowners' Association and the Shipping Federation of Canada. The last named, for example, was concerned about the difficulty of applying the Code to the seasonal, irregular pattern of employment in the stevedoring industry.¹ Another section of the industry, that connected with the Halifax port, also communicated with the Minister of Labour. The Chairman of the Halifax Steamship Committee and the President of the Halifax Longshoremen's Association sent a joint

¹ See its letters appended to the Senate Banking and Commerce Committee Proceedings, March 9, 1965.

telegram of protest, and the local Brotherhood of Railway and Steamship Clerks wired another.¹ The Executive Secretary of the Port of Halifax Commission, which was also involved in these communications, sent a lengthy letter to the Minister on January 12, 1965 outlining the objections of all the groups involved. An exchange of letters with MacEachen satisfied the Port officials on most of the points they had raised. The shipping industry in general, however, remained discontent even after learning that the Minister intended to increase the flexibility of features of the bill.

The Airlines Industry²

The Air Transport Association of Canada acts as the collective spokesman in Ottawa for the major airlines and smaller air services in the country. Because most of the industry's employees enjoyed better working conditions than the Labour Code prescribed, the bill did not present too great a problem to many air line companies. The small "bush operators" in particular, though, were seriously concerned with the hours of work provision, and the major lines joined them in their objection to other aspects of the bill: those dealing with pay for work done on holidays and with

¹ Based on reliable sources that wish to remain anonymous.

² This account is based on an interview with Mr. A.C. Morrison, President, Air Transport Association of Canada.

pay for employees "on call". They also preferred to be spared all the additional record-keeping and paper work that the bill would entail.

When the officials of the Association first became cognizant of the bill they wrote to object to "our minister," the Minister of Transport.¹ He forwarded the letter to the Minister of Labour with the comment that their criticism appeared to be valid. From its annual meeting on November 6 the Association wired MacEachen and then submitted a memorandum on November 25. The Association urged its members to protest to the Minister but it discouraged contacts with M.P.'s, feeling that their interference in the matter would not assist the organization in dealing with the Department. Indeed, the Association's head office was even reluctant to supply a list of its objections to an Opposition M.P. who asked for them because it did not want it to appear that it had pressured him to raise them.

The Broadcasting Industry²

The broadcasting industry was another that was covered by the Code and opposed to certain portions of it. Its representations were made by the organized voice of the industry, the Canadian Association of Broadcasters. After

1 Ibid., Mr. Morrison indicated that they so regard the Minister of Transport.

2 This account is based on an interview with Mr. T.J. Allard, Executive Vice-President, The Canadian Association of Broadcasters.

first reading, the Association sent a delegation to see the Minister and his officials to make suggestions about the application of the bill to that industry. This was followed by a formal written brief pointing out its objections. No attempt was made to mobilize local station pressure on either the Department or M.P.'s, although individual companies or networks may have made similar protests.

The Association was generally unhappy about being included in federal jurisdiction at all, apart from purposes of licensing. Reconciled to that fate, it thought that at least its creative and performing employees should be exempt from the Code since they were highly paid and should be able to work voluntarily over forty-eight hours per week.¹ Another problem was in deciding exactly who were employees among the free-lancing and self-assigning personnel. That many of these people worked for a variety of employers would cause considerable record-keeping difficulty.

The Grain Trade

The Canada Grain Act and the Canadian Wheat Board Act together declare that the entire Canadian grain trade is "for the general advantage of Canada,"² a declaration which

1 The bill permitted eight hours of overtime per week with time and one-half pay.

2 Under section 92(10)(c) of the B.N.A. Act.

puts it under federal jurisdiction and makes it subject to the Canada Labour (Standards) Code. Both the western grain elevators and the Ontario feed and flour mills, the two main groups involved, expressed their displeasure with certain aspects of the bill.

The western grain elevators are organized into two segments: the North-West Line Elevators Association with offices in Winnipeg, formed by the investor-owned companies, and the Canadian Cooperative Wheat Producers Ltd., the cooperatively-owned elevators, based in Regina.¹ Representatives of both Associations met with the Minister of Trade and Commerce and the Minister and Deputy Minister of Labour on October 19. That several prairie M.P.'s were present at the meeting or were later approached by the grain trade officials accounts for many of the questions asked in the House about the bill on that date. From its October 30 annual meeting the Manitoba Pool Elevators sent wires to the four party leaders expressing concern over certain sections of the bill. In early November a meeting was held between representatives of the industry and the Department of Labour officials. Letters and telegrams were subsequently sent to members of the Government and officials of the Labour Department both by the two associations and by their member firms. For example, on January 23, 1965, the President of the Cooperative Producers wired the Prime Minister

1 See the Senate Banking and Commerce Committee Proceedings, March 9, 1965, 103.

and four other ministers urging "in the strongest terms the exclusion of elevator personnel from the bill."¹ Support for the elevators' stand was forthcoming from the country's largest agricultural group, the Canadian Federation of Agriculture in its annual brief to the federal Cabinet in February 1965.² Their plea was for exemption of all elevator operators.

The Ontario Grain and Feed Dealers' Association made representations against the bill on behalf of the elevators and feed and flour mills in that province.³ Their main contention was that they were really under provincial jurisdiction and that they had always complied with provincial labour standards. After some correspondence with the Department, an Association delegation met with the Labour Minister to argue for this viewpoint. That avenue around the Code having been blocked, the Association claimed that the hours of work provision of the Code could not be met in the industry's five-month peak period, essentially the same contention as the western elevators. They were not convinced, as the Minister was, that the device in the bill for averaging hours of work would solve their problem. Later the Toronto office sent a letter to all member firms outlining fully its objections. While some elevators and

1 Mr. D.W. Wilton, Director, Public Relations and Field Service, Manitoba Pool Elevators, letter to author.

2 C.F.A., "Presentation to the Prime Minister of Canada and Members of the Cabinet, February 23, 1965, 17.

3 Based on an interview with Mr. M.H. Macphail, Execu-

mills might have forwarded these to their M.P.'s, there was, according to the Association's Executive Vice-President, no central directive for them to do so.¹

Other Employer Groups

Mention has been made of the protests of most of the industries affected by the Labour Code. One large employer interest group to make representations but which was not directly involved was the Canadian Manufacturers' Association. The C.M.A. represents 6,000 firms and 75 per cent of the country's total manufacturing output. The only action it took in connection with this legislation (other than being consulted earlier by the Department) was to send a submission to the Minister of Labour on October 13, 1964.²

The Manufacturers' Association actually represents few if any of the industries covered by the Code but was concerned because of the influence it would likely have on provincial standards and on collective bargaining. These effects, the brief critically predicted, would be substantial but were unjustifiable because the standards in the bill were too high.

Another large employer group, the Canadian Construction Association, was also inclined to make representations

tive Vice-President of the organization.

1 Ibid. See Chapter V.

2 Mr. I. Freedman, Manager, Industrial Relations Department, C.M.A., letter to author.

against the bill even though it was not directly affected. It decided instead to reserve all its resources for an onslaught on the amendments MacEachen had promised to the Fair Wages and Hours of Work Act. They would bring that Act, covering labour on federal government contracts, into line with the standards in the Labour Code.¹

Employee Groups

Several employee interest groups also took action in connection with the Code. Most were in full support of it, but some expressed opposition to certain parts. Reference has already been made, for example, to the opposition of employees of the firms composing the Canadian Warehousing Association and to the Halifax Longshoremen. The other main group to express reservations was that representing the various railway running trades.

A special meeting of railway running trades representatives was held in Montreal on November 13. Another, which Mr. Cushing was invited to attend to explain the bill and to answer questions, was held four days later in Ottawa.² This meeting set up a nine-man committee which later met the Minister, Deputy Minister, Mr. Cushing and Bernard Wilson, the Department's expert on railway oper-

1 Mr. Peter Stevens, Director of Labour Relations, Canadian Construction Association, interview.

2 Based on an interview with Mr. A.R. Gibbons, Vice-President of the Canadian Labour Congress.

ations, to present a three-page brief. The unions said they were fully in sympathy with the objectives of the bill, but opposed one point in its application: the loss in take-home pay which would result from the reduction in working hours. They urged that the bill be amended to prevent the possibility of such an occurrence. There was also some concern on their part that the Minister was empowered to set interim standards if the Department agreed to grant the industry a temporary deferment. This provision appeared to them to conflict with the I.R.D.I. Act. Beyond this meeting, the railway unions had no official contact with M.P.'s although some at least received letters from individual members of the running trades. One such form letter read: "We...urge that you do everything in your power to bring about an amendment to Bill C-126 to protect the monthly take-home pay of all groups of workers such as ours."¹

The industrial protests prompted several other employee groups to express their unreserved support of the bill. One of these was the Teamsters Union. Its representatives met the Labour Minister on November 17 in a meeting that was also attended by several M.P.'s. A brief entitled "The Dangers of Excessive Hours of Work in the Trucking Industry" was presented which contained descriptions of several fatal accidents caused by driver fatigue and which mentioned the

¹ From Stanley Knowles' files.

widespread use of pep-pills among drivers to help them keep awake. Later the Teamsters sent a form letter to all M.P.'s, again stressing the dangers of excessive hours. It concluded: "We ask you to support this Bill when it [returns] to the floor of the House. In doing so, you will not only be favoring long-needed progressive legislation, you will also be supporting a measure that will help to curtail death, injury and property damage on our increasingly congested highways."¹

Another union which welcomed the bill for its likely contribution to industrial safety was the Marine Officers' Section of the West Coast Canadian Brotherhood of Railway, Transport and General Workers' Union. It forwarded a mimeographed letter to the Minister of Labour and to the N.D.P. headquarters for distribution to that party's and other interested M.P.'s on November 10, which read in part:

The B.C. Towing Industry has one of the highest accident ratings of all the industries in Canada. We feel a major contributing factor to this is the excessive hours being worked by the new members. The implementation of this part of the Bill [Part I, Hours of Work] will act as a deterrent to forcing these men to work an exorbitant number of hours.²

The Saskatchewan Wheat Pool Employees' Association, the only group of prairie elevator operators organized into a union, also urged the Minister to make no concessions to the industries and employers protesting. The union sought

1 Ibid.

2 Ibid.

an assurance that the grain elevator operators would not be removed from the Code. After consulting the Legislation Director of the C.L.C., who put them into touch with Stanley Knowles, the Association sent a telegram to the Prime Minister on November 2 opposing the arguments of the elevator companies.¹

There were doubtless representations made by interest groups in addition to those discussed above. The efforts of almost all of those which were mentioned in the press, which were revealed in interviews with Departmental officials and M.P.'s, or which later presented briefs to the Senate have been described.²

1 Ibid.; Mr. A. Andras, Director of Legislation, C.L.C., interview.

2 The Department of Labour would not supply a list of all the organizations which protested to it.

Chapter Five: Passage of the Revised Bill

I. House Debate on the Revised Bill

Although the Minister of Labour had given some assurance as early as October that amendments to the Labour Code would be introduced to mitigate some of the opposition, the Cabinet had not finally approved such changes two months later. On the eve of the 1964 Christmas recess, the Government house leader, George McIlraith, told the Commons:

...a great many representations have been made as to the effect of the operations of the bill on certain labour groups in the country. Those representations had to be taken into account and considered very carefully, and they were. As a result there are some amendments that we propose to make to the bill. In any event, there is one question still outstanding and the government has it under quite active consideration.

Those representations did reveal some need for perfecting the bill.¹

The Minister of Labour, too, immediately referred to the representations that had been made when the House resumed discussion of the Code on February 16, 1965. "As a result of these discussions, and further consideration, we propose to introduce several amendments which I think will

¹ House of Commons Debates, December 18, 1964, 11331.

allay the apprehensions that have been expressed on the possible adverse effects of the legislation."¹ While he felt that the degree of flexibility in the original bill had not been fully appreciated, he had become convinced that even more was necessary. As first introduced, the application of the hours of work provision could be deferred in any industry for up to eighteen months by an order of the Minister if sufficient justification were given. The two main provisions he was now adding would allow a deferment up to eighteen months from the time an order was issued (but there was no time limit on making the order), and would permit a deferment beyond eighteen months after a formal public inquiry and an order of the Governor in Council. In going this far to satisfy those protesting, MacEachen remained adamant that no industry would be totally exempted from the bill.

The discussion in October had been adjourned on the hours of work clause of the bill; in February it continued for two and one-half days more on that one clause alone. Some twenty-four M.P.'s participated in the consideration of the hours of work provision, about twenty of them Conservatives. Nearly all brought forward the objections of one or more of the groups affected by the bill. The protests of the trucking industry were echoed at least ten

¹ Ibid., February 16, 1965, 11385.

times--about five references appear to have been prompted by representations made by the Canadian Trucking Associations and the other half by members of the Canadian Warehousing Association. One M.P. asserted, for example: "I think we are concerned as representatives in parliament to whom representations have been made, that the implementation of this bill will not create havoc or disturb the trucking industry."¹ A Liberal parliamentary secretary cited instead the brief of the Teamsters Union, and stressed the flexibility in the bill. He added: "It is difficult for me to understand how much further we could go in labour legislation in order to satisfy any particular group which is dissatisfied with the bill, without exempting that group entirely from its provisions."² Two members raised the objections of the running trades, one alluded to those of the longshoremen, and questions were asked about each of the fishing and airline industries by two other M.P.'s. Three Conservatives including the former Minister of Agriculture, Alvin Hamilton, who dealt at length with a proposed solution to it, discussed the problem of the prairie grain elevators; the mining industry was referred to once; and four M.P.'s were concerned with the discretion left to the Minister under the bill. After the truckers, however, the most persistent opposition was on behalf of the feed

1 Ibid., 11474.

2 Ibid., 11442.

mills in eastern Canada. Although none of the participants was apparently aware of it, four M.P.'s quoted extensively from identical submissions sent to them by local members of the Ontario Grain and Feed Dealers' Association. One of the four reported that he had received "letter after letter" on this subject,¹ a statement supported by others from that province.² If it had not been part of the strategy of that organization to pressure M.P.'s, as was stated in Chapter IV, the Association had at least sent its members a clear, concise exposition of its objections which could be forwarded conveniently to the local member of Parliament and apparently was.

