Ontario Labour Relations in the Wake of Bill 80*:*

An Analysis of the Legislative Attempt to Enhance Democracy and Autonomy in Ontario Construction Union Locals

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Introduction

On December 10, 1992, then Minister of Labour Robert Mackenzie introduced "Bill 80", a set of amendments to the construction provisions in the *Ontario Labour Relations Act* ("*OLRA*"). The Minister announced that the Bill was intended "to promote greater democracy and local control in the relationship between internationally based parent construction unions and their Ontario locals" because "Ontario-based construction locals have long expressed a desire for greater control over their own affairs".[1] The main elements of the Bill would extend to Ontario construction locals shared bargaining rights in the non Industrial, Commercial and Institutional sectors, and would provide to the locals greater control over the resolution of jurisdictional disputes within the trades, protection from interference or reprisals from the international parent unions and proportionate control over benefit plans.

Has the New Democratic Party government's legislative initiative achieved its stated goal of enhancing the principles of autonomy and internal union democracy by "enacting a law that brings a sense of balance and fairness to the relationship between local unions, their members and international parents"? [2] Or have subsequent emendations rendered the provisions "toothless" and too susceptible to an interpretation by the Ontario Labour Relations Board which is unfavourable to local unions? These and related inquiries regarding the Bill 80 amendments will be conducted with regard to the history and influence of American labour law in Part I; the distinctly "cautious" character of labour law reform in Canada in Part II, Bill 80 itself and the legislative debate surrounding the proposed amendments to the *OLRA* in Part III and several significant Ontario Labour Relations Board decisions which help delineate the scope of Bill 80 in Part IV. I will conclude with a brief evaluation of the overall effectiveness

[1] Legislative Assembly of Ontario, *Hansard,* (10 December 1992) at 2250 (Robert Mackenzie). ***[Hansard].***
[2] Legislative Assembly of Ontario, *Hansard,* (4 October 1993) at 1520 (Robert Mackenzie). ***[Hansard].***

of amendments to the *OLRA* in response to my initial inquiries.

I. Labour Law in Canada: American Influence and Union Autonomy

Hearkening back to the famous *Snider* decision when the Judicial Committee of the Privy Council determined that the provinces had jurisdiction over labour law, it is evident that the Canadian federal system of government can be characterized as one of "extreme decentralization". Indeed, for over twenty years, the "wary" federal government withdrew from any serious involvement in labour matters until, exercising its extraordinary wartime emergency powers to legislate in the "provincial" sphere of labour law, the federal government enacted "PC 1003" in 1944. The statutes which followed were all premised on the idea, expressed in the preamble to Part I of the *Canada Labour Code* that "the common well-being" is promoted "through the encouragement of free collective bargaining and the constructive settlement of disputes."[3] Implicit in the achievement of "common well being" is the balance between individualist and collectivist tendencies, a balance necessitating a constant realignment. This balancing is particularly important in the labour relations context "where the ability of unions to represent members, collect dues and exercise the right to strike depends on a legal regime that allows for collective action even over the protests of individuals who believe their own rights are being diminished".[4] Thus, the crucial inquiry arises: how much state "intrusion" is acceptable when facilitating collective bargaining - while respecting individual democratic rights - for the common good?

Another important consideration when examining the efficacy of the Bill 80 amendments to the *OLRA* is the interpenetration of Canadian and American union structures

[3] *Canada Labour Code*, R.S.C. 1985, c. L-2, Preamble.
[4] Daphne Gottlieb Taras, Allen Ponak and Morley Gunderson, "Introduction to Canadian Industrial Relations" in M. Gunderson and A. Ponak (eds.) *Union-Management Relations In Canada* (3rd ed.). Don Mills, Addison-Wesley Publishers, 1995 at 15. *[Taras]*.

and the role of American law in shaping Canadian legislation. More than a century ago, American labour leaders began integrating Canadian workers in North American "international" unions, and today, one third of Canadian union members belong to unions headquartered in the United States.[5] Statistics indicate a decline in the proportion of international or American unionism, from sixty-five percent of Canadian union members belonging to American-based unions in 1965 to only twenty-seven percent in 2008[6], and a rise in the growth of national unions. Indeed, there have also been some major Canadian breakaways from parent American unions,[7] but international, American-based unions remain a significant feature of the Canadian union structure: of the twenty-four largest unions, eight are international and sixteen are national.[8]

