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Canada Post Attempts to Divide Postal Workers

Arbitration Fails to Resolve Decades of Injustice Suffered by Rural Suburban Mail Carriers

- Louis Lang -

Postal workers protest outside Supreme Court building in St. John's Newfoundland, March 24, 2018, demanding pay equity.

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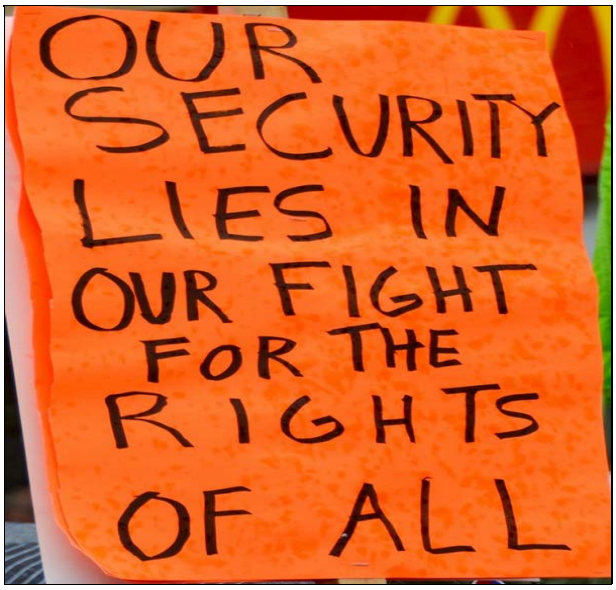
- Louis Lang -

The arbitration decision in the Pay Equity Review Process issued on May 31, 2018, has failed to correct the wage discrimination that Rural Suburban Mail Carriers (RSMCs) have been raising against Canada Post since at least 2004. While the decision recognizes that the work performed by Urban Letter Carriers (LCs) and the RSMCs is readily comparable and a clear wage gap continues to exist, the arbitrator has rejected the union's proposals to remedy the situation.

This Pay Equity Review Process was initiated after the 2016 negotiations precisely to end many years of failed negotiations due to the intransigence of Canada Post. Year after year, the company has refused to recognize its discriminatory actions against RSMCs and refused to recognize the principle of paying all workers a living wage acceptable to their collectives.

In a disturbing turn of events the arbitrator, while agreeing with much of the evidence presented by the union, has ultimately refused to make a decision and referred the issues back to the two parties for further negotiations. By her actions the arbitrator has failed to carry out her responsibility to settle the issues, for which she was appointed. Furthermore, she has thrown the unjust treatment of RSMCs back into negotiations that have proved to be impossible for many years because of Canada Post's insistence on discriminating.



The principle of a living wage for all workers and the elimination of wage discrimination based on gender are rights that belong to all workers and not a matter to be relegated to negotiations. Canada Post continues to attack the dignity of workers, and the refusal of the arbitrator to uphold rights lets the company off the hook for its unconscionable treatment of RSMCs.

Referring the matter back to negotiations is not just another clumsy delaying tactic, which is the stock in trade of this Liberal government. It comes at a time when negotiations are underway for new contracts for both urban and suburban workers. The clear intention is to split the two groups of workers in an effort to undermine the

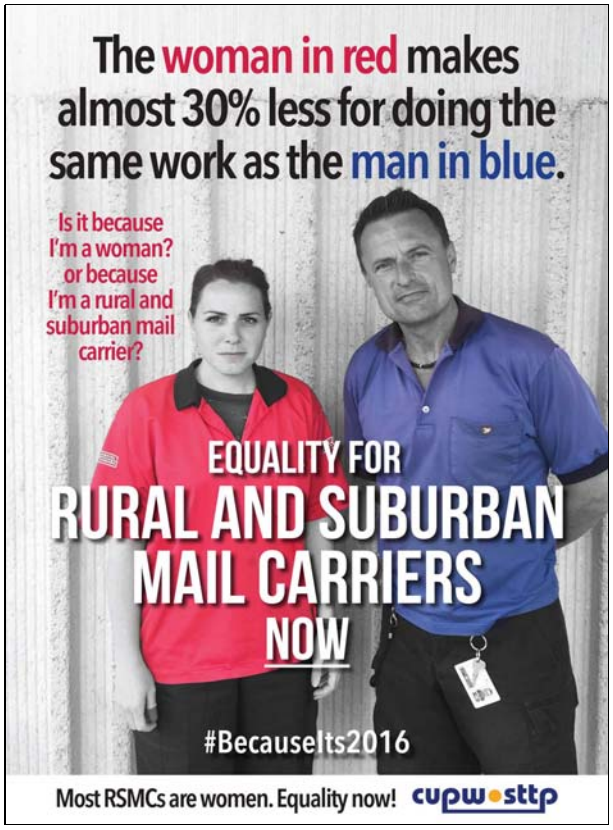
unity of postal workers who are fighting to hold the corporation to account.

