

The Alberta Labour Code stacks the deck against working Albertans

All working Canadians have the right, under the Constitution, to join unions and bargain collectively.

But Alberta's current Labour Code has been deliberately designed to make it difficult for working Albertans to exercise those rights. The deck has been stacked against them.

As the first non-conservative government in Alberta since the 1920s, the NDP has an opportunity – some might say a responsibility – to unstack the deck and level the playing field.

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Alberta's one-sided Labour Code

The Labour Code is the piece of legislation that sets out the rules governing how working Albertans can come together in unions and collectively bargain contracts with their employers.

Unfortunately, generations of right-wing governments in Alberta have stacked the deck against working people in our province, leaving us with a one-sided Labour Code that favours employers at the expense of employees.

To understand why this matters, a sports analogy is helpful.

The Code is the rule book governing the way workers and employees “play the game” of organizing and collective bargaining. But, it’s a rule book that consistently gives the advantage to one team (employers) and the expense of the other (workers).

Fair-minded people would cry foul if a hockey or football game was so obviously rigged against one team. It’s time for Albertans to cry foul on the Labour Code.

Why Do We Need Labour Code Reform?

We need Labour Code reform because:

- Our Code is out-of-step with the law...
- And, because unions are good for society

In a number of recent landmark decisions, the Supreme Court of Canada has concluded that all Canadians have the constitutionally protected right to join unions and bargain collectively.

They've even made it clear that these rights include the right to strike.

“s. 2(d) (of the Chart of Rights and Freedoms) guarantees the right of employees to meaningfully associate in the pursuit of collective workplace goals. This guarantee includes a right to collective bargaining. Collective bargaining is a necessary precondition to the meaningful exercise of the constitutional guarantee of freedom of association. It is not a derivative right protected only if state action makes it effectively impossible to associate for workplace matters... The government cannot enact laws or impose a labour relations process that substantially interferes with the right of employees to associate for the purpose of meaningfully pursuing collective workplace goals.”

Mounted Police Association of Ontario v. Canada (Attorney General), [2015] 1 S.C.R. 3

The Charter values of “[h]uman dignity, equality, liberty, respect for the autonomy of the person and the enhancement of democracy” support protecting the right to a meaningful process of collective bargaining”

Saskatchewan Federation of Labour v. Saskatchewan, [2015] 1 S.C.R. 245

The Supreme Court has taken this position, in part, because they recognize that unions and the process of collective bargaining are “social goods”.

Specifically, they have argued that unions help address the power imbalance that exists between workers and employers; and between the powerful and everyone else.

Implicit in the Courts' rulings is the notion that unions are good for Canadian society.

Strong unions give their members good contracts; but they also help create a more level political playing field in which the wealthy and powerful don't always get their way, and in which programs and policies that benefit the many (like Medicare and CPP) don't always lose out to programs and policies that benefit the few (like tax cuts for the rich).

In keeping with this view, the Court has made it clear that provincial and federal labour codes in Canada need to respect the rights that all Canadians have to join a union and bargain collectively.

Unfortunately, instead of supporting and facilitating these rights, Alberta's existing Labour Code throws up barriers and hurdles.

Why should Albertans support Labour Code reform?

Albertans should support Labour Code reform because unions are good for the economy

At the same time as our courts have been re-evaluating their position on unions, economists and policy organizations have also become increasingly supportive of laws that make it easier for working people to join unions and bargain collectively.

For example, over the past three years, traditionally conservative organizations like the International Monetary Fund (IMF), the World Bank and the Organization for Economic Cooperation and Development (OECD) have all concluded that jurisdictions that support and facilitate unionization and collective bargaining have stronger economies than those that prohibit or discourage these activities.

“Lax hiring and firing regulations, lower minimum wages relative to the median wage, and less prevalent collective bargaining and trade unions are associated with higher market inequality.”

International Monetary Fund

Of course, anti-union employer groups like the Merit Shop Contractors Association will challenge these conclusions. They will say that the economy is better served by laws that discourage and inhibit collective bargaining.

But the weight of evidence and history is against them. Governments in many American states have enacted the kinds of laws that they prefer over the past 30 years, and the results for working people and the broader economy have been disastrous.

In the US states where governments have done what the Merit Shop wants the Alberta government to do, both wages and economic growth are lower than in other states; and inequality is higher.