On a later clause, in fact, an Ontario Conservative, John Loney, moved an amendment to exclude the eastern elevators, feed mills and seed cleaning plants from the bill. The amendment arose from discussion among three members of the Ontario portion of the caucus agriculture committee. They consulted no one else. As a farmer himself, Loney was well aware of the situation in which such firms would be placed, and denies that his proposal was a response to any organized campaign by the Grain and Feed Dealers' Association.³ The three M.P.'s had no hope the amendment would be passed and were not surprised when it was rejected by a

1 Ibid., 11445.

2 Pauline Jewett (former M.P. for Northumberland) and other Ontario M.P.'s, interviews.

3 John Loney M.P. (Bruce), interview.

vote of 71 to 20.

The only other amendment that was moved by a Conservative M.P. was even more an individual rather than a party effort. It was also the only amendment offered by an Opposition member which the Minister willingly accepted.¹ This was proposed by Gerald Baldwin, to whom it occurred that a loophole existed in the bill. A provision to restrict the reduction of wages if room and board were offered did not include a situation where such services were provided by a firm other than the employer himself which had been the arrangement on the construction of a railway through Baldwin's constituency. No one else in the House was consulted about the amendment, and no one outside the Commons had urged him to move it. Nonetheless the Minister accepted it as covering a possibility not premeditated in the drafting process.

The N.D.P. amendments, on the other hand, were all party endeavours. The caucus labour committee had studied the bill, decided what changes should be sought, and then distributed the amendments to be moved among its four members.² Besides the party's two amendments that were dis-

¹ The other Opposition amendment accepted, the inclusion of Remembrance Day, was not accepted so willingly. The information on the Baldwin amendment is from an interview with him.

² Stanley Knowles M.P., interview. This is theoretically also the way the Conservative caucus handles Government bills but apparently did not in this case.

cussed in Chapter IV, there were four others proposed in the course of the February debate. These originated in the party caucus although they may have been discussed in the liaison committee of C.L.C. officials and N.D.P. M.P.'s. Stanley Knowles sought to raise the minimum wage to \$1.50 per hour, the figure the C.L.C. was requesting, and to set a limit of thirty-six months on the period during which the application of the hours of work provision could be deferred. Andrew Brewin moved that there be a three-week vacation with pay after three years' employment, and Tom Barnett attempted to amend the bill so that a permit allowing a firm to exceed the hours of work standard in an emergency could be issued by the Department only after a joint application of employer and employees. The Government had no difficulty in marshalling its forces to defeat all four proposed amendments.

More significant, therefore, are the Government's own amendments, the most important of which has been referred to above. That amendment, providing in certain circumstances for an indefinite deferment of the hours of work limitation, was itself altered slightly to give the Governor in Council rather than the Minister certain powers after the Minister discussed it privately with Michael Starr and Stanley Knowles. The Minister also amended clause 7 to add flexibility to the weekly day of rest provision, a necessity

which was brought to the attention of the Department by the shipping industry:¹ "In consultation with certain industries we found that clause 7 was quite rigid and did not take into account in particular the case of ships' crews...."² There were also four Government amendments made to the general holidays provision designed to meet opposition from certain employer groups. No pay would be granted to an employee who did not work on a holiday if he had not worked fifteen days prior to it (clause 33). No employee would be paid for a holiday on which he did not work if he had been asked to work that day (clause 33). An alternative method for the employer to reward an employee forced to work on a holiday was introduced (clause 31), and another alternative was made possible if a collective agreement already provided for eight holidays with pay (clause 29). Finally, the Minister was forced to postpone the date upon which the legislation would become effective to July 1, 1965.

All the Government's amendments as well as most of the unamended clauses were passed without a vote. Only one clause--dealing with the employment of handicapped persons--met with substantial Opposition criticism. Every speaker

¹ H.J. Johnstone, Director, Labour Standards Branch, Canada Department of Labour, interview.

² Allan MacEachen, Debates, 11481.

agreed that the employment of such persons should be facilitated, but many Opposition members did not feel that the method proposed in the bill was the most appropriate. The clause easily passed on a vote. In all, four days of debate were consumed by the Labour Code after the House reconvened, and by February 19 all fifty-four clauses had been approved. Then, three days later the Minister moved third reading, which followed without debate, and the bill proceeded to the Senate.

II. Consideration in the Senate

The Senate gave first and began second reading of the Labour Code on March 2. The Government Leader in the upper chamber, the only Senator in the Cabinet, customarily delegates the responsibility for moving second reading of a bill to a colleague in that chamber.¹ In this case he chose Senator Donald Smith. Senator Smith had considerable interest in labour matters, he was a personal friend of the Minister of Labour and a fellow Nova Scotian, and he possessed much parliamentary experience as a former M.P. and a veteran of the upper house.² An official of the Labour Department gave him a briefing on the bill from which, in addition to his study of the Commons' debate, he prepared

1 Senator Donald Smith, interview.

2 Ibid.

a lengthy, comprehensive speech for delivery on second reading. He referred several times to the "long drawn-out discussions" which the Minister and his officials had had with those the bill affected and added: "Most of us have from time to time received copies of the briefs that have been presented to the Minister in this regard."¹

Senator Lionel Choquette delivered the first Conservative speech in reply the following day. He did not oppose the principle of the bill, but questioned if it was "as favorable as it appears on the surface."² He cited interest group objections to the Code, in particular those raised by several parts of the trucking industry. When Government Leader Connolly pointed out that these opinions had been expressed before the bill had been amended in the Commons, the Conservative senator replied: "We have no assurance that this amendment is acceptable to the people who have protested...."³ The Senate had a duty, he added, to see that legislative measures were as practical as possible: "This is conservatism [but] conservatism with a small 'c'" for party lines "are not severely drawn in this chamber."⁴

Three other senators made speeches on second reading. Two Liberals, one of whom referred to the long hours that

1 Senate Debates, 1305.

2 Ibid., 1316.

3 Ibid., 1317.

4 Ibid., 1318.

were required in the trucking industry, praised the bill, and one Conservative censured it. In this criticism, Senator Gunnar Thorvaldson quoted extensively briefs from the trucking industry, the Halifax waterfront, and the prairie grain elevators. Coming from Manitoba, he was particularly concerned about the elevators and reported a discussion he had had with one large grain company's president. Senator Smith then closed the debate, answering some of the questions and charges raised, and second reading followed. The Code was thereupon sent to the Standing Committee on Banking and Commerce. This is a routine procedure in the Senate, especially when a bill has not gone to a standing committee in the Commons¹ and MacEachen had anticipated it from the start.

The Banking and Commerce committee is the most active of the Senate's standing committees.² It is composed of fifty members with a quorum of nine (although the average attendance during its consideration of the Labour Code was twenty-five), and presided over by Salter A. Hayden, a very competent and highly regarded chairman.³ The Committee held its first meeting on the Code the evening of the same day it had been given second reading. Several Conservative

1 Senator Smith interview.

2 Ibid.

3 According to Senator Smith, an impression supported by reading the proceedings of the committee.

senators complained about this haste, and a number of interest groups, fearing that the Committee was to hold only one meeting, informed the chairman that they were not prepared to present their briefs on so little notice. It was therefore decided to discuss the clauses of the bill with officials of the Labour Department before hearing representations and before disposing of any parts of the bill. Mr. Cushing, the Assistant Deputy Minister, assisted by Miss Lorentsen and Mr. Johnstone, Directors of the Legislation and Labour Standards Branches respectively, answered the senator's questions that evening. These were so numerous that discussion did not progress beyond clause 14. Although the senators already had in their possession briefs from most of the industries involved, few of the queries at that stage appear to have been inspired by them.

The second committee meeting took place the following morning, when briefs were submitted by the Canadian Trucking Associations, the Dominion Marine Association, the Railway Association of Canada, and the C.N.R. hotels. John Magee, Executive Secretary of the C.T.A., read a "very hastily prepared brief."¹ He said that "the trucking industry is not unappreciative of amendments to the bill..."² and asserted that they were an indication that "the Government now sees

¹ John Magee, interview.

² Senate Banking and Commerce Committee Proceedings, 30.

the problem of the extra-provincial trucking industry in a much different light than was the case when Bill C-126 was introduced...."¹ Nevertheless, he respectfully submitted that the extra-provincial trucking industry be removed entirely from the bill. Like all other witnesses, he was asked a number of questions at the completion of his formal remarks.

The Dominion Marine Association had sent a copy of its forty-page brief to each senator beforehand and it was summarized at the hearing by Captain Hurcomb. He cited a statement by the Minister of Labour as an admission "that they are beginning to see that this hours-of-work provision does not fit, at least in the shipping industry."² He, too, asked for complete exemption for his industry from the Code, claiming: "All the quibbling, transitionalizing, deferring, suspending and averaging out, and all the other bits of squirming and writhing about is [sic] not going to supply the answer for us."³ Short briefs were then read by J.A. Bourne, counsel for the Shipping Federation of B.C. and by J.D. Leitch, President of Upper Lakes Shipping Ltd. The latter dealt with ocean rather than inland or coastal traffic and concluded:

1 Ibid., 32.

2 Ibid., 43.

3 Ibid., 46.

I would like to feel that having now gone to the time and trouble of preparing a brief, and appearing before this committee, the submission of the Canadian Shipping Industry will get proper consideration and will not be considered a mere formality to allow disgruntled citizens to let off steam.¹

The brief of the Railway Association of Canada, identical to that delivered to the Minister on January 11 (before he had introduced his amendments) was read by the General Secretary, G. A. Richardson. He was accompanied by a Vice-President of each of Canadian National and the C.P.R. This was the most lengthy and technical submission presented. The General Manager of C.N. Hotels followed with a separate brief which was mainly opposed to the minimum wage provision.

The next meeting of the Committee was held Tuesday, March 9, when the C.L.C., the Air Transport Association, the Canadian Warehousing Association, the Teamsters Brotherhood, and representatives of the western grain trade were heard. J. Morris, Executive Vice-President of the Canadian Labour Congress read a "very pro forma"² brief expressing, except for certain details, the organization's general approval of the bill. He was accompanied by A. Andras, the Congress's Director of Legislation, who agreed to put on the record the provincial minimum wage rates. The Executive Director of the Air Transport Association of Canada, A.C.

¹ Ibid., 50.

² A. Andras, Director of Legislation, C.L.C., interview.

Morrison, was the next to present another "hastily prepared"¹ brief. In answering questions he was assisted by officials of Air Canada, Canadian Pacific Airlines and Pacific Western Airlines. For the grain trade, the President of the North-West Line Elevators Association read the first submission which produced a lengthy discussion about whether elevator operators could be classified as "managers" and thus be exempt from the Code. The Senate Law Clerk and Parliamentary Counsel advised that in his opinion they would be excluded, a view that was later contradicted by the Minister of Labour. The second elevator **spokesman** was the President of the Manitoba Pool Elevators, also speaking on behalf of the Alberta and Saskatchewan Wheat Pools, and the third, the President of the United Grain Growers. Next the Canadian Warehousing Association submitted a brief, followed by one from the Teamsters Union. The latter's reception was decidedly less friendly than that accorded to any other group. (It had been the expectation of just such a reception that had persuaded the running trades not to appear before the Senate).² Finally, a lengthy telegram was read from the St. Lawrence Shipowners' Association and two letters were distributed which had been received from the Shipping Federation of Canada.

1 Mr. A.C. Morrison, now President of the Air Transport Association of Canada, interview.

2 Mr. A.R. Gibbons, Vice-President, C.L.C., interview.

After having heard all the interest groups which desired to appear, the Committee returned to its clause-by-clause discussion of the bill with Labour Department officials, following which the Minister took the stand. In his opening statement MacEachen said, quite correctly, that "a number of the briefs are somewhat dated...in the sense that they have not taken into account the flexibility provided in the bill,"¹ especially in the amended portion of it. The Minister admitted, however, that "we have learned a lot about the pattern of hours since we brought the bill into the house."² Senators Thorvaldson and M. Wallace McCutcheon led an attack on the hours of work provision in the subsequent questioning of the Minister.

The fourth and last meeting of the Committee was held on March 10 to consider and dispose of the bill clause by clause. During that session Conservative senators moved seven amendments, of which Senator McCutcheon proposed four. His first--to strike out Remembrance Day--was rejected by a show of hands. The second aimed at exempting from the Code all employees in undertakings subject to the Aeronautics Act, the Railway Act or the Canada Shipping Act. McCutcheon explained that most of these employees were not "susceptible to a great many of the provisions of this Act" and that

¹ Proceedings, 144.

² Ibid., 147.

most enjoyed working conditions which were by and large equal or better than those which the Code would establish. This far-reaching amendment came very close to passing-- only on a tie vote was it lost. The same senator then moved that the overtime rate of pay be one and one-half times the minimum rate of \$1.25 rather than times the employee's regular wage. This and his fourth amendment to allow the Minister to delay implementation of the holidays provision of the bill were both defeated in close votes. McCutcheon's proposals were inspired by the industrial protests but there was no special arrangement between him and the officials of the interest groups.¹

Senator Thorvaldson moved two amendments. The first would have excluded the managers and operators of grain elevators from the bill. The second would have had, in part, the same effect by exempting all employees of industries declared to be "for the general advantage of Canada." Both amendments were defeated. Finally, Senator Jacques Flynn sought to limit the discretion given to the Minister and Cabinet by including a statement in the Code that orders in council deferring any provision of it would lapse after one year if they had not been approved by Parliament. A negative vote of 7 to 12 disposed of this amendment and on division the bill was carried without change.

¹ Senator M. Wallace McCutcheon, interview.

On the following day in the Senate, the Government Leader moved third reading, a stage in the legislative process that is normally brief and perfunctory. In this case, however, several Conservative Senators, convinced of the rightness of their position, decided to persist in their opposition to certain parts of the bill. Having seen the kind of treatment their amendments had received in the Committee, however, they were not hopeful that any further such efforts would be successful.¹

Senator Flynn began the altercation by attacking the wide scope of the bill. He charged that its application "unduly brings the federal Parliament into fields that belong to the provinces," and that it covered industries to which it "really cannot be applied."² Government interference in areas of collective bargaining and the "exorbitant" powers left to the Minister and the Cabinet were also objects of his criticism. He concluded by moving an amendment worked out earlier with and seconded by Senator McCutcheon, to exempt from the bill grain elevator operators and certain people in the railway, shipping, trucking and airlines industries, but only if their employment was governed "by the terms of a collective bargaining agreement

¹ Ibid.

