

Alberta Government Prepares to Introduce Essential Services Legislation

The Need to Address the Anti-Social Offensive



Alberta Government Prepares to Introduce Essential Services Legislation

- **The Need to Address the Anti-Social Offensive**
- **The Defence of Public Services - *Peggy Morton***

For Your Information

- **Proposals of the Alberta Government**
- **Brief Review of Labour Legislation**
- **Supreme Court Rulings on Collective Bargaining**
 - **The "New Labour Trilogy"**

Other Matters of Concern

- **Private Partner for LRT P3 Also Violating International Law in Palestine**
- *Dougal MacDonald*
- **Faculty Bargaining Impasse at Athabasca University**

Alberta Government Prepares to Introduce Essential Services Legislation

The Need to Address the Anti-Social Offensive

The Alberta government is preparing to introduce legislation to revise Alberta's labour laws that criminalize strike action by public sector workers. The current laws make strikes illegal for all

employees of the provincial government, hospitals, health authorities, ambulance service providers, municipal firefighting services, and municipal police forces, as well as most staff at public colleges and universities. This outright ban has been rendered unconstitutional by the Supreme Court of Canada decision on *Saskatchewan Federation of Labour v. Saskatchewan*, January 30, 2015.

The NDP government proposes to replace the ban on strikes in the public service with legislation that designates what services are deemed essential and must be provided in the event of a strike.

The government published consultation documents and asked for public input on essential services legislation for public sector collective bargaining. The government says that Essential Services Legislation would be based on a model that "balances the rights of all the parties in the labour relations system, and which recognizes both the impact of the Supreme Court decisions and the protection of the public. However, there are many details and policy options for the essential services legislation for which government is seeking stakeholder input."



The first thing the Communist Party of Canada (Marxist-Leninist) would like to point out is that the way the concept of balance between workers and the public interest is used must not disparage the deep motivation of the working class to defend its rights as an integral part of defending the rights of all.

Historically, the danger to public services has not been posed as a result of the collective actions of public sector workers in defence of their rights. At this time, the danger to public services comes from the neo-liberal austerity agenda of wrecking and privatization of public services, and from governments that bow down to the narrow private interests of the monopolies. Unless this is taken into account in making the revisions to labour legislation, the revisions will not give rise to a model that sorts out any problems facing society at this time.

The process the NDP is proposing implies a rejection of the use of force and violence such as that used by the PCs against the workers in place of good faith negotiations. We think this is a very worthy and significant undertaking. However, the PC rule also involved giving priority to monopoly interests and this must change. By giving priority to the narrow private interests of the monopolies a concept of monopoly right was brought into being which negates public right and the public interest. The premise is that the interests of the monopolies are the interests of the public which is not true. The PCs used their position of power to pass laws which forced the workers to submit to monopoly interests in the name of the greater good. This must be addressed.

This demand and the laws passed to enforce it deprived the workers of the greatest weapon society has to defend itself and the people's well-being and public interest, which is the striving of the workers to see justice done and their resolve to defend the rights of all. Unless the aim of labour laws is to uphold the public interest and all the parties in the labour relations system have the aim of upholding the public interest, any balance which is achieved will be short-lived at best.



Laws impose limitations on rights. They cannot be seen to be a fast track towards the criminalization of the workers who must submit to unjust demands, or else they face the full force of the law. In the opinion of the Communist Party of Canada (Marxist-Leninist) in order for the revisions to the legislation to be meaningful, this issue must be addressed.

This is a period where profound renovation is required to bring arrangements on par with the changed conditions as a result of the globalization of the economies of all countries and the great advances made by the scientific and technical revolutions. Modern definitions are needed for the modern content that the working people are fighting to bring into being. Modern content must uphold the dignity of labour and the understanding that the people who do the

work are capable of making the decisions that uphold the public interest and are deeply motivated to do so.