So, the choice between laws that facilitate collective bargaining and those that inhibit it is not hypothetical. The results are in, and they're clear. That's why the IMF and the World Bank have become advocates for legal frameworks that encourage collective bargaining.

The decline of unions increases “post-redistribution inequality by reducing the influence of unions and organized workers on policy makers to adopt more redistributive policies, such as progressive taxation rates.”

World Bank

How is collective bargaining good for the economy?

Collective bargaining is good for the economy because it boosts consumer spending and reduces inequality

Why are economists becoming increasingly supportive of legal frameworks that facilitate collective bargaining? The answer can be summed up in three words: consumer purchasing power.

When workers have better protections and better bargaining power, they bring home a bigger piece of the economic pie (that they help to create). This means they have more to spend...and more consumer spending means more economic growth.

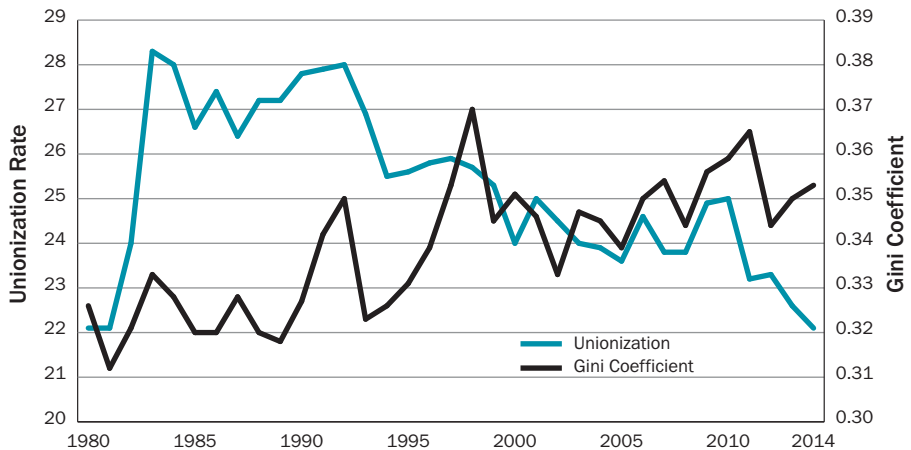
To put it another way, economists agree that slow growth and increasing inequality are two of the biggest problems facing the 21st century economy.

Increasingly, they're coming to the conclusion that the redistributive effects associated with unionization and collective bargaining are a big part of the solution to both of these problems.

In the same way that it makes good economic sense for governments to increase the minimum wage and to spend stimulative during recessions in order to put money in the pockets of consumers, it also makes sense for them to support and facilitate collective bargaining.

When more people enjoy the benefits of collective agreements, the middle class is stronger. And when the middle class is stronger, the economy is stronger.

Unionization Rate and Gini Coefficient in Alberta, 1980-2014



The decline in unionization and collective bargaining in Alberta, brought upon by restrictive labour laws introduced in 1988, has resulted in a dramatic jump inequality. Laws that make it easier for working people to bargain collectively are needed to reverse this trend. The IMF, World Bank and OECD have all concluded that societies with lower levels of inequality enjoy higher levels of consumer spending and economic growth.

How does the Alberta Labour Code “stack the deck” against workers?

The Code stacks the deck against workers by making it more difficult for them to join unions and bargain fair contracts

The whole point of any Labour Code is to lay out the rules for how workers can join unions and bargain with employers. But the existing Alberta Labour Code doesn't facilitate and regulate the ability of workers to engage in these activities; it deliberately inhibits them.

When it comes to union certification, employers in Alberta can:

- Threaten and intimidate workers in the time between an application for union certification vote and the actual vote
- Deny the union access to workers so they only hear the employer's side of the story before a vote
- Invite “employer friendly” unions in to a workplace, in order to keep real unions out

When it comes to bargaining, employers in Alberta can rest assured that they will face no meaningful penalties if they ignore their legal responsibility to “bargain in good faith.”

It is especially common for employers to drag their feet and refuse to bargain during negotiations on first collective agreements.

Another problem has to do with the move towards consolidation, mergers and monopolization among employers; a trend that started in the 20th century, but which has continued and accelerated in the 21st.

The result is that corporations are getting so big that, in many cases, they simply choose to “starve out” their unionized employees on picket lines, rather than bargaining with them in good faith. There are no effective mechanisms in the Code to discourage these kinds of practices.

In addition to these problems, the Code is riddled with many, many other provisions that tip the playing field in favour of employers.