Postal workers do not forget that in 2004 when RSMCs won the right to join the union and bargain collectively for a contract, the corporation forced the urban workers to give up their severance pay provisions in the contract. The corporation forced urban workers to reduce their claim on the value they produce as "compensation" for incorporating RSMCs as employees instead of precarious independent contractors. This time, postal workers are determined not to allow the corporation to use the pay equity issue to undermine the unity of all postal workers in the fight for the rights of all.

2016 Negotiations and Pay Equity

In the 2016 round of negotiations between Canada Post and the Canadian Union of Postal Workers, a major demand of the union was for pay equity for RSMCs. The union maintained that LCs and RSMCs perform comparable work and bring similar capacities to the work they perform. The union claimed the corporation has failed to fulfill its obligation under the *Canadian Human Rights Act* to provide RSMCs, who are mainly women, similar wages and benefits to LCs.

The negotiations at that time failed to resolve the issue. Instead, a Pay Equity Memorandum of Understanding (MOU) was signed in September of 2016. With the signing of the MOU the corporation and the union agreed to establish a Joint Pay Equity Review of the RSMCs' conditions to see whether they are in accordance with the Human Rights and the Equal Wages Guidelines.



The Joint Pay Equity Review Process required each of the parties to nominate a consultant or expert to produce reports outlining their respective positions. A Joint Pay Equity Committee (JPEC) was also established to provide input for the work of the consultants.

This process continued until January 27, 2017 when the Minister of Labour appointed an arbitrator, Maureen Flynn, to act as a mediator and arbitrate the issues where no agreement has been reached.

The consultants and the JPEC completed their reports by October 2017 and this was followed by a series of pre-mediation meetings in December 2017. No agreement could be reached and the matter was referred to arbitration with hearings set to begin on January 9, 2018. To add to the delays, late in December 2017, the corporation requested to revise its consultant's report and asked to have the arbitration hearings postponed. Arbitration hearings finally began February 18, 2018 with fourteen days of hearings scheduled until the beginning of May 2018. Arbitrator Flynn released her report on May 31, 2018.

The lengthy report (176 pages) describes many technical issues related to the clauses of the Collective Agreements governing the wages and working conditions of RSMCs and LCs as well as the requirements of the *Canadian Human Rights Act* and related regulations. The arbitrator's

decision assessed the reports of the consultants based on opposing views about how the two jobs should be evaluated and what methodology should be used to assess the wage gap between the two classifications. The following is a quote from paragraph 706 of the arbitration report:

> [706] In addition to their disagreement on the wage gap methodology, the parties also had conflicting views on certain aspects of the RSMC and LC compensation. Specifically, the following elements were debated or treated differently: the applicable job rate, the inclusion of vehicle expenses in RSMC wages, the inclusion of variable allowance, the inclusion of overtime wages and the adjustment to LC wages for paid meals and breaks.

In her report, the arbitrator preferred the union's approach on many of the issues which were in dispute. Regarding the issue of job evaluation, the arbitrator concluded that the union consultant's report "more accurately reflects the job content and better represents the particularities of each potential comparator." Consequently, she concluded that the differences between the two jobs are relatively minor and so the work of RSMCs and LCs can be readily compared.

The arbitrator also rejected the corporation's proposed method of calculating the wages of RSMCs because it was based on counting "points of call" on each route, which the arbitrator described as an approach based on "labour cost to the corporation" and not one that evaluates the employees' compensation for the work they perform. The objective of the Pay Equity Review was to assess if "there is a wage gap" between the two groups of workers, not to save the corporation money in wages.

In spite of the fact that the arbitrator in most cases preferred the union's approach in establishing the data needed to be able to properly assess the wage gap, she rejected the union's conclusions regarding the actions the corporation needs to take to remedy the systematic discrimination against the RSMCs.

The union demands damages equivalent to $9.72 per hour, which is the calculated difference between the LC net rate and the RSMC derived hourly job rate. It also demands an improved route measurement system. The arbitrator rejected these just demands. Instead of ruling on the matters before the tribunal, which have been analyzed and discussed since at least September 2016, the arbitrator refused to make a definitive decision and instead referred the outstanding issues back to the parties.