² Senate Debates, 1399.

negotiated by a duly certified bargaining unit."¹ Senator Thorvaldson strongly supported the amendment. He said the common denominator of all objections to the bill was that the problem was not a transitional one, not one that could be solved by regulations, but a problem "rooted in the very nature and kind of business in which [these industries] are engaged."² He cited the briefs of the elevator companies, the Dominion Marine Association and the Canadian Warehousing Association, and claimed that the Minister had paid no attention to their objections. This statement, Senator Smith interjected, was clearly contradicted by the several amendments the Minister had made. Thorvaldson, however, continued:

I am quite sure that the House of Commons would be most happy to accept such an amendment were we to make it....I most sincerely plead with you to exercise the functions of the Senate as they are intended to be exercised, namely, with sober second thought and mature judgment, and let us cure the defects in this legislation which should be obvious to us all.³

In continuing the debate the following day, Senator McCutcheon again reminded the Senate of its function "to take a sober second thought and improve the legislation."⁴ His was a most comprehensive speech repeating some of the objections raised by Flynn and Thorvaldson, and then covering

1 Ibid., 1401.

2 Ibid., 1402.

3 Ibid., 1408.

4 Ibid., 1415.

each of the shipping, airlines, and railway industries. He cited the briefs of the Dominion Marine Association, the Air Transport Association, the St. Lawrence Shipowners' Association, the Railway Association, the C.L.C. and the Teamsters, the last two of which he dismissed as of little consequence. McCutcheon also quoted a Winnipeg Free Press editorial supporting the amendment excluding elevator operators and claimed that the Government's amendments did not touch the special situations with which Flynn's amendment dealt. "The point is that the special and transitional provisions of this bill are not adequate to cover the special situations referred to in the amendment, because these are not special or transitional situations."¹

Senator Connolly then replied. He emphasized the flexibility of the bill, expressed doubts about the validity of some of the assertions made in the industrial briefs, cited some of the employee arguments, and dealt at length with the question of Executive discretion. The regulations under the bill would be drawn up in close consultation with both employers and employees, and the Minister had already indicated that he would very likely grant a deferment to certain industries.

The vote on the Flynn amendment was twenty-three to thirty-eight in the negative. In spite of Senator McCutcheon's

¹ Ibid., 1422.

earlier remark that "as I see it, there is no partisan attitude to be taken on this bill,"¹ it was a straight party vote. All those supporting it were Conservatives and of the thirty-eight against, thirty-six were Liberals, one was an Independent Liberal, and one, an Independent.²

Senator McCutcheon, seconded by Senator Flynn, then moved a final amendment similar to one of his in the Committee to give the Minister discretion to delay the application of the holidays provision. Here he referred again to the Railway Association brief and concluded: "I say that the adoption of this amendment is the sort of action which the Senate should take in order to improve a piece of legislation without in any way depriving any person...of any of the benefits that may accrue to him under the legislation...."³ The amendment was defeated by exactly the same figures as the previous one and with the same party solidarity.⁴

The motion was finally agreed to and the bill was read a third time. Two days later the Chief Justice of Canada appeared in the Senate Chamber to signify the approval of the Governor General, and the Canada Labour (Standards) Code became a law.

1 Ibid., 1415.

2 Ibid., 1427.

3 Ibid., 1431.

4 Ibid., 1434.

III. Conclusions

From this discussion of the passage of the Canada Labour (Standards) Code, several conclusions emerge in relation to the propositions set out in Chapter I. These conclusions may be grouped into three parts.

Dominance of the Cabinet

The sixth expectation of Chapter I has largely been upheld: the Government was not disposed to accept Opposition amendments. Six of the eight proposed in the House of Commons, all of which would have modified rather basic parts of the Code, were defeated by the Government. The Loney amendment would have reduced the scope of the bill while the Orlikow proposal would have enlarged it. Two of the N.D.P. amendments would have raised the minimum standards of the legislation and the other two would have had the significant effects of limiting the period of deferment and of giving employees a say in allowing emergency overtime work. The Baldwin amendment, the only one which the Minister did willingly accept, covered a situation that was meant to be included in the bill but had been overlooked by the drafters. The success of the Knowles Remembrance Day amendment was due neither to the Cabinet's willingness to accept it nor to the minority government situation, since over half the M.P.'s were absent from the chamber. It is not possible to say with assurance whether it was the result of

a small-scale back bench revolt or of poor management on the part of the Liberal Whip, although the latter would seem to be more probable. In sum, the Minister and Cabinet would not be moved to amend the bill by opposition criticism on any matter of principle, but they were not so "sensitive about the general excellence of their own measure" that they would not accept one amendment to plug a small loop-hole in the bill.

The lack of Conservative amendments in the House, especially when contrasted with the approach of the official Opposition in the Senate, is indeed one of the most striking aspects of the passage of the Labour Code. For the most part, in fact, the Opposition performance in the House was quite undistinguished. In the October debate there was little real contribution made by any Conservative, Social Credit or Creditiste M.P.'s. Exceptions to this were the two Conservatives from the North and even they spoke on an amendment moved by the N.D.P. The Conservatives' contribution was more valuable in the February debate where they raised the objections of almost all of the protesting groups. Still, Alvin Hamilton delivered the only speech containing much original thought. The Conservatives, as a party, were not disposed to move any amendments in the House. This was rather surprising in the light of the vociferous objections to the bill raised by many industries, and the manner in

which the Conservatives in the Senate reacted to these protests. The Commons Conservatives did not wish to make the bill any stronger, but either they were very poorly organized¹ or they feared the electoral consequences of trying to weaken it. In this situation they preferred limply to read into Hansard almost ad infinitum the interest groups' objections without, except in the Loney case, taking up arms in any other way.

The N.D.P. performance, on the other hand, was a model of opposition strategy; the M.P.'s of that party made the best of a situation tailor-made for them. Having long proposed such a measure and deriving much of their support from those it would benefit, they could afford to be decisive and to advocate changes to strengthen the bill. This they did. Most of their efforts were unsuccessful, but they had one significant, if unexpected, victory.

Activity of Interest Groups

Almost without exception, the interest groups involved in this legislation directed their initial attention at the Minister and the Department. They usually first arranged for a meeting with him and his chief officials which was followed with correspondence and, in most cases, with a formal written brief. Those which contacted the Prime Min-

¹ Baldwin interview. He believes that the bill did not go through the regular Conservative caucus examination.

ister or other members of the Cabinet usually did so only after it appeared that the Minister and the Labour Department would not be substantially moved. One interest group, however, first appealed to the Minister of Transport to influence his Labour colleague, and representatives of the grain trade met jointly with the Ministers of Labour and Trade and Commerce, the latter then being responsible for the Canada Wheat Board. In the light of the fact that it had been mentioned so frequently in the Commons, including the Speech from the Throne, that such legislation was being considered, it is somewhat surprising that the introduction of the bill caught most of the interest groups completely unawares. On the other hand, of course, the Labour Department had deliberately done nothing to inform them. Another interesting point is that although there was a good deal of contact among the protesting groups,¹ no attempt was made to launch any sort of combined campaign against the bill.

M.P.'s were lobbied to an unusually great extent in connection with the Labour Code. Nevertheless it is clear that most of the groups involved had no organized campaign to pressure parliamentarians, but rather, as a rule, left it up to their individual members' discretion. One group at least, it was shown, was notably reluctant to contact

¹ Mr. Magee and Mr. Richardson, interviews.

the Opposition for fear of jeopardizing its relationship with the Department. The major exception to this was the Canadian Trucking Associations. The director of their intensive legislative campaign reports, however, that this was an unusual procedure for that organization too.¹ He had used it only once before and did so in this case because he could get no satisfaction through the usual channels--meeting with the Minister and departmental officials. This substantiates proposition eight of Chapter I that while some pressure would be put on M.P.'s, interest groups would direct their attention primarily at the Minister and the Department.

Debate in the Senate

This legislation was perhaps not the kind that would allow the Senate to exercise effectively its intended function of protecting provincial rights. One French-Canadian Senator did suggest that the bill infringed upon such rights, but so had a Crditiste member in the Commons, and the Quebec Trucking Association in its letter to Premier Lesage.

There was nothing distinctive about the Senate debate in that regard. Neither did the Senate make any attempt to improve the drafting of the bill. Perhaps this was an unusually well drafted bill as it emerged from the Commons, for all of the amendments proposed in the upper chamber

¹ Magee interview.

were of a substantive nature. Although all defeated, these amendments did reveal the conservative tenor of the Senate. Some came very close to being approved and all would have gone further in weakening the bill than any change proposed in the Commons would have done. The McCutcheon-Thorvaldson-Flynn triumverate formed the only real conservative opposition to the bill in either chamber.

Even though they had little hope that the Senate would amend the bill after it had been passed by the Commons, the interest group spokesmen did appreciate the opportunity afforded by the Banking and Commerce Committee to present their case. This allowed the individual members of the groups to appreciate the efforts of their Ottawa representatives and permitted the groups to demonstrate their difficulties to a wide audience which may have resulted in a more favourable administering of the law. In this sense, the Senate's consideration of the bill was perhaps not entirely without merit, and the quality of the debate was high. Nevertheless, that several of the briefs to the Senate were either out of date or so hastily prepared as to be unclear, gives some indication of how seriously the interest groups took the Senate hearings.

How, finally, in the light of all the protestations about the absence of partisanship in the Senate, did that aspect of its proceedings compare with the Commons? The votes in the Banking and Commerce Committee were not en-

tirely on a partisan basis, but when a serious dispute arose on third reading in the Senate chamber itself, party lines were solid. The Commons, on the other hand, had approved the bill with virtually unanimous consent.

Chapter Six: Administration of the Law

Members in both houses of Parliament had recognized the vital importance of the manner in which the Code would be administered. At the time of writing (July 31, 1966), the administrative process has really only begun but much can be said both about the quasi-legislative and quasi-judicial powers conferred upon the civil service and about the contact between it and the groups affected.

I. The Regulations

Nine of the fifty-four clauses of the Act permit regulations to be made under them. As a simple example, clause 3(3) states: "This Act does not apply to or in respect of employees who are members of such professions as may be designated by the regulations...." Three of the nine clauses providing for regulations are, however, much wider in scope. Each of these three clauses lists certain subjects (twenty-five in total) on which regulations may be made but the Governor in Council can, in addition, make regulations "for carrying out the purposes and provisions" of a whole part of the Act or, in one case, of the whole

Act. The Labour Code clearly provided many opportunities for the civil service to enact subordinate legislation.¹

In August 1964, before the bill was introduced into Parliament, a Labour Standards Branch had been established in the Department under Harris J. Johnstone.² It was under his direction that a committee, composed of almost all the same people who had drafted the bill, was established to draft the regulations. The committee worked with haste, for it had but from March 18 to July 1, 1965, the date the Act became effective, to complete its task.

After the regulations were finished in draft form, confidential mimeographed copies entitled "Proposed Content of General Regulations Under the Canada Labour (Standards) Code" were sent to almost every industry, company or employee group which had communicated with the Department about the Labour Code.³ This was in accordance with assurances given by both the Minister and Senator Connolly. They were accompanied by a letter from Gordon Cushing, the Assistant Deputy Minister, which read in part: "These proposals are still under consideration and have not been drafted in appropriate legal form. This memorandum is being circulated

1 See below for a discussion of their content.

2 Miss Lorentsen and Mr. Johnstone, interviews.

3 Ibid. According to the Canadian Association of Broadcasters (Mr. Allard interview) and the Canadian Banking Association (letter from Mr. H.L. Robson, Secretary) those two groups did not receive a copy.

now to those organizations which have asked to have an opportunity to consider the regulations before they are finally drafted and to express their views."¹ The letter, which in most cases was sent to the interest group headquarters, requested that any comments be forwarded to the Department within two weeks, by May 19.

The Railway Association of Canada, after consulting with its member firms, complied, with a letter to Cushing on May 19 enclosing ten pages of comments on the draft regulations. (The Association detected some rather minor changes reflecting its suggestions in the final version).² When the draft regulations were received by the Dominion Marine Association, the General Manager forwarded them to all its member firms requesting their comments. One shipping company submitted two pages of views directly to the Department, but most sent them to the Association for transmission to Cushing.³ A similar procedure was followed in other industrial organizations including the Air Transport Association of Canada,⁴ but the Canadian Trucking Associations thought it was only consistent with their previous request for complete exemption to make no comment at all on

1 Dominion Marine Association files.

2 Mr. G.A. Richardson, interview.

3 Capt. P.R. Hurcomb, interview.

4 Mr. A.C. Morrison, interview.

the draft regulations.¹ Among the employee groups which were consulted and which returned brief comments to the Department were the Teamsters Union, the Canadian Air Line Pilots' Association and the railway running trades. When the representatives of the various running trades met to consider the regulations on May 13, they were again successful in their request for Cushing's attendance. Two pages of comments were then forwarded to the Minister with an additional request typical of most of the organizations: "Since the time for consideration of the proposed Regulations was rather short to bring together the many General Chairmen involved in the maintenance of railway collective agreements, it is our hope that further consultation will be had before the Regulations are finalized."² None in fact was.

The regulations were then put into final form, incorporating certain of the suggestions received, by the Departmental solicitor, W.B. Davis.³ Their legal style was approved by an official in the Department of Justice; they were signed by the Minister of Labour; and then sent to the Privy Council Office for publication in the June 25 edition

1 Mr. John Magee, interview.

2 Mr. A.R. Gibbons, files.

3 Mr. Davis, interview.

of the Canada Gazette Part II.¹

A large part of the regulations was concerned to set out the rules for averaging out irregularly distributed working hours. The Act had said that averaging could be done "over two or more weeks" and the regulations set a thirteen-week period as the normal span over which they could be averaged, but a longer period was allowed where necessary. The regulations also set the minimum wage and the hours of work for employees under seventeen years of age, and listed the kinds of employment this group was prohibited from undertaking. In addition, they determined what deduction could be made from the minimum wage for provision of meals and lodging, and they established further rules for the granting of annual holidays. By and large, the regulations were not very significant in content since, unlike most provincial labour legislation, the four essential standards had been established in the Act itself. What was far more important than these quasi-legislative powers were the quasi-judicial powers of the Executive to grant deferments from the Code.