The Defence of Public Services

- *Peggy Morton* -

The staunch defender of the public interest has been the organized collective resistance of the working class to attacks on its rights and on the rights of all. The right to social programs and public services and the rights of workers who provide the services are interdependent. For example teachers point out forcefully that teachers' working conditions are students' learning conditions. Teachers' workloads affect the quality of education that students receive. Workers who provide care and services in health care and seniors' care need adequate staff and proper working conditions to allow them to provide patients or residents with the care they need and which is theirs by right.

Organized collective resistance to attacks on rights is not only justified but a duty of all, and must not be criminalized. Organized collective resistance by public sector workers to attacks on their rights is based on defending rights and in opposition to the wrecking of public services and programs. The 1998 strike of Edmonton hospital workers succeeded in stopping privatization of housekeeping services despite backward forces in the government declaring the workers' strike



illegal. The strike was in defence of the right to health care, as well as the rights of the workers who deliver health care services.

The interests involved in the 1998 strike were the rights of workers and the rights of people to health care vs. monopoly right to expand their "market" and to siphon value as private profit out of the public health care system. Nonetheless, truth was turned on its head and the resistance of the workers was declared illegal on the basis that it posed a danger to the public interest. But the facts show that it was the hospital workers who were defending the public interest and have never stopped fighting to uphold that social responsibility in spite of the constant attacks of the PC governments and executive managers.

Brutal cuts to health care funding have been a significant factor in soaring rates of hospital-acquired infections. About 250,000 Canadians acquire life-threatening infections in hospitals every year. As many as 12,000 people a year die. Privatization led to the cutting to the bone of cleaning services to increase private profit. The big accounting monopolies jumped into the act, making a bundle carrying out phony audits used by backward forces to demand that the public sector be competitive with a lower level of service, and dirty hospitals became the norm.

Under the PC Redford government, the use of police powers to attack the rights of workers such as Bills 45 and 46 was met with determined opposition not just from the workers involved but from a broad section of society. The government was forced to retreat and eventually suffered a resounding defeat. The resistance waged against successive PC governments was based on the demand that governments carry out their responsibilities towards the people and society to defend the rights of workers and the rights of all, and to give those rights a guarantee in law.

The reality that the public sector workers are the front line defence of public services and programs and are in fact their greatest champions must be recognized. Workers are in the best position to know which services are essential and to make decisions about how those services should be provided. This should be recognized by all and guaranteed in government law.



For Your Information

Proposals of the Alberta Government

The Alberta Government's proposals on essential services legislation for public sector collective bargaining are contained in the Discussion Guide - *Essential Services Legislation for Alberta's Public Sector* it issued with its call for public input.

The *Discussion Guide* states:

"... instead of using compulsory arbitration to resolve disputes, many unionized public sector workplaces would be able to strike or lockout, so long as they can continue to provide essential services necessary to Albertans. ..."

The *Discussion Guide* suggests that an essential services agreement should identify specific job classifications, work functions and the number of employees required to provide essential services. Employers and the union would be required to have an essential services agreement in place before a strike or lockout can take place. All employees designated as essential under the agreement would be required to report for work. The government has indicated that this could potentially include such a large number of the workers in a sector as to render a strike ineffective.

The *Discussion Guide* then states:

"It may be that in some sectors or bargaining units, a large number of employees would be required to maintain essential services, such that a strike by the rest of the employees would not be meaningful. In such a case, legislation might continue to prohibit strikes and lockouts for those units, and instead utilize binding arbitration as a meaningful alternative mechanism to resolve bargaining disputes."

The *Discussion Guide* also puts on the table whether workers in continuing care facilities, who now have a legal right to strike, should be included in essential services legislation.

The *Discussion Guide* can be found [here](#).



Brief Review of Labour Legislation

Under existing anti-labour legislation in Alberta, entire sectors of Alberta public sector workers are subject to legislation that prohibits strikes and requires contract disputes to be resolved by compulsory arbitration boards.

Four *Acts* govern collective bargaining for workers and professionals in the public sector:

the *Labour Relations Code*,
the *Public Service Employee Relations Act*,
the *Post Secondary Learning Act*,
and the *Police Officers Collective Bargaining Act*.