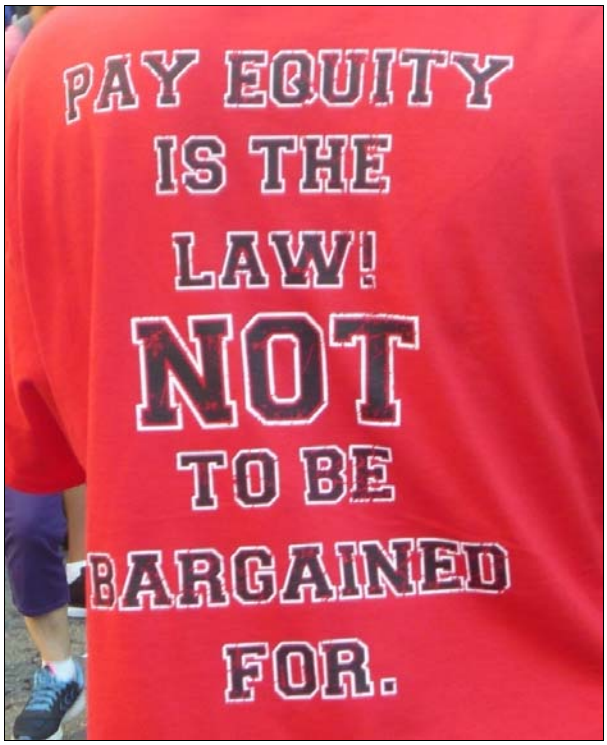
Her decision contains the following:

> [848] It is manifest that, in light of the Undersigned's previous findings, the Union's request cannot be granted.
>
> [849] Considering the necessity for the parties to adjust the methodology, as stated above, to which is added the inclusion of variables both in the assessment of direct wages and in the evaluation of the pension benefits, it is inappropriate to render any decision regarding damages at this point of the process.
>
> [850] The time necessary for the parties to proceed with the aforementioned adjustments will

not cause prejudice to the parties. On the contrary, it will allow them to find a better and fairer solution that is more equitable to both. It is in their interest to pursue the work that was suspended prematurely to achieve more fruitful results.

In her final remarks the arbitrator said:

> The parties will thus have until August 31, 2018, subject to a mutually agreed extension, to present their agreement. If no agreement is reached, the Undersigned, after having consulted with the parties' counsels, will set aside days for arbitration during the Fall of 2018. If desired, the Tribunal will set aside the necessary dates for mediation sessions.



The report of the arbitrator is of great concern for postal workers. While the evidence clearly shows that the corporation's treatment of RSMCs has resulted in systemic discrimination in terms of direct and indirect wages, benefits and working conditions for the close to 8,000 women who perform the work, both negotiations since 2004 and this latest arbitration process have failed to correct the situation. The ongoing blatant discrimination against the RSMCs, the vast majority being women, is incomprehensible. Many ask why this flagrant violation of the *Canadian Human Rights Act* has not resulted in Canada Post being held to account. Is discrimination against women something to be negotiated and not a violation of rights to be condemned and changed immediately? This is 2018 after all.

Yet the delay tactics continue. By refusing to rule on the evidence before her, the arbitrator has revealed that the process is not designed to solve the problems faced by the workers. The continuous stalling, delays and excuses are meant to put pressure on the union and the workers to abandon their just demands.

It cannot be stressed enough that the report of the RSMC Arbitration Tribunal refusing to hold the corporation to account has been issued while the union is in the midst of negotiations with Canada Post for the two contracts covering urban and suburban workers, which expired at the beginning of this year. The decision to refer this important issue of pay equity back to the parties after years of deadlock and refusal by the corporation to accept its responsibilities to eliminate wage discrimination against mainly women workers is not a coincidence. The design is to interfere in negotiations and force the union to accept yet more concessions and treat the rights of workers as bargaining chips to be bartered away.

(Photos: WF, CUPW, C. Dyer)

Quebec Construction Commission Declares Crane Operators Are Engaged in Illegal Strike

Stand with Quebec Crane Operators and Construction Workers Fighting for Their Rights and the Rights of All!

- Pierre Chénier -

Montreal demonstration, May 5, 2018, opposes unsafe changes to regulations on training of crane operators.