II. The Automatic Deferment

The Act provided that upon application, the minimum wage or hours of work provisions would be automatically

¹ Ibid.

deferred in any firm or industry until a Ministerial order approved the deferment or rejected it. Most of the industries involved immediately undertook to apply for this automatic deferment of the hours of work standards. Some also requested a deferment of the application of the minimum wage, which under no circumstances could exceed eighteen months from July 1, 1965. Application forms were available from the Department for both purposes which could be used either by an individual company or by an organization on behalf of several firms.¹ In its application, the firm or industry was required to set out in detail the different groups of employees involved and to explain why the introduction of either of these parts of the Act would be "unduly prejudicial to the interests of the employees or seriously detrimental to the operation of the business." It also had to define the length of time over which it sought deferment and to suggest an appropriate interim regime of hours or wages that the Department might prescribe.

It was with some difficulty that such information was gathered in the larger industries. The Railway Association of Canada had a voluminous correspondence with its member firms and with the Department concerning the application for

¹ This was one issue over which there was much correspondence between the various groups and the Department. Magee, Richardson and Hurcomb interviews.

deferment.¹ The Personnel and Labour Relations Department of the C.N.R. prepared a guideline for the railways' use in making the application and this was sent by the Association to each firm. All their requests were returned to the Association which sent an application on behalf of all to the Department on June 25. One company's application was forwarded after the July 1, 1965 deadline, but this was accepted by special order of the Minister.

The trucking firms' application reveals an exciting example of intra-organizational politics.² The Ottawa office of the Canadian Trucking Associations was charged with the task of applying for the deferment on behalf of all firms engaged in inter-provincial business, in preparation for which it met officials of the Department on several occasions. To make the application, the C.T.A. had to list the names of all such firms but the Executive Vice-President, John Magee, had never been able to persuade the provincial associations to give him the names of all the inter-provincial carriers. The provincial bodies were still antagonistic and some considered sending a list to the Department in confidence so that the C.T.A. would not obtain it. When they were informed that all the names would have to be pub-

1 Richardson interview.

2 Magee interview.

lished in the Canada Gazette for the deferment to be effective, the provincial associations eventually complied and in making the collective application, the C.T.A. acquired its first list of the firms it was representing. The Quebec Association, however, fearful of discovering later that all trucking firms might somehow be included in federal jurisdiction, insisted on having all Quebec firms Gazetted, even the ones which were clearly within provincial authority.

The Dominion Marine Association also distributed the application forms to its member firms along with suggestions for completing them. Later it collected the applications and forwarded them to the Department.¹ In a similar manner, the Air Transport Association² and the Ontario Retail Feed Dealers' Association³ each applied for deferment on behalf of its members. The latter asked for deferment of both the hours of work and the minimum wage provisions. On the other hand, it was not their associations but rather the individual radio and television stations and the separate elevator companies themselves which applied. All such applications were given an automatic deferment pending the Department's decision.

1 Hurcomb interview.

2 Morrison interview.

3 Macphail interview.

III. Departmental Decisions on Deferments

Prior to July 1, 1965 there were 540 submissions for deferment of Part I of the Act (Hours of Work) covering 4,239 establishments.¹ Two hundred and fifty submissions for deferment of section 11 (Minimum Wages) covering 279 establishments were also received. A four-member committee in the Labour Standards Branch gave initial consideration to most of the applications.² In the light of its knowledge of the industry and of other applications for deferment, it studied the information provided on the application forms. If the committee judged the request to be justified, it sought to set interim standards for the whole industry which the forms suggested would be agreeable to a majority of its firms. The orders are made in the name of the Minister but to date he has approved every one of the committee's recommendations.³ Rather than being dealt with by this committee, some of the applications have been disposed of directly by Johnstone, Haythorne, or even the Minister himself.

Thus far, after one year of the Act's operation, seven orders for deferment of the hours portion of the bill have been issued. Five of these covered individual radio or TV stations, and expire in September or December, 1966; one,

1 "Annual Report on the Canada Labour (Standards) Code" tabled in the House of Commons, June 29, 1966.

2 Johnstone interview.

3 Ibid.

ending April 30, 1967, applied to a C.N.R. ferry terminal; and the seventh, terminating in August, 1967, was a general order respecting feed mills, feed warehouses and seed cleaning plants. There has been to date only one rejection of an hours deferment application.

Slightly more applications for deferment of the minimum wage have been disposed of: forty-one. Twenty-nine have been granted deferments, including eighteen trucking firms, eight radio or television stations, one telephone company, one whaling operation, and another general order covering all feed mills, feed warehouses and seed cleaning establishments. These orders have usually been issued on the date up to which the deferment was requested, to cover the intervening period only. In any case, they could not extend beyond January 1, 1967. Twelve submissions for deferring the minimum wage have been rejected, including five chartered banks, three railways, and the C.N.R. hotels none of whose inclusion in the phrase "organized and operated in a local area" could be justified. These rejections were issued as soon as possible after July 1, 1965 because in such cases the employer was required to pay the legal minimum wage retroactive to the effective date of the Act.

IV. Departmental Indecisions

According to the "Annual Report on the Canada Labour

(Standards) Code" tabled in the House of Commons on June 29, 1966, some 532 out of the 540 applications for deferment of Part I, and 209 out of the 250 applications for deferment of section 11 had not been decided upon a year after they had been submitted. Included among the undecided cases, of course, are almost all of the really problematic industries: shipping, trucking and the railways. If the Department's progress has been slight in bring^ging these industries into line with the Code, what have been its efforts?

In connection with the railways, the Department has taken some preliminary action.¹ On September 14, 1965 the Deputy Minister convened a meeting of officials from the railway companies, the running trades unions and the Department to discuss the application for deferment. The railways wanted an indefinite deferment, whereas the unions requested only a temporary postponement during which collective bargaining could bring working conditions into closer correspondence with the standards of the Code. (The Brotherhood of Sleeping Car Porters, on the other hand, had written to the Deputy Minister a month earlier of its "unequivocal opposition" to the application for deferment). The Department's representatives indicated that they were willing to consider any special arrangement that would reconcile the existing system with the basic objectives of

¹ Richardson and Gibbons interviews.

the legislation, but they would not entertain an unconditional or indefinite deferment. At Haythorne's suggestion the size of the group was reduced and the new working committee met September 26. The Department suggested then that a study of working hours over a thirteen-week period be prepared by the railway companies which objected to the proposal on the grounds of its cost, but agreed to consider the idea. The railway unions had a separate meeting with Departmental officials December 21, 1965 since which date nothing further has been attempted. The Department's attitude has been that it would postpone further action on the railway deferment application "as long as there was evidence that the parties were making an effort to reach a solution themselves."¹

The Labour Department has also begun similar preliminary discussions with the trucking industry and the grain trade. About four meetings have been held with officials of the Canadian Trucking Associations, but the issue of hours of work is still completely unresolved.² Although the Department's view is that the implementation of the Code will not be forced in advance of developments in collective bargaining, it appears to have a mistaken impression that

¹ Departmental Memorandum re: Meeting with railway management and union representatives, September 27, 1965.

² Magee interview.

significant progress in this direction through bargaining has been made.¹ There have been separate meetings with representatives of the Teamsters union but no joint sessions as were held in the case of the railways. The Minister and the Presidents of the three Pool Elevators met January 29, 1966 and on April 26 the Deputy Minister saw representatives of the Manitoba Pool in Winnipeg to discuss the elevators' application for deferment.² These discussions appear to be more likely of producing an early compliance with the standards of the Code.

The Air Transport Association submitted a brief to the Minister of Labour immediately after the passage of the Code through the Commons asking for an indefinite deferment and for the inquiry which had to precede it. Subsequent to that, two meetings have been held regarding the application. The Department has expressed its unwillingness to hold an inquiry and its intention to apply the Code shortly to the larger airlines which will not be too seriously affected.³

It was not until May 3, 1966 that the Department began to consider the shipping industry's application for deferment. On that date the Deputy Minister telephoned Captain

1 Magee interview. See the Minister of Labour's remarks in House of Commons Debates, May 27, 1966, 5634.

2 Correspondence from the Manitoba Pool Elevators.

3 Morrison interview.

Hurcomb of the Dominion Marine Association to suggest an exploratory meeting to discuss how the Code could be implemented in that industry. Haythorne suggested that labour also be represented at the meeting but agreed to hold the first only with management. The pressure of other business postponed the meeting and it has yet to be held. In preparation for it, however, Hurcomb wrote to members of the Association expressing the view that "it is essential that the industry take a common stand in this matter."¹

Although the Department is currently feeling some Parliamentary pressure to accelerate its disposal of the deferment applications,² there has been a manifest lack of urgency in its activity to date. Most of the industries involved, hopeful of an indefinite deferment, are somewhat concerned with the Department's unwillingness to hold an inquiry and its determination to work out a solution, however slowly, without one. They also dislike the uncertainty of the situation as it stands.

The legal justification for the Department's acting so leisurely is found in one of the amendments the Government introduced in February 1965 which removed the time limit on a deferment decision by the Minister. While he

¹ Dominion Marine Association files.

² Johnstone interview.

can defer implementation of the hours of work provision for a maximum of eighteen months from the date of his order, there is no time limit on his making the order. This effect --that the officials of the Department, or in theory, the Minister, can implement this part of the bill completely at their own discretion--was entirely overlooked in the parliamentary debate on the Labour Code.

V. Other Departmental Decisions

Firms which wished to average their working hours were required to obtain the Department's approval of such a scheme. If they were to be averaged over more than a thirteen-week period, this required the approval of the Minister; if less, only that of his officials. Prior to July 1, 1966 sixty-two such cases were approved by the civil service and seven by the Minister.¹ During the first year of the Code's operation, too, the Minister approved eleven applications to work in excess of the maximum hours, two requests for permission to pay less than the minimum wage to handicapped employees, and four applications to pay less than the minimum wage to employees under training programs. There were many other cases of firms reporting unusual arrangements which the Act permitted if the Department were notified.

¹ "Annual Report to Parliament."

Another activity of the Department in connection with the Labour Code, although in quite a different category, was its publicity campaign. This was arranged by the Information Branch of the Department and featured full- and half-page advertisements in the press as well as announcements on radio and television. One type of newspaper advertisement showed the Minister of Labour being interviewed on the steps of the Parliament buildings about the coverage of the bill and its four standards. Considerable Opposition ire was aroused, especially when MacEachen denied that it was a picture of him--just a drawing, a "likeness". Three members of the Opposition submitted separate questions in the House about the cost of the advertising campaign (daily newspapers, \$43,666; weekly newspapers, \$33,077; relevant trade journals and farm papers, \$54,444; foreign language press, \$7,464; radio and TV, \$28,968; total, \$184,329)¹ and some suggested that it would more appropriately have been paid for by the Liberal party than by the government. The Department also prepared a twenty-seven page booklet, distributed to all who inquired, which outlined the provisions of the bill in some detail.

VI. Conclusions

"If ever there was a hoax perpetrated on the people of

¹ House of Commons Debates, February 2, 1966, 573.

Canada, it was perpetrated by the implementation of this Code."¹ So spoke David Orlikow, a New Democratic member of Parliament on the 1966 estimates of the Labour Department. Either by Departmental decision or indecision, the Code was benefiting few of those for whom it was intended.

It was not the power to enact regulations that allowed the civil service to have this significant effect on the implementation of the Act. It has already been shown that although there was ample opportunity for the administration to make regulations, they were not actually wide in scope. It must be recalled, also, that the vacations and holidays provisions of the bill went into effect on July 1, 1965 and that the civil service was left relatively little discretion in applying them. The minimum wage provision, however, had been deferred in almost every industry requesting deferment, either by order, often up to the maximum eighteen months, or automatically, pending an order, as provided in the Act. But it is the hours of work provision, of course, which has been least applied.

When the drafters of the bill became aware that it would be impossible immediately to implement a forty-hour week in certain industries, they first provided for a maximum eighteen-month deferment from July 1, 1965. Then, in

¹Ibid., 5643.

response to the pressure of so many industries, the provision was added that the hours standard could be deferred for a period beyond eighteen months. There were three safeguards inserted in this new provision, however, to prevent its abuse: only the Governor in Council rather than the Minister could make such an order; it could only be made after the holding of a public inquiry; and if it were made, an interim regime of hours had to be set down. Nevertheless, the bill made it possible in addition for the Minister to delay his eighteen-month deferment decision so that it became indefinite until he did issue an order. This possibility has been resorted to thus far in almost every case. The hours of work provision applies to almost no one (probably none who did not have a forty-hour week before), and there is no likelihood of its applying to many others in the near future. This policy has been worked out in discussions between the Minister and Deputy Minister and the latter feels it is fully within the spirit of the Act. It cannot be implemented overnight, according to Haythorne, and it is preferable to allow the parties to reach an agreement themselves.¹ But in so delaying their advice to the Minister on making the deferment orders, the civil service has postponed the implementation of this part of the Act without the operation of any of the safeguards which were intended to

¹ Haythorne interview.

apply to indefinite deferments. They possess a virtually unlimited power to implement this part whenever they wish and for eighteen months after that, on any terms they choose. At least at the moment, industries that demanded outright exemption from the Act find themselves in a situation surprisingly close to that as a result of the manner in which this clause has been administered. The powers of the civil service are even greater than anticipated in Chapter I.

The other proposition concerning the administration of the law set out in Chapter I was that the contact between interest groups and the civil service would be close and constant. It has been indeed. In most cases it has been the interest group rather than individual firms which have dealt with the Department on the many matters affecting them: the regulations, the application for deferment, and the consideration of this application. Much more such contact is surely in store before an ultimate solution in the most difficult industries is found.

Chapter Seven: Conclusion

The ten propositions set out in Chapter I have in large measure been examined in the concluding portion of the other five chapters above. At this point, consequently, the contribution to the evolution of the Canada Labour (Standards) Code of each of the main elements in the Canadian political process will be assessed. This will be followed by brief notes on the press and on federal-provincial relations.

Political Parties

Political parties are often spoken of as "interest aggregators"--they seek to form the largest possible interest group coalitions in order to obtain election. Thus, the Liberal and Conservative parties in this case both sought to win the support of labour by offering in three successive election campaigns almost identical proposals for a national labour code. Upon achieving office, both parties implemented legislation consistent with their pledges, although the Liberals moved further and faster than the Conservatives in this respect.