The *Labour Relations Code* contains provisions prohibiting strikes by firefighters, workers employed by Alberta Health Services (including ambulance workers), and workers in approved hospitals. When a collective agreement cannot be reached through negotiations, the *Act* mandates settlement through compulsory arbitration.

The *Public Service Employee Relations Act* (PSERA) covers workers employed by the Alberta Public Service, provincial boards and agencies, and non-academic staff at universities, colleges and technical institutes. The PSERA requires collective bargaining disputes to be resolved by compulsory arbitration boards. In addition to banning strikes, PSERA prohibits a compulsory arbitration board from considering and making an award on the systems of job evaluation and selection, appointment, promotion, training and transfer.

The *Post-secondary Learning Act* (PSLA) and the *Model Provisions Regulation* (Appendix A — *Labour Relations Provisions for Academic Staff Members and Graduate Students*) cover academic staff members and graduate students employed at Alberta's public post-secondary institutions. The *PSLA* requires that binding interest arbitration be used to settle collective bargaining disputes.

The *Police Officers Collective Bargaining Act* covers employees of police forces. Binding interest arbitration is used to settle collective bargaining disputes.



Supreme Court Rulings on Collective Bargaining

Public sector workers in Alberta and their unions have waged a sustained fight for full bargaining rights including the right to strike. Workers waged this fight on the basis that as workers who create wealth and provide the services that Canadians need, they have a right to wages, benefits, and pensions commensurate with their work and qualifications, and to working conditions that allow them to carry out their responsibilities to the people of Alberta.

Prior to the 1971 provincial election, which brought Peter Lougheed and the PCs to power, Lougheed promised to bring in legislation providing full bargaining rights for public employees. Instead, his government enacted the *Public Service Employees Relations Act* making strikes illegal and limiting the issues that could be arbitrated.

Lougheed did not just fail to provide full bargaining rights for provincial government workers. In 1983, his government passed Bill 44 making strikes illegal for hospital workers and firefighters. Bill 44 provided for substantial fines and suspension of dues collection for up to six months for any union that upheld its members' right to an effective say on their wages and working conditions. Even the act of taking a strike vote was criminalized.



The Alberta Union of Provincial Employees, the Canadian Union of Public Employees, and the Alberta International Fire Fighters Association challenged this legislation in the courts. In a landmark case in 1987 known as *Alberta Reference*, the Supreme Court dismissed the appeal saying, "The constitutional guarantee of freedom of association in s. 2 (d) of the *Charter* does not include, in the case of a trade union, a guarantee of the right to bargain collectively and the right to strike."

Alberta Reference was one of three cases the Supreme Court heard in 1987 that became known as the "labour trilogy." The Supreme Court trilogy ruled that no constitutional right to bargain collectively and to strike exists.

The Supreme Court of Canada ruled on three cases in 2015, involving the right to a process of collective bargaining and the right to strike. These cases are: *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4; *Meredith v. Canada (Attorney-General)*, 2015 SCC 2; and *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1. The first case is about the right to strike, and the second and third deal with the right to bargain collectively.

These cases are now being called the new "labour trilogy." The Supreme Court on January 30, 2015 found that *The Public Service Essential Services Act, S.S. 2008 (PSESA)* enacted by the newly elected Wall government in Saskatchewan violated the *Charter*. The PSESA gave the provincial government power unilaterally to designate "essential services employees" and prohibit them from participating in a strike. The Court stated, "The prohibition against strikes in the PSESA substantially interferes with a meaningful process of collective bargaining" and therefore violates the *Charter* right to freedom of association.

The majority opinion stated, "The right to strike is an essential part of a meaningful collective bargaining process in our system of labour relations. The right to strike is not merely derivative of collective bargaining, it is an indispensable component of that right. Where good faith negotiations break down, the ability to engage in the collective withdrawal of services is a necessary component of the process through which workers can continue to participate meaningfully in the pursuit of their collective workplace goals. This crucial role in collective bargaining is why the right to strike is constitutionally protected by s. 2 (d)."