The imbalance is particularly stark in the construction sector (where employers have the ability to set up spin-off or so-called “double-breasted” companies in order to get around legal contracts they've signed with their employees) and in the low-wage service sector (where workers have the theoretical right to join unions, but in practice that right is effectively denied to them).

How did we get stuck with such an unfair Labour Code?

Alberta's Labour Code is the product of outdated thinking

The Code was written 30 years ago, at a time when the prevailing “wisdom” among conservative politicians, who were writing the rules, was that unions were bad for both society and the economy.

Their world view and their prejudices led them to craft a Labour Code that deliberately made it more difficult for working Albertans to do what courts and economists are now saying working people should be encouraged to do: join unions and bargain collectively.

“One big reason America was far more equal in the 1950s and 1960s than now is unions were stronger then. That gave workers bargaining power to get a fair share of the economy’s gains – and unions helped improve wages and working conditions for everyone.”

Robert Reich, former President Bill Clinton’s Labor Secretary

So, the restrictions and impediments imposed on unionization and collective bargaining that exist in Alberta’s current Labour Code were not an accident. They were part of a deliberate plan; a plan based on ideology, not evidence, about what’s actually good for society and the economy.

The question for Alberta’s current government is this: what should we do with laws that are discredited relics of the past?

The answer is straightforward: Replace them with laws that address the challenges of today and reflect the most up-to-date thinking on the issues.

Can we fix the existing Labour Code with tweaks?

Revising the Alberta Labour Code for the 21st century will require more than just tweaks.

The existing Code was built on a foundation of outdated ideas and discredited assumptions. You can't fix a house that's built on a faulty and failing foundation. So, we need to start with a new foundation.

More specifically, the existing Code is based on the notion that unions and collective bargaining are bad and should be, at the least, contained, but preferably discouraged altogether.

A new Code should be based on a new foundation of ideas: specifically, the recognition embraced by the Supreme Court of Canada that unions and collective bargaining are a social good and the conclusion advanced by economic organizations like the IMF and the OECD that legal frameworks that facilitate collective bargaining are good for the economy.

“Labor unions and other forms of genuine forms of popular self-organization are key to democratic economic development”

Joseph Stiglitz, former Chief Economist for the World Bank, Nobel Prize Winning Economist

In practice, this means we need a Code that actually facilitates collective bargaining and supports workers who want to exercise their constitutionally protected right to join a union.

Where the existing Code was deliberately designed to make it harder for workers to join unions and bargain collectively, the new Code, in the name of a strong economy and more equal society, should be deliberately designed to make it easier for workers to do those things.

What should a new Labour Code look like?

Preamble

We need a new preamble to the Labour Code that recognizes unions and collective bargaining as a social goods. Alberta's workplace laws need to support and facilitate the rights guaranteed by the Constitution, not block or undermine those rights.

Action: *Alberta needs a Labour Code that is explicitly committed to supporting collective bargaining.*

Certification (General)

We need to remove the multi-stage process currently required to certify a new union bargaining unit. Workers should only have to vote once, by signing a card or a petition. The multi-stage process in the current Code opens the door for employer campaigns to threaten and intimidate workers. This is no accident: it was part of a conscious effort to discourage the formation of unions. This needs to stop.

Action: *Alberta needs one-step certification (often referred to as "Card Check")*

Certification (Precarious Workers)

Workers in the low-wage service sector and workers with precarious employment arrangements (part-time and temporary workers; people working under new employment models like Uber) are in the greatest need of union representation.

But, the current rules make it almost impossible for them to exercise their constitutional rights to join a union and bargain collectively.

The Code should be changed to give workers in low-wage and precarious jobs the right to organize across franchise locations and regions (or even entire sectors) so that our most vulnerable workers have at least a small measure of bargaining power.

Action: *Alberta needs to give the Labour Relations Board the discretion to grant recognition and bargaining rights to precarious workers when they vote for it (often referred to as "Sectoral Bargaining")*

Bargaining

Employers often attempt to thwart the will of their employees by simply refusing to bargain, especially on first agreements. Under the existing rules, this is technically illegal. But there are no meaningful penalties, so the practice is widespread.

The Code should be changed so that the Labour Relations Board can intervene by imposing a settlement when employers are obviously dragging their feet and ignoring their legal obligation to bargain in good faith. This will provide a real incentive for the parties to bargain in good faith.