Within each major party, the decision to include the labour code idea in its program was taken by a small number of leading party officials--the resolutions committee of a

national convention which in one case merely approved the proposal of its research department. The subsequent decision to emphasize the issue in election campaigns was taken by an even smaller group within the party, the leader and his closest advisers.

The issue had, however, been advocated during the previous twenty years by the C.C.F. and it was simultaneously advanced by the N.D.P. These played the familiar role of third parties, that of popularizing the proposal, or in Almond's terms, of interest articulation and communication. Besides the election campaign, the private members' bill was found to be a useful means of pressing for the measure. The original platform of these groups, too, of which the Labour Code was part, was the work of a few party officials.

Interest Groups.

The three major labour organizations in the country were the most persistent articulators of the idea of a national labour code. For nearly twenty years they asked for such legislation in their annual briefs to the federal Cabinet, although they apparently did not pursue the issue otherwise. These demands had a direct influence on the Conservative platform and undoubtedly an indirect effect on that of the Liberals.

Once work began on the legislation, nearly all of the

organized interest group activity in connection with it was in opposition. This activity took place almost entirely after the bill was introduced into Parliament. The civil service did not feel a need or disposition to consult the groups most concerned, and almost all of the latter were unaware that the legislation was being prepared. Upon its publication, however, there was the most vehement protest from practically every industrial interest group affected. This usually took the form of communicating with the Minister and his chief officials, although groups which were more often clients of other departments sought their Minister's assistance too. When this action appeared to be to no avail, an appeal was often made to other cabinet ministers, to the Prime Minister, and in one case in particular, to M.P.'s. Although much publicity was given to these protests in the House, only one amendment was introduced by an Opposition member to exempt an industry from the bill. The Minister himself amended the Code to make it more amenable to the industrial groups concerned but he would not accede to their demands for outright exemption. Many of the groups took advantage of the Senate Banking and Commerce Committee hearings to present their case, but they did not expect to have much effect on the legislation since it had already been approved by the Commons.

Immediately after its passage, the interest groups attempted to obtain the most favourable administration of the

law. The groups were consulted about the regulations under the Act and about the implementation of it in their respective industries. Amendments to the Code allowed the civil service to delay this implementation which the groups were largely successful in persuading it to do.

Cabinet, Caucus and Minister

One of the civil servants most closely connected with the legislation said: "It was very much Mr. MacEachen's Labour Code." That appears to be the case. Not only was he at least partly responsible for its inclusion in the Liberal platform in the first place, but it was on his initiative that the civil service began to prepare it. The Cabinet, of course, had to endorse the basic policy and later scrutinize **and** approve the final bill. When considerable Cabinet opposition developed, however, the Minister relied on the strong support of the labour study group in the Liberal caucus, a group of young, progressive, recently elected members who were determined to see the election platform implemented without delay or dilution.

Once the Cabinet approved the bill, it was almost certain to pass and to pass unchanged unless amendments were proposed or accepted by the Government. The Minister did introduce amendments of some significance which, while they reflected the pressure of interest groups more than that of the Opposition, were much less extensive than the groups were pressing for. After the bill was enacted, it was with

the approval of the Minister that the civil service decided to postpone implementation of portions of it to prevent undue hardship on the industries affected.

Parliament

Parliament made little direct contribution to the Labour Code. Two amendments proposed there were adopted but otherwise the Code passed as introduced or amended by the Government. Nevertheless, there were several indirect parliamentary contributions. Through the introduction of private members' bills in the Commons, which were picked up by the press, the idea of a Labour Code was considerably popularized. The question period provided an opportunity to urge the Government to bring the bill forward and later to pressure the Minister to provide greater flexibility. It appears that the bill would have been amended even if no pressure had been put on M.P.'s, but their requests to have changes made undoubtedly encouraged the Minister to make them. The Senate Committee provided the interest groups with an opportunity to present their objections publicly, and although it did not produce any change in the bill, it is highly probable that the hearing resulted in a more sympathetic administering of the law. While the consideration of the Code in both chambers was thorough, those in the Commons who opposed weakening the bill overlooked the one clause which has permitted its much delayed implementation. Parliament, in short, did not act as a legislative body, but

did perform its more appropriate functions of prodding, questioning, and criticizing reasonably well.

Civil Service

The civil service entered the evolution of the Labour Code at three points, two of which were of utmost significance. First, it drafted the bill. While it had a general guide in the Liberal platform, the drafting committee actually chose the standards it felt best to implement and then sought to justify its decisions to the Minister and Cabinet, usually with success. All sorts of lesser decisions were taken by the civil service, too, although they were subject to rigorous Cabinet examination. Even though it was well prepared to draft the bill, the civil service required over a year to do so. Second, the civil service drafted the regulations, after having previously decided on which subjects it should have that power. Unlike the bill, however, the regulations were not subject to either Cabinet or Parliamentary oversight--at the political level they were approved only by the Minister. Third, the civil service had very extensive powers over the implementation of the Act. It decided, in conjunction with the Minister, to apply the Code with a minimum of hardship to the industries involved, making use of a provision in the Act which it had inserted in an amendment and which had completely escaped parliamentary scrutiny.

On the other hand, it must be noted that the civil

service did not itself take the initiative to adopt the Code. While to the interest groups opposed, its leading members appeared to be strongly committed to the bill and to look at it from the labour point of view, the civil service did wait for a Minister to call for such a bill rather than lobby him to consider it. This was the case even though the top Labour Department officials were anxious to see Canada at the forefront of nations complying with I.L.O. standards. Such a major policy apparently must originate at the political level.

The Press

The various stages of the passage of the Labour Code were well covered in the press. It was treated by some, for example, as a highlight of the 1964 Speech from the Throne,¹ and considerable publicity was given to the federal-provincial conference.² It is therefore strange that so many interest groups were unaware that it was being prepared. The House and even the Senate debates on the bill were widely reported, with particular attention being given to the success of the Remembrance Day amendment.³ The protests of most of the interest groups, in the form of telegrams to,

1 Edmonton Journal, February 18, 1964.

2 Toronto Star, February 23, 1965.

3 Ottawa Journal, Montreal Gazette, October 26, 1965.

and also some of the meetings with, the Minister were communicated by the press to the public at large.¹ Some attention has since been given to the requests for deferment,² with the spotlight in particular on the Government's dispute with the C.N. hotels.

Most major Canadian newspapers also appear to have spoken of the Code editorially.³ This comment varied from the laudatory to the critical, but no editorial matched for vitriol an article which appeared in the magazine Canadian Transportation in December 1965. Written by W.J. Crichton, it was entitled "The Labour Code: An Act of Violence?" The author had canvassed all the transportation interest groups involved and then recounted all their complaints in a most forceful manner. Other trade magazines such as the C.L.C.'s Canadian Labour also carried feature articles on the Code.

Federal-Provincial Relations

The Labour Code is relevant to the issue of federal-provincial relations in two significant ways. The first is the matter of federal consultation with the provinces in areas of mutual interest, a key provision in the Liberal

1 Halifax Chronicle Herald, December 15, 1964; Winnipeg Free Press, November 12, 1964.

2 Montreal Star, September 2, 1965; Toronto Globe and Mail, August 17, 1965.

3 For example, Winnipeg Tribune, March 2, 1965; Toronto Star, February 23, 1965; Winnipeg Free Press, March 16, 1965; Vancouver Province, December 3, 1964; Calgary

concept of "cooperative federalism". It was entirely consistent with that policy for the Minister of Labour to inform the provinces that this legislation was being contemplated and to ask for their comments. Apparently very little attention was paid to these comments, but the provincial ministers were undoubtedly grateful for having been informed since federal action was likely to have some repercussions in the provincial sphere. That the March 1964 Federal-Provincial Conference was the first at the political level dealing with labour matters since 1946 illustrates a change in the position both from the Conservative and even from the pre-1957 Liberal Government. Nothing has been done at the political level since the enactment of the Code to try to bring provincial labour legislation into closer correspondence with the federal which remains a much acclaimed objective of all three federal parties.

The second federal-provincial aspect of the Labour Code has to do with its anticipated influence on provincial standards. While it is too early to discuss its ultimate effect in this regard, the changes in provincial standards since October 1964 can be cited.

The least changes in provincial standards have taken place in their provisions for vacations with pay and hours of work. Slight changes have been made in vacations legislation only in Ontario and Manitoba. Five provinces remain

Albertan, October 6, 1964; St. John Telegraph Journal December 17, 1964.

below the federal standard in this field. All provinces remain behind the federal standard in hours of work and only Alberta has reduced its maximum hours provision slightly since the federal Code was introduced. This is quite understandable, however, in view of the large number of deferment orders under the federal law.

Alberta and British Columbia have introduced statutory holiday legislation since the Code made its appearance but only two provinces equal the federal standard in this area and six provinces have no such legislation at all.

The minimum wage has increased in all provinces but two since October 1964 and at least two provinces have projected future increases. Still, all provincial legal minimum wage provisions are below the federal standard.

Officials of the federal Department of Labour credit the Code with having already had some effect on provincial standards. Mr. Johnstone says, for example, that never in any comparable period have provincial standards risen so much.¹ Most provincial deputy ministers are not so certain. Some say it is too difficult to speculate on the influence of the federal Code, especially so soon; others deny that it has yet had any material effect in their province; but few believed it would not have a possible influence in the future. As one said, "It is safe to say

¹ Harris J. Johnstone, Director, Labour Standards Branch, interview.

that it will result in increased pressure from the trade union movement for some degree of uniformity."¹

The influence of the Canada Labour (Standards) Code on provincial labour standards, if not too significant so far, is bound to be felt in the future. It will also be some years hence before the Code will be implemented completely even for labour within federal jurisdiction. Some sixty years after first requested by organized labour and twenty-five years after labour began to ask for it annually, some thirty-five years after the C.C.F. first advocated it, ten years after the Conservatives decided to implement it, eight years after the Liberals adopted a commitment to it, and over a year after it was actually enacted, the Labour Code is still far from being fully effective.

"A slow sort of country!" said the Queen.
"Now, here, you see, it takes all the running
you can do to keep in the same place. If you
want to get somewhere else, you must run at
least twice as fast as that!"

¹ The opinions of all provincial deputy ministers of labour were canvassed. This is the comment of Mr. R.P. Cambell, Acting Deputy Minister, New Brunswick.

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13-14 ELIZABETH II.

CHAP. 38

An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses.

[Assented to 18th March, 1965.]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE.

1. This Act may be cited as the *Canada Labour* Short title
(Standards) Code.

INTERPRETATION.

2. In this Act,
(a)	"collective agreement" means an agreement in writing between an employer or an employer's organization acting on behalf of an employer, on the one hand, and a trade union acting on behalf of the employees in collective bargaining or as a party to an agreement with the employer or employer's organization, on the other hand, containing terms or conditions of employment of employees including provisions with reference to rates of pay and hours of work;	Definitions
"Collective agreement."
(b)	"day" means any period of twenty-four consecutive hours;	"Day."
(c)	"employee" means a person employed to do skilled or unskilled manual, clerical, technical, operational or administrative work;	"Employee."
(d)	"employer" means any person who employs one or more employees;	"Employer."

"Federal work, undertaking or business."

- (e) "federal work, undertaking or business" means
- (i) a work, undertaking or business referred to in subsection (1) of section 3 other than a work, undertaking or business of a local or private nature in the Yukon Territory or the Northwest Territories; and
 - (ii) a corporation to which this Act applies as described in subsection (2) of section 3;

"General holiday."

- (f) "general holiday" means New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day and includes any day substituted for any such holiday pursuant to section 28;

"Industrial establishment."

- (g) "industrial establishment" means any federal work, undertaking or business and includes such branch, section or other division of a federal work, undertaking or business as is designated as an industrial establishment by the regulations;

"Inspector."

- (h) "inspector" means an inspector designated pursuant to this Act;

"Minister."

- (i) "Minister" means the Minister of Labour;

"Order."

- (j) "order" means any order of the Minister made pursuant to this Act or the regulations;

"Overtime."

- (k) "overtime" means hours of work in excess of standard hours of work;

"Standard hours of work."

- (l) "standard hours of work" means the hours of work described in section 5 or prescribed by an order made under section 51;

"Trade union."

- (m) "trade union" means any organization of employees formed for purposes that include the regulation of relations between employers and employees;

"Wages."

- (n) "wages" includes every form of remuneration for work performed but does not include tips and other gratuities;

"Week."

- (o) "week" means in relation to Part I, the period between midnight on Saturday and midnight on the immediately following Saturday.

APPLICATION.

Application of Act.

3. (1) This Act applies to and in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada excluding any work, undertaking or business of a local or private nature in the Yukon Territory or Northwest Ter-

ritories but including, without restricting the generality of the foregoing,

- (a) any work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada,
- (b) any railway, canal, telegraph or other work or undertaking connecting a province with any other or others of the provinces, or extending beyond the limits of a province,
- (c) any line of steam or other ships connecting a province with any other or others of the provinces, or extending beyond the limits of a province,
- (d) any ferry between any province and any other province or between any province and any country other than Canada,
- (e) any aerodrome, aircraft or line of air transportation,
- (f) any radio broadcasting station,
- (g) any bank,
- (h) any work or undertaking that, although wholly situated within a province, is before or after its execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces, and
- (i) any work, undertaking or business outside the exclusive legislative authority of provincial legislatures,

and to and in respect of the employers of such employees and to employment upon or in connection with the operation of any such work, undertaking or business.

(2) This Act applies to and in respect of any corporation established to perform any function or duty on behalf of the Government of Canada other than a corporation that is a department under the *Financial Administration Act*.

Government corporation.

R.S., c. 116, Schedule B.

(3) This Act does not apply to or in respect of employees who are

Non-application to certain employees.

- (a) managers or superintendents or who exercise management functions, or
- (b) members of such professions as may be designated by the regulations as professions to which this Act does not apply.

4. (1) This Act applies notwithstanding any other law or any custom, contract or arrangement, whether made

Saving more favourable benefits.

before or after the commencement of this Act, but nothing in this Act shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to him than his rights or benefits under this Act.

Sunday.

(2) Nothing in this Act authorizes the doing of any work on Sunday that is prohibited by law.