The Quebec Construction Commission (QCC) has declared that crane operators in Quebec are engaged in an illegal strike. This claim was made on June 18 after workers did not report for work on construction sites throughout the province. The representative of the QCC blustered in front of the media that it is gathering as much information as possible to prove crane operators are engaged in an illegal strike and that criminal charges are soon coming.

Unions or union representatives found guilty of ordering, encouraging, supporting or participating in a strike ruled illegal are liable to a fine of $7,960 to $79,587 for each day or part of a day. The workers themselves are liable to fines of up to $199 a day. The representative of the QCC also levelled the, now customary, charge that intimidation is being used to incite workers to strike and that criminal proceedings for intimidation will also be filed.

Charges of intimidation can lead to workers being disqualified from leading or representing a trade union for five years. This follows a campaign by the QCC over the last few weeks, travelling to building sites across Quebec to spy on workers and warn them they will be prosecuted if they defend their rights in a concerted fashion, such as refusing to work overtime or engaging in any activities that hinder, slow down or interrupt work.

The facts of the situation are the following. Crane operators working on the construction of the new Champlain Bridge left the job site on Thursday, June 14. Rain had forced the stoppage of work but the general contractor violated the collective agreement requiring crane operators to be paid a

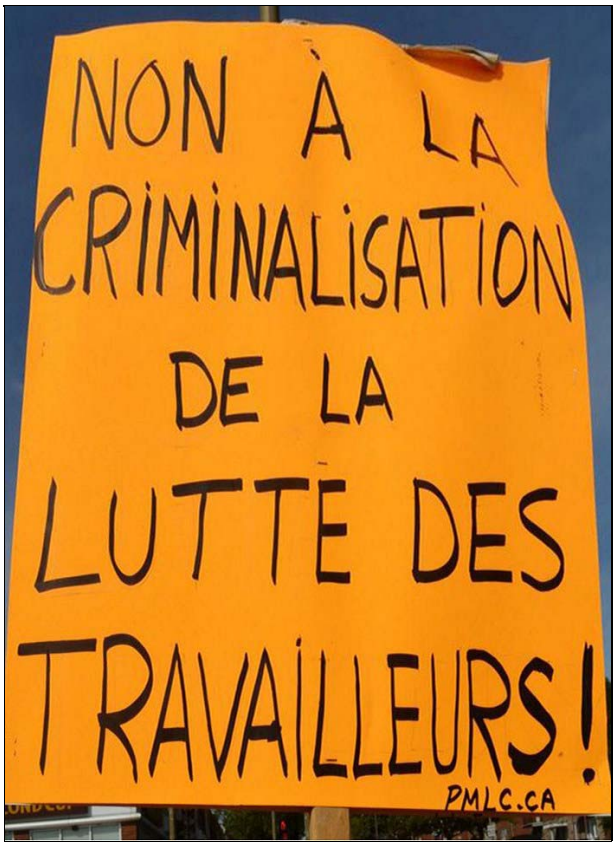
minimum of 5 hours when operations are halted due to inclement weather.

The crane operators did not return to work on the Champlain Bridge the following day and did not show up Saturday for overtime work. On Monday, June 18, crane operators across Quebec did not show up for work causing those sites that require crane operations to be idled.

The crane operators have been engaged in vigorous opposition to a new regulation put forward by the QCC and endorsed by the Quebec government, which threatens to put the lives and safety of crane operators, other construction workers, and the public in danger. The new regulation would drastically reduce the quality and quantity of training received by crane operators. The government, at the bidding of the QCC, has abolished the requirement that a crane operator complete the Diploma of Vocational Studies (DVS), which includes 870 hours of training. The DVS is now optional and a new training regime has been introduced made up of a mere 150 hours provided directly on worksites under company direction.

The QCC and government have also concocted an 80-hour course to operate boom trucks with a maximum capacity of 30 tonnes, after which a worker who passes the course becomes a qualified operator for that type of crane. This type of crane has a history of overturning the most and causing the most damage. This is the current confrontational context in which the actions of the crane operators are taking place.

The QCC and government dismiss the efforts of construction workers to defend their right to adequate training. They have refused to listen to the representations of workers to demand that the new regulations not be passed and a task force be created with all concerned parties to study the situation. The QCC has become an oppressive police agency of the state to criminalize workers who defend their rights and to stifle the voices of all concerned with the deteriorating standards and attacks on rights and safety in the construction sector.