The SCC decision stated, "The maintenance of essential public services is self-evidently a pressing and substantial objective, but the determinative issue in this case is whether the means chosen by the government are minimally impairing, that is, carefully tailored so that rights are impaired no more than necessary."

In the Supreme Court's view, while the right to strike is protected, governments can deprive workers of this right so long as it is done in the Court's opinion by impairing rights "no more than necessary." Other decisions of the SCC accept as "necessary" without further investigation or inquiry, the assertion by any government that it has "no choice" but to wreck social programs and services and that this is the "fiscally responsible" thing to do.

These conclusions of the Supreme Court violate modern rights, including the rights that belong to all people by virtue of being human, and the rights that belong to workers as the producers of society's goods and services.



The "New Labour Trilogy"

The Supreme Court decision in *Saskatchewan Federation of Labour vs. Saskatchewan, 2015* recognizes that the right to strike is a fundamental part of collective bargaining. This completes the shift beginning in 2007 when the Supreme Court recognized a right to a process of collective bargaining.

The SCC rulings do not recognize the rights that belong to workers by virtue of being the producers of the value on which society depends. The SCC has decided that workers have a *Charter* right to a process of collective bargaining, which includes strike action. However, it says governments can restrict this right so long as they do so in a way that "minimally impairs rights." In this way, the SCC has severed the process of collective bargaining from its aim.

In the post-WWII industrial relations system, a social contract was established where the ruling capitalist class obtained a certain labour peace plus assurances from the leadership of the working class that it would not mobilize workers who wanted to opt for socialism. In return, a growing section of the working class was provided Canadian standard wages, benefits, and pensions, and the people generally received a broadening of public services to include national health care etc.



Beginning in the 1970s, the monopolies and their political representatives in the ruling elite decided unilaterally to end the social contract and begin what is now known as the anti-social offensive attacking the rights of all and the public interest on a broad front. This is the context in

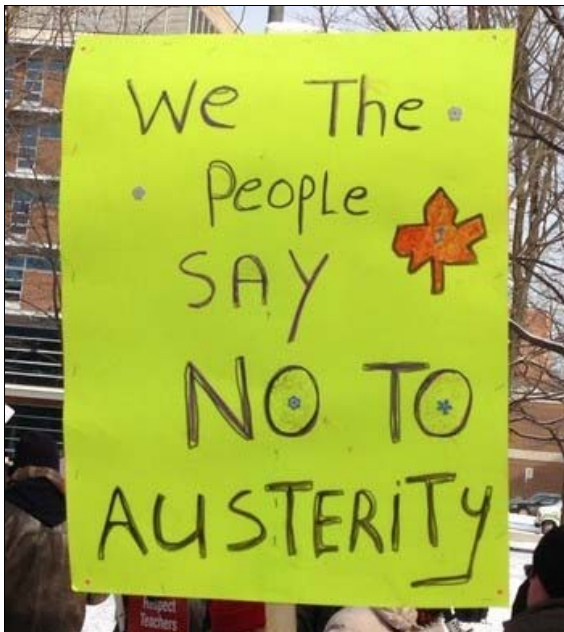
which the SCC declares that rights can be trumped by the neo-liberal demand that all the human and natural resources and means of production of society be placed at the disposal of the monopolies.

In 2007, the Supreme Court issued its decision on *Health Services and Support — Facilities Subsector Bargaining Assn. v. British Columbia*. The Court recognized a *Charter* right to a process of collective bargaining, but not the aim of collective bargaining. In addition to severing the process from the aim, the right to strike generally was not considered to form part of the process.

The aim of collective bargaining is to defend the rights of workers to modern working conditions and wages, benefits and pensions commensurate with the high level of their capacity to work, their training and expertise and the level reached by the collective productive forces and their power to provide a Canadian standard of living for all. Without a process or legal means to fulfil the aim, workers are deprived of their rights, which is incompatible with modern arrangements and society.