PART I.

HOURS OF WORK.

Standard
hours of
work

5. (1) Except as otherwise provided by or under this Part, the working hours of an employee shall not exceed eight hours in a day and forty hours in a week, and, except as provided by or under this Part, no employer shall cause or permit an employee to work longer hours than eight hours in any day or forty hours in any week.

Averaging.

(2) Where the nature of the work in an industrial establishment necessitates irregular distribution of an employee's hours of work, the hours of work in a day and the hours of work in a week may be calculated, in such manner and in such circumstances as may be prescribed by the regulations, as an average for a period of two or more weeks.

General
holiday in
week.

(3) In a week in which a general holiday occurs that under Part IV entitles an employee to a holiday with pay in that week, the working hours of the employee in that week shall not exceed thirty-two; but, for the purposes of this subsection, in calculating the time worked by an employee in any such week, no account shall be taken of any time worked by him on the holiday or of any time during which he was at the disposal of his employer during the holiday.

Maximum
hours of
work.

6. (1) An employee may be employed in excess of the standard hours of work but, subject to sections 9 and 10, the total hours that may be worked by any employee in any week shall not exceed forty-eight hours in a week or such fewer total number of hours as may be prescribed by the regulations as maximum working hours in the industrial establishment in respect of which he is employed.

Averaging.

(2) Subsection (2) of section 5 applies in the computation of the maximum hours of work in a week prescribed under this section.

Scheduling
hours of
work.

7. Except as may be otherwise prescribed by the regulations, hours of work in a week shall be so scheduled and actually worked that each employee has at least one

full day of rest in the week, and, wherever practicable, Sunday shall be the normal day of rest in a week.

8. When an employee is required or permitted to work in excess of the standard hours of work, he shall be paid for the overtime at a rate of wages not less than one and one-half times his regular rate. Overtime pay.

9. (1) On the application of an employer or an employer's organization, the Minister, having regard to the conditions of employment in any industrial establishment and the welfare of the employees, may, by a permit in writing, authorize hours to be worked by any class of employees therein in excess of the maximum hours of work prescribed by or under section 6. Excess hours under ministerial permit.

(2) No permit may be issued under subsection (1) unless the applicant has satisfied the Minister that there are exceptional circumstances to justify the working of additional hours. Justifying permit.

(3) A permit under subsection (1) shall be issued for the period specified therein, which shall not be longer than the period during which it is anticipated that the exceptional circumstances that justified the permit will continue. Duration of permit.

(4) A permit under subsection (1) may either specify the total of the number of additional hours in excess of the maximum hours prescribed by or under section 6 or may specify the additional hours that may be worked in any day and in any week during the period of the permit. Additional hours may be specified.

(5) Where a permit has been issued under this section, the employer for whom or on whose behalf the permit was issued shall report in writing to the Minister, within fifteen days after the expiration of the period specified in the permit or within such time or times as the Minister may fix in the permit, stating the number of employees who worked in excess of the weekly hours prescribed by or under section 6 and the number of additional hours each of them worked. Report to Minister.

10. (1) The maximum hours of work in a week as prescribed by or under section 6 may be exceeded in cases of Emergency work.

- (a) accident to machinery, equipment, plant or persons;
- (b) urgent and essential work to be done to machinery, equipment or plant; or
- (c) other unforeseen or unpreventable circumstances;

but only to the extent necessary to prevent serious interference with the ordinary working of the industrial establishment affected.

Reporting additional work.

(2) Where the maximum hours of work in an industrial establishment have been exceeded under the authority of this section, the employer shall report in writing to the Minister, within fifteen days after the end of the month in which the maximum hours were exceeded, stating the nature of the circumstances in which the maximum hours were exceeded, the number of employees who worked in excess of the maximum hours, and the number of additional hours each of them worked.

PART II.

MINIMUM WAGES.

Minimum hourly wage.

11. (1) Except as otherwise provided by or under this Part, an employer shall pay to each employee of the age of seventeen years and over a wage at the rate of not less than one dollar and twenty-five cents an hour or not less than the equivalent of that rate for the time worked by him where the wages of the employee are paid on any basis of time other than hourly.

Minimum on other basis than time.

(2) Where the wages of an employee are computed and paid on a basis other than time or on a combined basis of time and some other basis, the Minister may, by order,

- (a) fix a standard basis of work to which a minimum wage on a basis other than time may be applied, and
- (b) fix a minimum rate of wage that in his opinion is the equivalent of the minimum rate under subsection (1);

and except as otherwise provided by or under this Part the employer shall pay to each employee who is paid on a basis other than time a wage at a rate not less than the minimum rate fixed by order under this subsection.

Employees under 17 years of age.

12. An employer may only employ a person under the age of seventeen years

- (a) in such occupations as may be specified by regulation, and
- (b) subject to the conditions and at a wage of not less than the minimum wage prescribed by the regulations for the occupation in which such person is employed.

Handicapped employees.

13. (1) For the purpose of enabling a person to be gainfully employed who has a disability that constitutes

a handicap in the performance of any work to be done by him for an employer, the Minister may, upon the application of the handicapped person or an employer, authorize the employment of such person at a wage lower than the minimum wage prescribed under section 11 if, having regard to all the circumstances of the case, the Minister is of the opinion that it is in the interests of such person to do so.

(2) An application made under subsection (1) shall be supported by such evidence of disability and handicap as the Minister may require. Evidence required.

14. The Governor in Council may make regulations for carrying out the purposes and provisions of this Part and, without restricting the generality of the foregoing, may make regulations Regulations applicable to this Part.

- (a) requiring employers to pay employees who report for work at the call of the employer wages for such minimum number of hours as may be prescribed whether or not the employee is called upon to perform any work after so reporting for work;
- (b) fixing the maximum price to be charged for board, whether full or partial, furnished by or on behalf of an employer to an employee, or the maximum deduction to be made therefor from the wages of the employee by the employer;
- (c) fixing the maximum price to be charged for living quarters, either permanent or temporary, furnished by or on behalf of an employer to an employee, whether or not such quarters are self-contained and whether or not the employer retains general possession and custody thereof, or the maximum deduction to be made therefor from the wages of the employee by the employer;
- (d) governing the charges or deductions for furnishing uniforms or other articles of wearing apparel that an employer may require an employee to wear or requiring an employer in any specified circumstances to provide, maintain or launder uniforms or other articles of wearing apparel that he requires an employee to wear;
- (e) governing the charges or deductions for furnishing any tools or equipment that an employer may require an employee to use and

for the maintenance and repair of any such tools or equipment;

- (f) specifying the circumstances and occupations in which persons under the age of seventeen years may be employed in any industrial establishment, fixing the conditions of such employment and prescribing the minimum wages for such employment; and
- (g) exempting, upon such terms and conditions and for such periods, as are considered advisable, any employer from the application of section 11 in respect of any class of employees who are being trained on the job, if the training facilities provided and used by the employer are adequate to provide a training program that will increase the skill or proficiency of an employee.

PART III.

ANNUAL VACATIONS.

Definitions.
"Vacation
pay."

- 15.** In this Part,
- (a) "vacation pay" means four per cent of the wages of an employee during the year of employment in respect of which he is entitled to the vacation;

"Year of
employment."

- (b) "year of employment" means continuous employment of an employee by one employer
 - (i) for a period of twelve consecutive months beginning with the date the employment began or any subsequent anniversary date thereafter, or
 - (ii) for a calendar year or other year approved by the Minister under the regulations in relation to an industrial establishment.

Annual
vacation
with pay

16. (1) Except as otherwise provided by or under this Part, every employee is entitled to and shall be granted a vacation with vacation pay of at least two weeks after every completed year of employment.

Year begun
before com-
mencement of
this Part.

(2) For the purposes of this Part a year of employment includes a year of employment begun before the coming into force of this Part and completed after that date.

Year of em-
ployment
under *Annual
Vacations Act*.

(3) Where an employee has completed a year of employment before the coming into force of this Part and has not been granted an annual vacation with vacation pay in respect thereof before that date, he shall be granted

such annual vacation with vacation pay as he was entitled to under the *Annual Vacations Act*.

17. The employer of an employee who under this Part has become entitled to a vacation with vacation pay, Granting vacation with pay.

(a) shall grant to the employee the vacation to which he is entitled, which shall begin not later than ten months immediately following the completion of the year of employment for which the employee became entitled to the vacation; and

(b) shall, at least one day before the beginning of the vacation or at such earlier time as the regulations prescribe, pay to the employee the vacation pay to which he is entitled in respect of that vacation.

18. Vacation pay shall for all purposes be deemed to be wages. Vacation pay

19. Where a general holiday occurs during the vacation granted to the employee pursuant to this Part, the vacation to which the employee is entitled under this Part may be extended by one day, but the employer shall pay to the employee in addition to the vacation pay the wages to which the employee is entitled for that general holiday. General holiday during vacation

20. (1) Where the employment of an employee by an employer is terminated before the completion of the employee's year of employment, the employer shall forthwith pay to the employee Termination of employment during year

(a) any vacation pay then owing by him to the employee under this Part in respect of any prior completed year of employment, and

(b) four per cent of the wages of the employee during the completed portion of his year of employment.

(2) Notwithstanding paragraph (b) of subsection (1), an employer is not required to pay an employee any amount under that paragraph unless the employee has been continuously employed by him for a period of thirty days or more. Employment for 30 days required.

21. Where any particular federal work, undertaking or business in which an employee is employed is, by sale, lease, merger or otherwise, transferred from one employer to another employer, the employment of the employee by the two employers before and after the transfer Transfer of work, undertaking or business.

of the work, undertaking or business shall, for the purposes of this Part, be deemed to be continuous with one employer, notwithstanding the transfer.

Regulations
in relation
to annual
vacations.

22. The Governor in Council may make regulations for carrying out the purposes and provisions of this Part and, without restricting the generality of the foregoing, may make regulations

- (a) defining the circumstances and conditions under which the rights of an employee under this Part may be waived or the enjoyment thereof postponed;
- (b) prescribing the notices to be given to employees of the times when vacations may be taken;
- (c) prescribing the time when vacation pay shall be paid;
- (d) defining the absences from employment that shall be deemed not to have interrupted continuity of employment;
- (e) respecting the approval by the Minister of a year of employment in relation to any industrial establishment;
- (f) for the calculation and determination of vacation and vacation pay in the case of seasonal or temporary employees or in other suitable cases;
- (g) providing for the granting of vacation or payment of vacation pay in the event of temporary cessation of employment; and
- (h) providing for the application of this Part where, owing to illness or other unavoidable absence, an employee has been absent from his employment.

Repeal of
1957-58,
c. 24.

23. The *Annual Vacations Act* is repealed.

PART IV.

GENERAL HOLIDAYS.

"Employed
in a
continuous
operation"
defined.

24. In this Part, the expression "employed in a continuous operation" refers to employment in

- (a) any industrial establishment in which in each seven day period, operations once begun normally continue without cessation until the completion of the regularly scheduled operations for that period;
- (b) any operations or services concerned with the running of trains, planes, ships, trucks and

other vehicles whether in scheduled or non-scheduled operations;

- (c) any telephone, radio, television, telegraph or other communication or broadcasting operations or services; or
- (d) any operation or service normally carried on without regard to Sundays or public holidays.

25. Except as otherwise provided by this Part, every employee is entitled to and shall be granted a holiday with pay on each of the general holidays falling within any period of his employment. Entitlement to holidays.

26. (1) Except as otherwise provided by this Part and subject to subsection (2), when a general holiday falls on a day that is a non-working day for an employee, the employee is entitled to and shall be granted a holiday with pay at some other time, which may be by way of addition to his annual vacation or granted as a holiday with pay at a time convenient to him and his employer. General holiday falling on day off.

(2) Except as otherwise provided by this Part, when New Year's Day, Dominion Day or Christmas Day falls on a Sunday or Saturday that is a non-working day, the employee is entitled to and shall be granted a holiday with pay on the working day immediately preceding or following the general holiday. Alternative day for holiday falling on non-working Saturday or Sunday.

27. Section 26 does not apply in respect of any employees who are employed under the terms of a collective agreement that entitles such employees to at least eight holidays with pay, exclusive of any annual vacation, in each year. Exemption under collective agreement.

28. (1) Any other holiday may be substituted for a general holiday in any of the circumstances following: Substituted holidays.

- (a) where a class of the employees of an employer is represented by a trade union and the parties to a collective agreement entered into with regard to the terms or conditions of employment of the employees notify the Minister in writing that a specified day has been designated in the collective agreement as a holiday with pay in lieu of a general holiday under this Part, such designated day shall, for those employees mentioned in the collective agreement, be a general holiday for the purposes of this Act; or

- (b) where no employees of an employer are represented by a trade union or where a class of employees is not provided for under a collective agreement with regard to general holidays, and the employer applies to the Minister to substitute another designated holiday for any general holiday under this Part, the Minister may, if he is satisfied that a majority of the employees or, as the case may be, that a majority of the class of employees who are not provided for under a collective agreement in regard to general holidays, concur with the application, approve the substitution of such designated holiday for the specified general holiday, and such designated day shall for those employees be a general holiday for the purposes of this Act.

Existing
collective
agreements.

(2) Where a collective agreement that is in effect on the day this Part comes into force provides for at least eight holidays with pay in each year, exclusive of any annual vacation, the employer who is bound by the collective agreement may designate a holiday specified in the agreement as a holiday in lieu of a specified general holiday under this Part and, on notification thereof to the Minister, that designated holiday shall, for those employees of the employer who are mentioned in the collective agreement, be a general holiday for the purposes of this Act during the period the collective agreement is in effect.

Weekly or
monthly pay
not to be
reduced for
holiday

29. (1) An employee whose wages are calculated on a weekly or monthly basis shall not have his weekly or monthly wages reduced for a week or month in which a general holiday occurs by reason only of his not working on the general holiday.

Pay at daily
or hourly
rate

(2) An employee whose wages are calculated on a daily or hourly basis shall, for a general holiday on which he does not work, be paid at least the equivalent of the wages he would have earned at his regular rate of wages for his normal hours of work.

Pay on
other basis.

(3) An employee whose wages are calculated on any basis other than a basis mentioned in subsection (1) or (2) shall, for a general holiday on which he does not work, be paid at least the equivalent of the wages he would have earned at his regular rate of wages for his normal working day.