In the face of the situation, the Labour Standards, Pay Equity, and Workplace Health and Safety Board (CNESST in French) is shamefully silent about this deliberate lowering of health and safety standards. The Quebec government, which passed Bill 152 to further criminalize construction workers, has rubber stamped the new regulations. The institutions that claim to be the public authority and to represent the public interest refuse to defend it. They have slammed their doors shut to the workers, the very people who know from experience the dangers that exist and the increased danger to everyone with this lowering of training standards and attacks on rights. What are construction workers supposed to do when all avenues of discussion within the old institutions are blocked? The problem construction workers face in this reality is a problem that all workers and society must face with urgency and determination.

The new regulation and Bill 152 are nothing but neo-liberal instruments to lower working

conditions in construction and attack the struggle of workers organized in trade unions. The aim is clearly to increase the profits of construction companies to the detriment of workers and the public.

Lowering the training standards for workers to qualify as crane operators and putting the companies in charge of worksite training increases competition among workers for available work and puts them at greater risk of injury and death. They will be under even more pressure from employers to perform dangerous and even illegal tasks under the threat of not being called to work on the next job.

Everyone knows that the big companies responsible for the training of crane operators will increase pressure on them to work under the table, a practice already rampant in construction. According to construction workers, up until the new regulation, only the crane operators have been able to keep illegal activities of the companies in check. The required vocational training has played a role in this because it made the workers more knowledgeable, and imbued within their consciousness the confidence to identify and refuse unsafe work and to declare openly and legally their hours of work with the full organized support of the union. The new measure is a deregulation of the crane operators' trade, a part of the deregulation of construction trades in general and lowering of working conditions. The sole purpose is to serve those who own and control the big construction companies and their expropriation of the value workers create.

The campaign and attacks of the QCC on crane operators are socially irresponsible actions that violate their rights and put the public in danger. Cranes are often used in heavily populated areas. The backward march of the QCC and government deserve condemnation in the strongest terms by all working people.

Interview, Richard Goyette, Labour Lawyer and Former Director General, FTQ-Construction

Workers' Forum: Crane operators in Quebec are fighting the new regulations that lower the professional requirements in their trade. Those regulations are creating a serious problem, particularly with regard to the health and safety of construction workers and of the public. What, in your opinion, are the main features of that fight?

Richard Goyette: The issue can be summed up as follows: the state is acting in a very contemptuous way towards construction workers and the public. Conditions existed in the late 1990s whereby crane operation resulted in the deaths of construction workers and of the public. This was remedied through the establishment of 870 hours of mandatory professional training in the form of a Diploma of Vocational Studies (DVS), to ensure that every operation performed by a crane operator would be safe for him or herself, other workers and the public. That regulation was very effective in reducing the number of deaths and injuries in the trade. Now the government, in the name of competition, of broadening access to the construction trades, or who knows what else, is reverting back to conditions that killed and maimed people. In the name of the "economy," the government is prepared to return to such conditions.

Such contempt is all the greater given the fact that both the federal and Quebec *Charter of Rights and Freedoms*, the *Act respecting occupational health and safety*, Quebec's *Civil Code*, and the *Universal Declaration of Human Rights*, an entire legal battery, dictates that the individual must be

taken proper care of, that we must ensure that workplaces are kept healthy and safe.[1] The governments that passed these laws and signed declarations are now saying that the law doesn't matter anymore and that what they call "the economy" takes precedence over everything else.

Workers find this appalling. There are already 50 deaths a year in Quebec's construction sector. Rather than saving workers, more people are going to die. That is the real issue. The workers know that they are right. Legally, they are right. But in the short term, they do not have the means to have that right respected. How to sort out that problem is the issue facing us.

The Quebec government is trying to play the corporatism card because it cannot rely on anything else to pass such a regulation. Workers are being blamed for only being concerned with their own jobs and are being supported by businesses recognized as crane-leasing employers. However, the sector developed by respecting the rules. Crane operators are those who report the highest number of hours worked. Crane operators even have a recall list, which is something that does not exist elsewhere in the construction industry. The sector is also linked to vocational training. According to the government, this is all costing too much, and the government even had a regulatory impact study done that claims that a reduction in regulations will lower the payroll by $1.9 million. This means that more and more work will be done under the table where anyone will be able to do anything. Crane operators have posted photographs on their website of boom trucks that overturned recently. And the attempt is to further liberalize the operation of such trucks!