In spite of the 2007 decision, which says governments cannot just tear up collective agreements, all arrangements between workers and employers are under attack. Armed with monopoly-controlled powers under bankruptcy protection of the *Companies' Creditors Arrangement Act*, monopolies are tearing up collective agreements, defying government laws and spitting on all arrangements with impunity such as with Nortel and U.S. Steel. Established arrangements are also under attack from free trade agreements, which include "investor rights" clauses that supersede even government laws.

The SCC told governments in 2007 that they could not simply tear up collective agreements. But governments keep rewriting the laws to attack public education and health care and their workers with impunity. The monopolies who receive lucrative contracts to take over hospital public services and privatize public assets, fire workers willy-nilly in effect tearing up their collective agreements. The 2007 ruling does not touch the monopolies that lose none of their contracts and monopoly rights because those are all considered sacred and untouchable. In contrast, workers' rights are being trampled in the mud.



The 2007 decision in *Health Services* also accepted the demand for austerity measures as a legitimate goal of governments. The BC government claimed a "crisis of sustainability" in the health care system as a justification for its assault on health care workers. The Court accepted this argument without question but disagreed with the government's "lack of consultation" with the health care unions on how to implement this objective. In accepting the "sustainability crisis" argument, the responsibility of the government to provide high quality, comprehensive health care when people need it was thrown to the winds. This violates the right to health care as an inviolable right of the people.

This outlook accorded with previous decisions of the Supreme Court on "wage restraint" legislation. For example, in *Newfoundland (Treasury Board) vs. Newfoundland and Labrador Assn. of Public and Private Employees (N.A.P.E. 2004)*, the Supreme Court said that the

Newfoundland government had discriminated against women by paying them less while engaged in similar work but that the government did not have to make this right because of "dire financial circumstances."

In the *Meredith* case, the second of the Trilogy, the SCC says that the neo-liberal austerity agenda imposed under the anti-social offensive trumps workers' rights and public right. This violates the rights of the working people who produce all value on which society depends, and violates the rights of all, who possess their rights by virtue of being human. These SCC rulings in what is known as the "New Labour Trilogy" are in contradiction with a modern definition of rights, a modern government of laws and modern constitution that must uphold the rights of all.



Other Matters of Concern

Private Partner for LRT P3 Also Violating International Law in Palestine

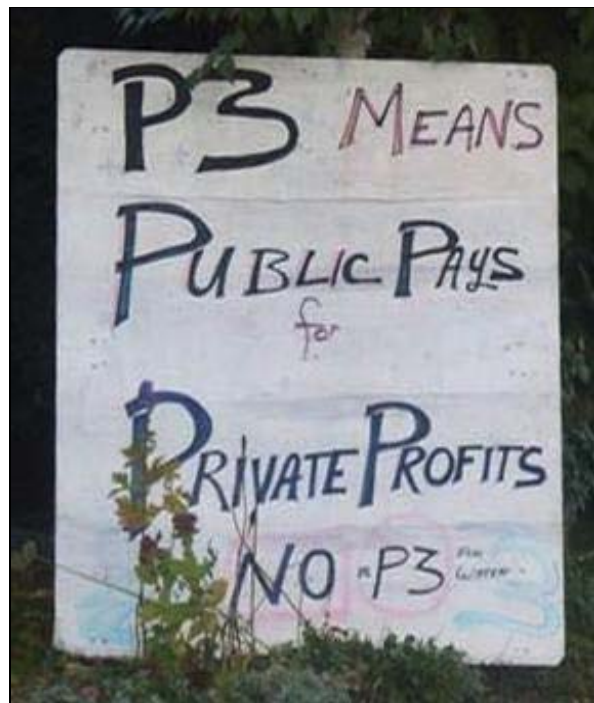
- Dougald MacDonald -

French monopoly Veolia is the largest water privatizer in the world. Veolia is one of the P3 partners that Edmonton City Council contracted in November 2015 to build the private part of the Millwoods extension to Edmonton's LRT Line. In addition to the need to oppose all P3 contracts on principle, it should also be noted that Veolia itself should be opposed on the grounds that it is guilty of numerous criminal activities against the Palestinian people. In fact, it has been described as the one monopoly that benefits most from the Israeli occupation of Palestine.