Additional
pay for
holiday
work.

30. Except in the case of an employee employed in a continuous operation, an employee who is required to

work on a day on which he is entitled under this Part to a holiday with pay shall be paid, in addition to his regular rate of wages for that day, at a rate at least equal to one and one-half times his regular rate of wages for the time worked by him on that day.

31. An employee employed in a continuous operation who is required to work on a day on which he is entitled under this Part to a holiday with pay

Holiday work
in continuous
operation
employment.

- (a) shall be paid, in addition to his regular rate of wages for that day, at a rate at least equal to one and one-half times his regular rate of wages for the time worked by him on that day; or
- (b) shall be given a holiday and pay in accordance with section 29 at some other time, which may be by way of addition to his annual vacation or granted as a holiday with pay at a time convenient to him and the employer.

32. Pay granted to an employee for a general holiday on which he does not work shall for all purposes be deemed to be wages.

Holiday
pay.

33. No employee is entitled to be paid for a general holiday on which he does not work when he is not entitled to wages for at least fifteen days during the thirty calendar days immediately preceding the general holiday; and no employee who is employed in a continuous operation is entitled to be paid for a general holiday on which he did not report for work after having been called to work on that day.

Exceptions.

34. (1) An employee is not entitled to pay for a general holiday that occurs in his first thirty days of employment with an employer if the employee does not work on that day, but if he is required to work on the general holiday he shall be paid at a rate at least equal to one and one-half times his regular rate of wages for the time worked by him on that day, unless he is employed in a continuous operation in which case he is entitled to his regular rate of wages for the time worked by him on that day.

Holiday
during
first 30 days
of employ-
ment.

(2) For the purposes of this section a person shall be deemed to be in the employment of another person when he is available at the call of such other person whether or not he is called upon to perform any work therefor.

"Employ-
ment"
for purposes
of this
section.

PART V.

ADMINISTRATION AND GENERAL.

Inquiries.

Inquiries.

35. (1) The Minister may, for any of the purposes of this Act, cause an inquiry to be made into and concerning employment in any industrial establishment and may appoint one or more persons to hold the inquiry.

Powers on an inquiry

(2) A person appointed pursuant to subsection (1) has and may exercise all of the powers of a person appointed as a commissioner under Part I of the *Inquiries Act*.

Inspections.

Inspectors.

36. (1) The Minister may designate any person as an inspector under this Act.

Powers of inspectors.

(2) An inspector may, for the purposes of enforcing this Act or the regulations,

- (a) inspect and examine all books, payrolls and other records of an employer that in any way relate to the wages, hours of work or conditions of employment affecting any employee;
- (b) take extracts from or make copies of any entry in the books, payrolls and other records mentioned in paragraph (a);
- (c) require any employer to make or furnish full and correct statements, either orally or in writing in such form as may be required, respecting the wages paid to all or any of his employees, and the hours of work and conditions of their employment; and
- (d) require an employee to make full disclosure, production and delivery to him of all records, documents, statements, writings, books, papers, extracts therefrom or copies thereof or of other information either verbal or in writing that the employee has in his possession or under his control and that in any way relate to the wages, hours of work or conditions of his employment.

Right to enter premises.

(3) An inspector may at any reasonable time enter upon any place used in connection with a federal work, undertaking or business for the purpose of making an inspection authorized under subsection (2), and may, for such purpose, question any employee apart from his employer.

(4) An inspector shall be furnished by the Minister with a certificate of his authority and on entering any place used in connection with a federal work, undertaking or business shall, if so required, produce the certificate to the person in charge thereof.

Certificate of authorization.

(5) The person in charge of any federal work, undertaking or business and every person employed thereupon or in connection therewith shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties under this Act or the regulations.

Duty to assist inspector.

37. An inspector may administer all oaths and take and receive all affidavits and statutory declarations required under subsection (2) of section 36 and certify to the administration or taking thereof.

Administering oaths.

38. (1) Where an inspector finds that an employer has failed to pay an employee

Where under-payments found on inspection.

- (a) the minimum wage prescribed under this Act,
- (b) any overtime pay to which the employee is entitled under this Act, or
- (c) any vacation pay or holiday pay to which the employee is entitled under this Act,

the inspector may determine the difference between the wages actually paid to the employee and the wages to which the employee is entitled, and, if the amount of the difference is agreed to in writing by the employer and the employee, the employer shall, within five days after the date of the agreement, pay that amount to the employee on the direction of the inspector or to the Minister who shall pay it over to the employee forthwith upon the receipt thereof by him.

(2) No prosecution for failure to pay an employee the full wages to which he was entitled under this Act shall, without the written consent of the Minister, be instituted against the employer when he has made payment of any amount of difference in wages in accordance with subsection (1).

Consent required for prosecution.

Information and Returns.

39. (1) Every employer shall furnish such information relating to the wages of his employees, their hours of work, and the general holidays, annual vacations and conditions of work of his employees, and make such returns thereon from time to time, as the Minister may require.

Information and returns.

(2) Every employer shall make and keep for a period of at least twenty-four months after the work is performed a record of the name, address, age if under

Records to be kept.

the age of seventeen years, wage rate, hours worked, and the actual earnings of and payments to each of his employees, and such records shall be available at all reasonable times for examination by an inspector.

Notice to
furnish
information.

40. (1) Where the Minister is authorized to require a person to furnish information under this Act or the regulations, the Minister may require the information to be furnished by a notice to that effect served personally or sent by registered mail addressed to the last known address of the person for whom the notice is intended, and such person shall furnish the information within such reasonable time as is specified in the notice.

Proof of
service of
notice

(2) A certificate of the Minister certifying that a notice was sent by registered mail to the person to whom it was addressed, accompanied by an identifying post office certificate of the registration and a true copy of the notice, is admissible in evidence and in the absence of any evidence to the contrary is proof of the statements contained therein.

Proof of
failure to
comply

(3) Where the Minister is authorized to require a person to furnish information under this Act or the regulations, a certificate of the Minister certifying that the information has not been furnished is admissible in evidence and in the absence of any evidence to the contrary is proof of the statements contained therein.

Proof of
documents

(4) A certificate of the Minister certifying that a document annexed thereto is a document or a true copy of the document made by or on behalf of the Minister shall be received in evidence and have the same force and effect as if it had been proven in the ordinary way.

Proof of
authority

(5) A certificate under this section signed or purporting to be signed by the Minister is admissible in evidence without proof of his appointment or signature.

Pay
statement

41. (1) An employer shall, at the time of making any payment of wages to an employee, furnish to the employee a statement in writing setting out

- (a) the period for which the payment of wages is made;
- (b) the number of hours for which payment is made;
- (c) the rate of wages;
- (d) details of the deductions made from the wages; and
- (e) the actual sum being received by the employee.

Exemption.

(2) The Minister may, by order, exempt any employer from any or all of the requirements of subsection (1).

*Offences and Penalties.***42.** A person who

Offences.

- (a) contravenes any provision of this Act or the regulations, or any order made thereunder; or
- (b) discharges or threatens to discharge or otherwise discriminates against a person because that person
 - (i) has testified or is about to testify in any proceeding or inquiry had or taken under this Act, or
 - (ii) has given any information to the Minister or an inspector regarding the wages, hours of work, annual vacation or conditions of work of the employee or any of his fellow employees in an industrial establishment;

is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

43. A complaint or information under this Act may relate to one or more offences by one employer in respect of one or more of his employees.

Procedure.

44. Proceedings in respect of an offence under this Act may be instituted at any time within two years after the time when the subject matter of the proceedings arose.

Time limit.

45. (1) Where an employer has been convicted of an offence under this Act in respect of any employee, the convicting court may, in addition to any other penalty, order the employer to pay to the employee any overtime pay, vacation pay, holiday pay or other wages to which the employee is entitled under this Act the non-payment or insufficient payment of which constituted the offence for which the employer was convicted.

Order to pay arrears of wages.

(2) Where an employer has been convicted of an offence under this Act in respect of the discharge of an employee, the convicting court may, in addition to any other penalty, order the employer

Reinstatement of pay and position.

- (a) to pay compensation for loss of employment to the employee not exceeding such sum as in the opinion of the court is equivalent to the wages that would have accrued to the employee up to the date of conviction but for such discharge; and

- (b) to reinstate the employee in his employ at such date as in the opinion of the court is just and proper in the circumstances and in the position that the employee would have held but for such discharge.

Refusal to
comply
with order.

(3) An employer who refuses or neglects to comply with an order of a convicting court made under this section is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding fifty dollars for each day during which such refusal or failure continues.

When
inaccurate
records kept.

(4) In determining the amount of wages or overtime for the purposes of subsection (1), if the convicting court finds that the employer has not kept accurate records as required by this Act or the regulations, the employee affected shall be conclusively presumed to have been employed for the maximum number of hours a week allowed under this Act and to be entitled to the full weekly wage therefor.

Identity of
complainants.

46. Where a person who makes a complaint to the Minister requests that his name and identity be withheld, his name and identity shall not be disclosed by the Minister or his officials except where disclosure is necessary for the purposes of a prosecution or is considered by the Minister to be in the public interest.

Civil remedy.

47. No civil remedy of an employee against his employer for arrears of wages is suspended or affected by this Act.

Ministerial Orders.

Orders.

48. Where by this Act or the regulations the Minister is authorized to make any order in respect of any matter, the order may be made to apply generally or in particular cases or to apply to classes of employees or industrial establishments.

Annual Report.

Report to
Parliament.

49. The Minister shall, within three months after the termination of each fiscal year, prepare an annual report on the administration of this Act including a statement showing the additional hours worked by employees under permits issued by the Minister under section 9 and the additional hours worked under section 10, and cause the report to be laid before Parliament forthwith if Parliament is then sitting or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

Regulations.

50. The Governor in Council may make regulations for carrying out the purposes of this Act and, without restricting the generality of the foregoing, may make regulations

Regulations.

- (a) requiring employers to keep records of wages, vacations, holidays and overtime of employees and of other particulars relevant to the purposes of this Act or any Part thereof;
- (b) designating any branch, section or other division of any federal work, undertaking or business as an industrial establishment for the purposes of this Act or any Part thereof;
- (c) governing the production and inspection of records required to be kept by employers;
- (d) for calculating and determining wages received by an employee in respect of his employment, including the monetary value of remuneration other than money and the regular rate of wages of employees who are not paid solely on a basis of time;
- (e) prescribing the maximum number of hours that may elapse between the commencement and termination of the working-day of any employee;
- (f) fixing the minimum period that an employer may allow his employee for meals, and the maximum period for which an employer may require or permit an employee to work or be at his disposal without a meal period intervening;
- (g) requiring an employer in any industrial establishment to notify employees, by the publication of such notices, in such manner as may be prescribed, of the provisions of this Act or any regulation or order made thereunder, particulars of hours of work including the hours at which shifts change, particulars of rest periods and meal periods and other matters related to hours and conditions of work of employees;
- (h) providing for the payment of any wages of an employee to the Minister or to some other person in the event that the employee cannot be found or in any other case;
- (i) providing for the establishment of consultative or advisory committees to advise the Minister on any matters arising in relation to the administration of this Act; and

- (j) for any other matter or purpose that under this Act is required or permitted to be prescribed by regulation.

Special and Transitional Provisions.

Order of
deferment or
suspension
of Part I by
Minister.

51. (1) Where upon the submission of any person it is shown to the satisfaction of the Minister that the introduction of the standard hours of work or the maximum hours of work under Part I in any federal work, undertaking or business

- (a) would be or is unduly prejudicial to the interests of the employees therein or to any class of employees therein, or
(b) would be or is seriously detrimental to the operation of the federal work, undertaking or business,

the Minister may by order defer or suspend the operation of Part I in respect of that federal work, undertaking or business or that class of employees therein for such period as may be fixed in the order; but a period of deferment or suspension under this subsection shall not exceed a period of eighteen months from the date of the coming into force of Part I, or the date of the order, whichever is the later date.

Order of
deferment or
suspension of
Part I by
Governor in
Council.

(2) Where it is made to appear from a report of an inquiry held pursuant to section 35 that, in the case of any federal work, undertaking or business, or of any class of employees therein,

- (a) a longer period of deferment or suspension than has been or may be ordered by the Minister under subsection (1) is required in the best interests of the employees or any class of employees therein, or
(b) certain provisions of Part I would unduly disturb any employment custom peculiar to the federal work, undertaking or business or any operation therein,

the Governor in Council, on the recommendation of the Minister, may by order defer or suspend the operation of Part I in respect of that federal work, undertaking or business or that class of employees therein.

Prescribing
hours of
work.

(3) An order made under subsection (1) may, and an order under subsection (2) shall prescribe the hours of work that shall, in respect of the federal work, undertaking or business or class of employees therein to which the order relates, be the hours of work during the deferment or suspension granted by the order; and no employer of any employee in respect of whom the order applies shall require

the employee to work in excess of the hours of work prescribed in the order except upon such conditions or in such circumstances or upon the payment of such overtime pay as may be prescribed in the order.

(4) An order made under this section may prescribe different hours of work for different periods of time during the deferment or suspension granted by the order.

Differing
hours of
work.

(5) The Governor in Council, upon the recommendation of the Minister, may, from time to time, by order, amend or revoke an order made under subsection (2) if it is made to appear from a report of an inquiry held pursuant to section 35 that it is in the public interest, or in the interest of any class of employees, to do so.

Amending or
revoking
orders.

52. (1) Where upon the submission of any person it is shown to the satisfaction of the Minister that the immediate introduction of the minimum wages under Part II in any federal work, undertaking or business organized and operated in a local area

Deferment of
section 11.

(a) would unduly prejudice the interests of the employees therein or any class of employees therein, or

(b) would be seriously detrimental to the operation of the federal work, undertaking or business, the Minister may by order defer the operation of section 11 in respect of that federal work, undertaking or business or that class of employees therein to the 1st day of January, 1967 or to such earlier day as may be fixed in the order.

(2) An order made under subsection (1) shall specify the minimum rate of wages that shall be paid during the period of deferment granted by the order; and no employer of any employee in respect of whom the order applies shall pay such employee a wage at a rate that is less than the minimum rate of wages specified in the order in respect of such employee.

Minimum
wage applying
during
period of
deferment.