So, on that issue you have civil disobedience in the name of higher ideals, which is not even geared towards an immediate pecuniary interest, which is civilized, versus a government which is not civilized and is showing itself to be backward. If people try to take control of their destiny and that of their community against reckless and dangerous policies, then who is right? Are they the ones who are going to be fined? Is it their unions that are going to be smashed? Are they the criminals? The whole world is being turned upside down. That is the issue.

Note

1. Section 46 of the Quebec's *Charter of human rights and freedoms* states:

"Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being."

Section 2087 of the *Civil Code* of Quebec states: "The employer is bound not only to allow the performance of the work agreed upon and to pay the remuneration fixed, but also to take any measures consistent with the nature of the work to protect the health, safety and dignity of the employee."

Section 9 of the *Act respecting occupational health and safety* states:

"Every worker has a right to working conditions that have proper regard for his health, safety and

physical well-being."

Information about Diploma of Vocational Studies in Crane Operation Training

Picture of overturned boom truck in Montreal, April 19, 2018, posted to crane operators facebook page.

Under the new regulation implemented since May 14, the compulsory professional training of crane operators by way of a Diploma of Vocational Studies (DVS), consisting of 870 hours of training, has been abolished. It is now optional and the government and the Quebec Construction Commission have introduced a 150-hour training program given directly by the company on the construction site.

The introduction of compulsory vocational training in the construction trade in 1997 was not a matter of choice. It was established within a context of fatal accidents and serious injuries involving the operation of cranes.

The FTQ-Construction reports that in 1994, faced with an alarming number of accidents involving cranes, a round table comprised of the CSST (Occupational Health and Safety Commission), the CCQ (Quebec Construction Commission), the Ministry of Education, as well as employer and trade union associations, agreed to impose mandatory training entitled "Safe Use of Cranes" on active workers as well as new entrants to the trade.

The content of this measure was incorporated into the DVS when it was created in 1997. According to the FTQ-Construction, since the creation of the DVS, there has been a 66 per cent drop in the number of yearly deaths involving cranes. Between 1973 and 1997, that number averaged 4.5 deaths per year. Since 1997 until today, that number has dropped to 1.5 deaths per year, which although still

unacceptable, is nevertheless much lower and proves that training has to be further improved and certainly not reduced or dismantled. Since vocational training was introduced, non-fatal accidents involving the use of a crane have also decreased significantly.

In its brief submitted to the Quebec government on February 1, 2018, entitled "Memorandum on Draft Regulations Amending the Regulation Respecting Vocational Training in the Construction Industry Regarding Crane Operator Trades," the Collective of Crane Operators describes the context at that time:

FTQ-Construction facebook graphic -- contrasts DVS crane operator training to on-the-job training now accepted.

> If we sum up the situation that prevailed at the time, the following elements come to mind:
>
> 1. A large number of accidents occurred on construction sites involving lifting devices;
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> 2. These accidents caused injuries and deaths, and lesser harm with regard to the damaging of equipment, vehicles and buildings;
>
> 3. Many accidents directly endangered the lives of citizens who, because of their work or leisure, happened to be near construction sites;
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> 4. As a result of these events and in order to remedy the situation, the Occupational Health and Safety Commission called upon the Quebec Construction Commission to establish a training program for the "Safe Use of Cranes," to be given to all qualified operators, all practicing apprentices and all new candidates intent on joining the crane operator trade;
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> 5. Following the publication of the "Plan of Action for the Safe Use of Lifting Devices" produced by the Occupational Health and Safety Commission, the Professional Subcommittee of Crane Operators passed a resolution for that same purpose;
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> 6. As a result of the work already undertaken by the Professional Subcommittee of Crane Operators, committee members made specific reference to the professional training program soon to be established;
>
> 7. The "Safe Use of Cranes" course was only a temporary measure put in place to deal with the most urgent situations, until full vocational training would be available and made mandatory for those intending to operate a lifting device;

> 8. The content of the "Safe Use of Cranes" program and of many other measures were then incorporated into the DVS program, so that each operation performed by the crane operator proved safe for him or herself, fellow workers and the public.
>
> [...] once the "Safe Use of Cranes" course was integrated into the crane operator's vocational training program, provided by a vocational training centre, no one could acquire an apprentice competency certificate without first following the DVS professional training program. That is also why elements of safety are taught throughout the entire training program, and for good reason.

That is, abolishing the compulsory nature of this program, under the hoax that it is too rigid, that it hinders the broad access of workers to all the construction trades (i.e. that it restricts competition amongst the workers) and that it is not an adequate tool to deal with the so-called shortage of labour, is a fraud aimed at lowering the working conditions of the construction workers.

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