Action: *Alberta needs first-contract arbitration*

Strikes

The Supreme Court has ruled that working people have the constitutionally protected right to strike. The Court says that without that right, the constitutional right that all Canadians have to associate and join unions is meaningless.

Of course, while strikes are a right, no one would argue that they are pleasant. They should only be used as a last resort; and mechanisms should be put in place to help keep them as short as possible.

Unfortunately, our existing rules do the opposite. By allowing employers the right to use replacement workers, the current Code reduces employers' incentive to bargain in good faith. The result is that strikes often last longer, and become more acrimonious, than they need to.

We need a ban on replacement workers so that both sides have a real economic incentive to reach a negotiated settlement in a timely manner.

We also need mechanisms to address the overwhelming power imbalance between workers and multi-national corporations, who can – and often do – use their huge economic clout to “starve out” striking employees. This kind of grossly unlevel playing field makes a mockery of the right to bargain collectively.

Actions: *Alberta needs a ban on replacement workers and more options for arbitration to end prolonged strikes in the private sector.*

Loopholes and Shell Games

The current Alberta Labour Code is filled with loopholes that make it possible for many employers to walk away from the legal contracts they've negotiated and signed with their employees.

Sometimes they use corporate re-organizations to claim that the company that signed a contract no longer exists and, therefore, the newly-minted version of the company is no longer bound by its provisions.

In other cases, they cancel contracts with unionized sub-contractors and then hire non-union subcontractors to do the same work, often using the same employees.

Finally, in the construction sector, it is common practice for employers to get around union contracts by creating spin-off companies, which they claim are not party to the agreements and, therefore, not bound by them (this process is called “double-breasting”).

These kinds of shell games make a mockery of the right that Canadian workers have to join unions and bargain collectively. If companies were allowed to regularly renege on contracts that they had signed with suppliers or business partners, the business community would be up in arms.

We think Albertans should be equally outraged by loopholes that allow companies to renege on their contracts with employees.

Action: *Alberta needs rules that make it more difficult for employers to renege on the contracts they've signed with their employees*

Employer-dominated unions

One of the most infuriating tricks used by private-sector employers in Alberta to stop their workers from joining unions has been the use of phony unions or employer-dominated unions. This is a strategy that was developed and promoted by a small number of employer-side labour law firms – who often gloat about the clever ways they’ve managed to “game the system.”

The scheme works like this: the employer invites a compliant union into its workplace and voluntarily recognizes it as the legal bargaining agent for its employees. This often happens without the knowledge of majority of employees, and sometimes without a meaningful vote. Alternately, the employer hires a handful of workers with ties to the phony union, then signs a deal with them before “staffing up.” New employees often have no idea that they’re covered by a sweetheart agreement cooked up between their employer and the phony union.

Once the phony union is in place, the law says that real unions can only challenge them during brief “open periods” at the end of a multi-year collective agreements. The employer then re-negotiates their agreement with the phony union before the deal expires, so that the “open period” never arrives.

The really sad thing is that this strategy works. Over the past 30 years, more new bargaining units have been created in Alberta by phony unions than by real unions. Other provinces have sniffed out these strategies and put a stop to them. Not Alberta.

Action: *Alberta needs to give the Labour Relations Board more tools and more discretion to deal with phony, employer-dominated unions.*

“Trade unions have been an essential force for social progress, without which a semblance of a decent and humane society is impossible under capitalism.”

Pope Francis

How can you help?

Are you fed up with rules that stack the deck against working Albertans?

Are you tired of laws that ignore the fact that collective bargaining makes the economy stronger by increasing consumer purchasing power and reducing inequality?

Do you want to see a Labour Code that actually supports and facilitates collective bargaining, instead of inhibiting and undermining it?

Now is the time for you to make your voice heard!

You can help by visiting the Alberta Federation of Labour's campaign website, www.UnstackTheDeck.ca

Once on the website, simply type your name and address, and we'll help you send a letter to your MLA, with copies going to Labour Minister Christina Gray and Premier Rachel Notley.

Also, please contact the AFL office to sign up as a participant in the AFL "Lobby the Legislature" campaign, taking place throughout May 2017.

We'll help you make arrangements to meet with your MLA, face-to-face. Don't worry: we'll give you the materials, support and training to make the visit easy and productive! And if you don't want to go in alone, we'll find people for you to partner with.

With your help, we're confident that we'll be able to convince the government to bring Alberta labour laws out of the dark ages and into the 21st century!

Alberta Federation of Labour

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