(3) An order made under subsection (1) may specify different minimum rates of wages for different periods of time within the period of deferment granted by the order.

Differing
minimum
wages.

53. (1) The Minister may, as soon as may be after the 1st day of July, 1965, compile and publish in the *Canada Gazette* a list of such submissions for orders under sections 51 and 52 deferring the operation of Part I or section 11 in respect of any federal work, undertaking or business or class of employees therein as were pending on that day; and the operation of Part I or section 11, as the case may be, is, in respect of the federal work, undertaking or busi-

Submission
pending on
1st of
July,
1965.

ness or class of employees therein to which a submission referred to in such list relates, deferred pending the rejection of the submission or the making of an order under section 51 or 52, as the case may be.

Effect of
subsequent
rejection.

(2) Where the Minister subsequently rejects a submission mentioned in subsection (1),

(a) if the submission was made for an order deferring the operation of Part I, that Part operates, in respect of the federal work, undertaking or business or class of employees therein to which the submission relates, on and after the date of rejection by the Minister of the submission; and

(b) if the submission was made for an order deferring the operation of section 11, that section operates, in respect of the federal work, undertaking or business or class of employees therein to which the submission relates, on and after the 1st day of July, 1965, and the employees concerned shall forthwith be paid any arrears of wages to which they thereby become entitled.

Publishing
notice of
rejection

(3) Where a submission mentioned in subsection (1) is rejected pursuant to subsection (2), the Minister shall, as soon as may be thereafter, cause a notice of such rejection to be published in the *Canada Gazette*.

Commencement.

Coming into
force.

54. Parts I, II, III and IV of this Act shall come into force on the 1st day of July, 1965.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

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Number 256

CANADA LABOUR (STANDARDS) CODE.

Canada Labour Code Regulations (General)

ROGER DUHAMEL, F.R.S.C.
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OTTAWA, 1965

SOR/65-256

CANADA LABOUR (STANDARDS) CODE.

Canada Labour Code Regulations (General).

P.C. 1965-1141

AT THE GOVERNMENT HOUSE AT OTTAWA.

FRIDAY, the 18th day of JUNE, 1965.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

His Excellency the Governor General in Council, on the recommendation of the Minister of Labour, pursuant to the Canada Labour (Standards) Code, is pleased hereby to make the annexed "Canada Labour Code Regulations (General)".

REGULATIONS UNDER THE CANADA LABOUR (STANDARDS) CODE.

Short Title.

1. These Regulations may be cited as the *Canada Labour Code Regulations (General)*.

Interpretation.

2. In these Regulations,

- (a) "Act" means the *Canada Labour (Standards) Code*;
- (b) "Director" means the Director of Labour Standards, Department of Labour, Ottawa; and
- (c) "wages" means wages within the meaning of the Act.

Application to Professions.

3. The Act does not apply to the medical, dental, architectural, engineering and legal professions.

Hours of Work.

4. Except as provided in section 5 of these Regulations, where the nature of the work in an industrial establishment necessitates irregular distribution of hours of work of any class of employees with the result that

- (a) those employees have no regularly scheduled daily or weekly hours, or
- (b) the employees have regularly scheduled hours but the number of hours scheduled differs from time to time,

the hours of work in a day and hours of work in a week may be calculated for the employees within the class as an average for a period not exceeding 13 consecutive weeks, subject to the following Rules:

- I. The standard hours of work (being the hours for which the regular rate of pay may be paid) of an employee within the class shall not exceed 520 hours if the averaging period is 13 weeks or, if the averaging period selected by the employer is less than 13 weeks, that number of hours that equals the product of the number of weeks so selected multiplied by 40; and the overtime rate prescribed by section 8 of the Act shall be paid for all hours worked in excess of the standard hours prescribed in this Rule, but hours for which a premium rate of at least one and one-half times the regular rate has been paid shall not be counted in computing the hours for which the overtime rate is to be paid at the end of the averaging period.
- II. If the averaging period is 13 weeks, the total hours that may be worked by an employee within the class shall not exceed 624 hours, or, if the averaging period selected by the employer is less than 13 weeks, the number of hours that is the product of the number of weeks so selected multiplied by 48.
- III. If during the averaging period an employee within the class is granted a general holiday or other holiday with pay on which he does not work or an annual vacation, the number of hours specified in Rule I and in Rule II shall be reduced by 8 hours for every such general or other holiday or day of annual vacation but not more than 40 hours shall be deducted for any full week of annual vacation.
- IV. For any week in the averaging period in which an employee within the class is not entitled to wages, the number of hours specified in Rule I and in Rule II shall be reduced by 40.

- V. If an employee within the class terminates his employment of his own accord during an averaging period in effect under these Regulations, he shall be paid at his regular rate of pay for his hours worked during the completed part of the averaging period, and if his employment is terminated by the employer, he shall be paid overtime pay for any hours worked in excess of an average 40-hour week over the period he has worked.
- VI. Any hours for which a premium rate of at least one and one-half times the regular rate has been paid shall not be counted in determining the overtime pay that the employee is to be paid on termination of his employment.
5. (1) Where
- (a) the nature of the work in an industrial establishment necessitates irregular distribution of hours of work of any class of employees with the result that
 - (i) those employees have no regularly scheduled daily or weekly hours, or
 - (ii) the employees have regularly scheduled hours but the number of hours scheduled differs from time to time, and
 - (b) a 13-week period is not sufficiently long to provide for the period in which fluctuations take place,
- an employer may average over a longer period than 13 weeks if he establishes to the satisfaction of the Minister that a longer period is necessary.
- (2) Where the hours of work of a class of employees are calculated as an average for a period in excess of 13 weeks
- (a) the standard hours of work of an employee within the class shall not exceed that number of hours that equals the product of the number of weeks in the averaging period that is satisfactory to the Minister multiplied by 40; and
 - (b) the total hours that may be worked by an employee within the class shall not exceed the number of hours that equals the product of the number of weeks in the averaging period that is satisfactory to the Minister multiplied by 48.
- (3) Where an averaging period has been calculated under this section for a class of employees,
- (a) the overtime rate prescribed by section 8 of the Act shall be paid for all hours worked in excess of the standard hours prescribed in paragraph (a) of subsection (2) of this section, but hours for which a premium rate of at least one and one-half times the regular rate has been paid shall not be counted in computing the hours for which the overtime rate is to be paid at the end of the averaging period; and
 - (b) Rules III to VI in section 4 apply in respect of those employees.

6. The employer shall notify the Director that he has adopted an averaging period under section 4 of these Regulations for his industrial establishment, indicating the classes of employees to whom it applies, the number of employees in each class at the time of notification and the periods for which the employer is averaging.

Weekly Rest.

7. Where hours to be worked in excess of maximum hours of work prescribed by or under section 6 of the Act are permitted under section 9 of the Act, the Minister may specify in the permit that the hours of work in the week need not be scheduled as required by section 7 of the Act during the period of the permit and the Minister may prescribe in the permit alternative periods of rest to be observed.

8. During an averaging period, hours of work may be scheduled and actually worked without regard to section 7 of the Act.

Special Employees.

9. (1) An employer may employ a person under the age of 17 years in any office, plant, service, transportation, communication, construction, maintenance, repair or other occupation in a federal work, undertaking or business if

- (a) he is not required, under the law of the province in which he is ordinarily resident, to be in attendance at school; and
- (b) the work in which he is to be employed
 - (i) is not carried on underground in a mine,
 - (ii) would not cause him to be employed in or enter a place that he is prohibited from entering under the *Explosives Regulations*,
 - (iii) is not work as an atomic energy worker as defined in the *Atomic Energy Control Regulations*,
 - (iv) is not work that under the *Canada Shipping Act* he is prohibited by reason of age from doing, or
 - (v) is not likely to be injurious to his health or to endanger his safety.

(2) An employer may not cause or permit an employee under the age of 17 years to work between 11 o'clock P.M. on one day and 6 o'clock A.M. on the following day.

(3) An employer who employs any person under the age of 17 years pursuant to subsection (1) shall pay him a wage at the rate of not less than one dollar an hour or not less than the equivalent of that rate for the time worked by him where his wages are paid on any basis of time other than hourly; but an employer may pay a person under the age of 17 years who is being trained on the job at a rate less than one dollar an hour if the lesser rate is permitted under section 10 of these Regulations for the class of employees to which he belongs.

10. An employer is exempted from the application of section 11 of the Act in respect of any of his employees who are being trained on the job if

- (a) those employees are registered apprentices under a provincial apprenticeship Act and are being paid in accordance with a schedule of rates established thereunder; or
- (b) the employer establishes to the satisfaction of the Minister that the employees are undergoing training, under the direct supervision of a person fully qualified in the occupation to be learned, in preparation for employment with the employer or elsewhere at a rate of pay in excess of the minimum rate established by section 11 of the Act, and that such employees are and will be paid during the training period at not less than a rate or rates that the Minister considers appropriate for the training period or any parts thereof.

General Holidays.

11. For the purposes of subsections (2) and (3) of section 29 of the Act, if an employee's hours of work differ from day to day or if his wages are calculated on a basis other than time, the wages he would have earned at his regular rate of wages for his normal hours of work may be deemed to be

- (a) the average of his daily earnings exclusive of overtime for the days he has worked in the four-week period immediately preceding the general holiday, or
- (b) an amount calculated by a method agreed upon under or pursuant to a collective agreement.

Annual Vacations.

12. An employer shall give each employee entitled to an annual vacation at least two weeks' notice of the commencement of his annual vacation unless otherwise agreed between the employer and the employee.

13. Where it is the custom in an industrial establishment in which a person is employed to pay vacation pay on the regular pay day during or immediately following the vacation of an employee, the employer may postpone the payment of vacation pay from the day provided under paragraph (b) of section 17 of the Act to the customary pay day.

14. (1) The Director, if he is satisfied of the existence of exceptional circumstances, may, upon a joint application made to him by the employer and the employee setting forth that because of the existence of exceptional circumstances the employee agrees to waive, with respect to a designated year of employment, the vacation to which he is entitled under section 16 of the Act, authorize the application as a waiver by the employee of his right to the grant of a vacation under section 17 of the Act in respect of that designated year of employment.

(2) Notwithstanding subsection (1), the employer, not later than ten months immediately following the completion of the year of employment referred to in subsection (1) or within such other period as is provided by these Regulations, shall pay to the employee vacation pay in respect to that year.

15. The right of an employee to take a vacation with vacation pay to which he is entitled under the Act may be postponed in respect of a designated year of employment in the manner following:

- (a) by filing with the Director a written agreement between the employer and the employee stating that both parties desire to postpone, in respect of the designated year of employment, the taking by the employee of the vacation with vacation pay, and the filing of the agreement shall authorize the postponement; or
- (b) by sending to the Director a written application by the employer requesting because of the existence of specified exceptional circumstances that authority be granted to postpone, in respect of the designated year of employment, the taking of vacation with vacation pay by an employee, and the granting of the application by the Director shall authorize the postponement.

16. (1) An application for approval of a calendar year or other year as a year of employment shall be made in writing to the Director.

- (2) The application shall contain the following information:
 - (a) the name and address of the employer;
 - (b) the calendar year or other year for which approval is sought;
 - (c) the reasons for requesting such approval;
 - (d) a statement of the present vacation arrangements in effect for employees of the employer; and
 - (e) such other information as may be required by the Minister.
- (3) The Minister may
 - (a) approve the application as submitted;
 - (b) approve the application for a definite or indefinite period of time and subject to such terms and conditions as the Minister deems desirable; or
 - (c) deny the application.

Board and Lodging and Other Remuneration.

17. Where board or lodging or both are furnished by or on behalf of an employer to an employee, if the arrangement is accepted by such employee, the amount by which the wages of an employee may be reduced for any pay period below the minimum wage prescribed in section 11 of the Act, either by deduction from wages or by payment from the employee to the employer for such board and lodging, shall not exceed the following amounts:

- (a) for each meal, 50¢ (fifty cents); and
- (b) for lodging per day, 60¢ (sixty cents).

18. For the purposes of calculating and determining wages, the monetary value of any board, lodging or any remuneration other than money received by an employee in respect of his employment, shall be the amount that has been agreed upon between the employer and the employee, but where there is no such agreement or where the amount agreed upon unduly affects the wages of the employee, such amount as may be determined by the Minister.

*Payment of Wages, Vacation or Holiday Pay or other
Remuneration when Employee Cannot be Found.*

19. (1) Where an employer is required to pay wages to an employee or an employee is entitled to payment of wages by the employer and the employee cannot be found for the purpose of making such payment, the employer shall, not later than six months after the wages became due and payable, pay the wages to the Minister and payment made to the Minister shall be deemed payment to the employee.

(2) The Minister shall deposit any amounts received under subsection (1) to the credit of the Receiver General in an account to be known as the Labour (Standards) Code Suspense Account, and the Minister may authorize payments out of the account to any employee whose wages are held therein.

(3) The Minister shall keep a record of receipts and disbursements from the Labour (Standards) Code Suspense Account.

(4) Where, upon the termination of three years from the date the Minister received a payment under subsection (1), no claim has been made by the employee entitled thereto for such wages, the amount so held shall upon the order of the Minister become the property of Her Majesty in right of Canada.

Inadequate Records.

20. (1) Where an inspector finds that the records made and kept by an employer pursuant to subsection (2) of section 39 of the Act are inadequate, he shall advise the employer of the inadequacy.

(2) Where, on a subsequent inspection, an inspector finds that an employer has not corrected the inadequacy on which he had previously advised, he shall notify the Minister of the failure to keep adequate records and the Minister may, by order, prescribe the manner in which records required under section 39 of the Act are to be made and kept by the employer thereafter.

Notices to be Posted.

21. (1) Where an averaging plan is in effect, under these Regulations, in an industrial establishment, an employer shall post, in readily accessible places where they may be seen by the employees of the class or classes affected, notices giving clear information concerning the averaging plan in effect in such industrial establishment.

(2) Where, under the Act or these Regulations, an order, permit or authorization is granted affecting an industrial establishment or a class or classes of employees therein

(a) the employer shall post, in readily accessible places where they may be seen by the employees of the class or classes affected, copies of such order, permit or authorization affecting such employees; or

(b) the Minister may order such other means of notifying employees in an industrial establishment of the provisions of an order, permit or authorization affecting them as is, in his opinion, satisfactory in the circumstances.