

of honour and rights of workers as the producers of all social value. This refusal creates a conflict between the authority and the modern conditions. That is a big problem facing the people and society, which needs to be addressed and resolved.

Who decides what is in the public and national interest? Who decides and controls whose rights must be upheld and guaranteed as a matter of principle? At this time, governments control and rule on behalf of the global oligarchs, such as in the case of Alberta's Bill 9 or Trudeau's criminalizing of postal workers or inaction to make sure railways are safe, or any other decision taken. The public and national interest and rights of working people are defined as whatever serves the powerful private interests of the financial oligarchy. This is the clash between authority and the modern conditions that working people must address and resolve.



Workers and their collectives do not accept that governments have a mandate to declare that whatever they do is in the public or national interest or that their rights can be given and taken away through legislation and a rule of law that does not serve the cause of justice. Working people do not accept that governments can claim a mandate to wreck public services, gift the rich with public assets, wage war, and carry out other anti-social assaults in the name of a public and national interest, which they define.

This is why the MLPC calls on them to speak out during this election to say that those claiming such a mandate do not speak in their name.

Example of Fight Against Alberta's Bill 9, the *Public Sector Wage Arbitration Deferral Act*

Appeals Court Quashes Injunction against Bill 9



Protest in Edmonton, September 10, 2019, following Court of Appeal ruling on Bill 9.

The Court of Appeal of Alberta on September 6 quashed the lower court ruling and injunction suspending Bill 9, the *Public Sector Wage Arbitration Deferral Act*. Bill 9 effectively tears up the sections of legal collective agreements requiring arbitration of a wage re-opener to have been

concluded by June 30. Bill 9, which can now be enforced, directly impacts the wages of more than 180,000 Alberta public sector workers. In delaying arbitration and a settlement on wages, the clear intent of the legislation is to give the Kenney government time to wage a propaganda war to enact further legislation imposing unilateral wage freezes and/or rollbacks.

Justice Eric Macklin of the Alberta Court of Queen's Bench in granting the injunction against Bill 9 last July 31, which the Court of Appeal has now overturned, ruled that the legislation was not in the public interest. He wrote, "It is in the long-term public interest for the public to see that its government cannot unilaterally change its contractual obligations through legislation that may interfere with Charter rights."

"Further, it may be difficult, if not impossible, to confidently negotiate detailed terms and conditions of a collective agreement knowing that at any time after an agreement was reached, the terms and conditions could be unilaterally amended or nullified by legislation," Macklin added.

The Court of Appeal in a 2-1 decision rejected this argument stating, "The underlying issue is whether: a) Bill 9 involves a breach of the Charter, and if so b) whether it is demonstrably justified in a free and democratic society. The issue was not, as the trial judge reasoned, whether Bill 9 was in the 'long-term public interest'."

The Court of Appeal judgement referred to the decision in *RJR-McDonald Inc v Canada (AG)* to argue that the courts should not become involved in inquiring as to whether legislation is in the public interest. In that case, the tobacco company unsuccessfully sought to overturn legislation restricting advertising of cigarettes as a violation of its freedom of expression.

The Court of Appeal ruling quashing the injunction against Bill 9 states in part, "When the nature and declared purpose of legislation is to promote the public interest, a motions court should not be concerned whether the legislation actually has such an effect. It must be assumed to do so. In order to overcome the assumed benefit to the public interest arising from the continued application of the legislation, the applicant who relies on the public interest must demonstrate that the suspension of the legislation would itself provide a public benefit."

The Court of Appeal judgement concludes with harsh words admonishing the lower court Justice Macklin: "No part of the tripartite test gives the chambers judge a mandate to assess whether validly enacted legislation is in the public interest."

According to the judgement, how the "nature" of Bill 9 promotes the public interest is better left unsaid and just assumed because the government has the right to declare it so.

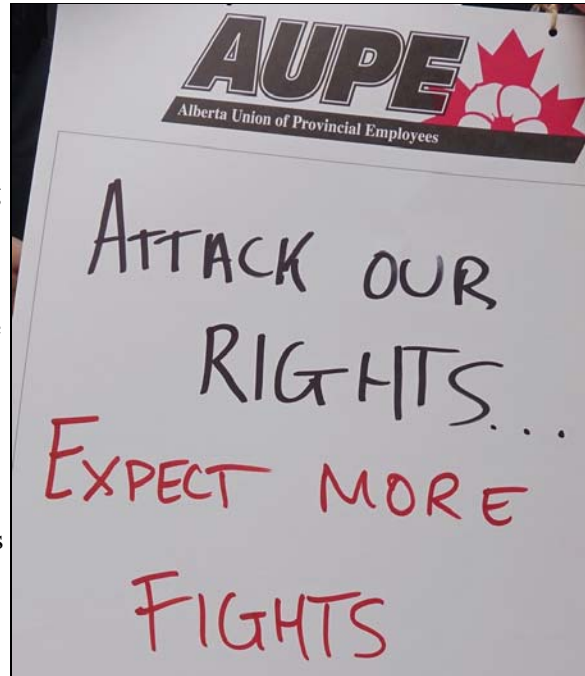
The judgement goes on to dismiss the case law used by trial judge Macklin, who had cited a Supreme Court decision finding that it is in the public interest that contracts be upheld. Wrong, said the Court of Appeal. The case cited concerns private interests, private contracting parties and does not apply to governments signing collective agreements. Governments should not be similarly held to their contractual agreements with workers the Court of Appeal argues:

"Although collective agreements are rarely disturbed by legislation in Canada, the government has the right to legislate with respect to labour relations, within constitutional limits. At the initial stage, it is up to the Legislature (not the courts) to decide if the public policy advantages of legislation like Bill 9 outweigh the disadvantages, and such legislation is entitled to the presumption of constitutional validity. The test at trial will be whether there is a breach of s. 2(d) of the Charter, and if so whether it is demonstrably justified in a free and democratic society."

Alberta Unions Respond to Reinstatement of Bill 9

What the Kenney Government in Alberta is up to concerns the working people across the country because it shows the manner in which limits are being imposed by legislatures and by the courts in the name of prosperity, national interest, jobs, fiscal responsibility and many other high sounding ideals. The fight over Alberta's Bill 9 is one example.

In a two-to-one decision released September 6, the Court of Appeal of Alberta overturned the injunction which had halted application of the Kenney government's Bill 9, the *Public Sector Wage Arbitration Deferral Act*. Bill 9 gives the government the right to renege on and change certain provisions within the collective agreements affecting 180,000 workers in the public sector. In doing so, the government has brought itself and the rule of law into disrepute by giving itself a legal veneer to deprive workers of already negotiated and agreed to wage-reopener provisions and scheduled arbitrations. The workers have no similar legal right to change unilaterally the collective agreement.



The lifting of the injunction means that the Alberta government can re-impose the suspension of collective bargaining rights for 180,000 public sector workers. Public sector unions gave a militant response to the judicial decision, emphasizing that they will vigorously defend the rights of workers.

"We are frustrated by the ruling. AUPE [The Alberta Union of Provincial Employees] will be consulting with our legal counsel and our membership will consider our options including appealing this decision to the Supreme Court of Canada," stated AUPE President Guy Smith, remarking in addition that the legality of Bill 9 itself will be challenged in court. "Justice Paperny's written dissent bolsters our argument that the court was absolutely correct to issue AUPE's injunction in the first place," Smith said.



"What this decision shows is that AUPE members and other hard working Albertans cannot rely on the courts to hold this government accountable. This is our struggle, and AUPE members know they are the ones with the power to fight this government's anti-worker agenda," Smith said.

"United Nurses of Alberta will never accept that governments have the right to simply tear up legal contracts," said President Heather Smith. "Like other unions, we will pursue legal remedies in the courts, but we also recognize that we cannot depend on the courts alone to do the right thing

when a government is determined to violate the fundamental rights of citizens."

"So while today's ruling is disappointing, it changes nothing about our intentions to continue to challenge this unconstitutional law in the courts and it will not deter our vigorous public advocacy of our fundamental rights," she said.

CUPE Alberta President Rory Gill said, "Alberta workers need to know that today's decision is a minor legal setback, and every public sector union is committed to fighting for their interests." "A deal is a deal. That's basic schoolyard stuff," he emphasized.

(With files from Global News and CBC. Photos: RU, AUPE.)

Who Defines What Constitutes the Public Interest?

- Peggy Morton -



The Court of Appeal of Alberta ruling effectively says the government has the right to declare what is in the public interest or not. It may be so. However, once this is done to deprive society of an aim which upholds individual and collective rights and instead blatant nation-wrecking is taken up, the cause of justice must prevail. The members of society must impose their own limitations on what governments can or cannot do. This is the fact of the matter seen in how governments use this argument of the public interest to attack the rights of workers, and engage in nation-wrecking. The public and national interest is defined by those in power and in control of government who serve narrow global private interests. It is not in accord with the concrete conditions, needs and rights of the working people.

The Kenney Alberta government declares it has a mandate from the election to renege on certain provisions of the existing collective agreements with public sector workers. This expresses the control the government has to define the public interest and impose its definition on working people. The true intent is to attack the wages, benefits and working conditions of the working class and trample on its rights.

This ruling and arguments of public interest and national interest put the issue of political control squarely on the agenda of Alberta's and Canada's workers. The issue boils down to who controls and who decides. On the anti-worker Bill 9 and in the current federal election, workers are responding to the appeal of the MLPC to speak out forcefully and defend their common interests on these important issues. This accords with the appeal of the MLPC: *Empower Yourself Now!*

Peggy Morton is the MLPC candidate in Edmonton Centre.

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