Even as the Palestinian people are continuing to fight valiantly to end the illegal Israeli occupation of their land, Veolia is aiding and abetting that occupation by:

- (1) operating Jerusalem Light Rail under a 30 year contract in violation of international law because it is built on Palestinian land and is an extension of Israel's illegal settlement enterprise;
- (2) managing the Tovian waste disposal site in the illegally occupied Jordan Valley;
- (3) running a bus service to the illegal Israeli settlements on occupied land;
- (4) and, operating the Ayalon Sewage Treatment Plant which provides wastewater treatment to illegal settlements.

In addition to its participation in the Israeli occupation of Palestine, Veolia is involved in other examples of bribery, corruption, union-busting, environmental degradation, price-gouging, obfuscation, and misdirection around the world.



Veolia is currently at the centre of a huge corruption scandal in Romania, after its local subsidiary the Apa Nova water and sewerage company was accused of bribing local authorities to approve higher prices for its services.

Veolia's sinister history and practices bring to mind the similarly checkered track record of another private French monopoly, Thales, which was hired by Edmonton City Council for the \$45 million LRT signalling contract for the NAIT LRT line.

Despite Veolia's global track record of nefarious activities, the water monopoly continues to enjoy substantial support within powerful pockets of financial and political circles. One reason may be that it is controlled by the Rothschild clique, one of the world's most powerful and wealthy families.

The facts about Veolia's shady past are easily found even at well-known information sites, as are the facts about Thales' shady past. This raises an important question that needs to be answered. Why does Edmonton City Council outsource to such companies, when it is so blatantly obvious that they are completely unsuitable to be trusted with the completion of important civic projects that are supposed to be serving the public interest? This is in addition to the principle that public utilities such as the LRT should be completely public without private monopoly interests siphoning off public funds out of the local and national economy, seriously weakening our collective well-being and security.



Faculty Bargaining Impasse at Athabasca University

Athabasca University (AU) professor Bob Barnetson posted some important information on the Friends of Post-Secondary Education website on February 25. The Athabasca University Faculty Association (AUFA) is currently conducting collective bargaining with the employer, Athabasca University.

Barnetson reports that on February 23, the AUFA Salary and Benefits bargaining team met with the AU Board of Governors' bargaining team to exchange opening proposals. Barnetson writes:



"AUFA's opening proposal included small cost-of-living increases over three years (2%, 2.5%, and 3%) plus a \$500 increase to PD (professional development funding), a \$125 increase to the discretionary benefit fund, and an additional vacation day. The Board failed to provide an opening position. Instead, the Board team made a presentation about AU's strapped financial position and eventually suggested that layoffs are imminent, regardless of the outcomes of bargaining. Interim AU President

Mackinnon briefly and unexpectedly appeared at the negotiations. He reinforced the Board's desire for AUFA to help the Board make cuts."

Barnetson continues:

"Bargaining is scheduled to continue on March 7. Absent a Board proposal, this meeting is unlikely to generate any results. Absent agreement by March 31, the matter will be referred to arbitration. Settlements across the province are relatively favorable, and our comparators should

have us in somewhere around the 2% mark for the next two years."

Barnetson suggests that the current state of bargaining reveals two things about AU:

"(1) The administration is so disorganized that they can't even put together an opening proposal, thereby violating the union contract and the Post-Secondary Learning Act (PSLA), both of which require them to negotiate. (2) The university is apparently in so much financial trouble that layoffs are imminent regardless of what concessions workers might give."

In conclusion, Barnetson addresses an important question to Alberta's new Minister of Post-Secondary Education, Marlin Schmidt:

"When will the government sack this Board and senior executive? There is just no way forward with these folks in charge. And that works an unfairness on our students."



[PREVIOUS ISSUES](#) | [HOME](#)

Read *Alberta Worker*

Website: www.cpcml.ca Email: office@cpcml.ca