The influence of American labour law has been significant; indeed, the "Wagner Act" of 1935 was the statutory inspiration for the regulation of Canadian labour relations and other major American developments in labour law have also been adopted in Canada.[9] In spite of this palpable influence, Canada and the United States subsequently took very different approaches to the regulation of internal union affairs.[10]

The act which best exemplifies the American approach is the *Labor-Management Reporting and Disclosure Act* of 1959 ("*LMRDA*")[11], an Act which legislated "comprehensive rules on internal procedures with the expressed congressional intent to protect civil liberties and

[5] *Ibid.* at 18.
[6] Human Resources and Skills Development Canada, "Table 6: National and International Unions" (2008).
[7] Such as the split of Canadian Auto Workers from the UAW in 1985 and the Brick and Allied Craft Union of Canada from IUBAC in 1998.
[8] Gregor Murray, "Unions: Membership, Structures, Actions and Challenges" in M. Gunderson and A. Ponak (eds.) *Union-Management Relations In Canada* (3rd ed.). Don Mills, Addison-Wesley Publishers, 1995 at 97. ***[Murray].***
[9] Some of these American developments which have been adopted in Canada include the scope of unfair labour practices and the principle of the duty to accommodate. Michael Lynk, "Union Democracy and the Law in Canada" (2000) 21 *J. Lab. Res*. at 38. ***[Lynk].***
[10] *Ibid.* at 37.
[11] Also known as the "Landrum-Griffin Act".

the political rights of union members".[12] Premised on the theory that democratic unions are more successful at bargaining and at organizing than autocratic ones, the *LMRDA* was an "attractive prospect to many contemporary union activists who saw internal democracy as an essential ingredient for the revitalization of the labour movement on the brink of a new century".[13] Indeed, a prominent labour academic suggests that one of the strongest policy arguments in favour of legislation which promotes union democracy is because "union democracy" is a critical factor in preserving "American democracy".[14]

The *LMRDA* included a "Union Member's Bill of Rights" which guaranteed to union members the right to nominate and elect candidates, to attend meetings and to exercise free speech and assembly.[15] Furthermore, these provisions of the *LMRDA* were given an expansive interpretation by the courts following *Salzhandler v. Caputo*, a seminal decision in which the Court of Appeals of New York ordered a union local financial secretary reinstated after he had been banned from participation in all union affairs for accusing the local president of larceny.[16] As labour professor Michael Lynk notes, a union member in the United States now enjoys greater free speech protection from union interference under the *Labor-Management Reporting and Disclosure Act* than from government interference under the First Amendment.[17] Once a complainant has exhausted internal union grievance procedures, s/he may then sue the union; although critics have noted the difficulty of obtaining independent legal counsel to represent the union member against his or her own union.[18] The possibility of cost recovery however, has operated to lessen this disadvantage for potential claimants.

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[12] *Lynk, supra* note 9 at 37.
[13] Michael J. Goldberg, "An Overview and Assessment of the Law Regulating Internal Union Affairs" (2000) 21 *J. Lab. Res.* at p. 19. ***[Goldberg].***
[14] *Ibid*. at 28.
[15] *Labor-Management Reporting and Disclosure Act,* 1959, (29 U.S.C.) s. 101. ***[LMRDA].***
[16] 316 F.2d 445 (2d Cir.) 1963.
[17] *Goldberg, supra* note 13 at 22.
[18] As Professor Goldberg notes, most labour lawyers are committed to either the management or the union side. *Ibid.*

The provisions in Title III of the *LMRDA* are most relevant to my analysis of the efficacy of Bill 80 in enhancing local union autonomy and democracy. The provisions concern the imposition of a "trusteeship"; a process whereby the international (or national) parent dismisses the elected local officers and temporarily assumes control over the union. The trusteeship procedure has frequently been manipulated by parent unions for undemocratic purposes, such as the elimination of potential political rivals at the local level[19] or the imposition of a particular bargaining agenda upon an unwilling local.[20] In fact, Goldberg notes that thirteen percent of all the national Teamsters locals were under trusteeship when the *LMRDA* was enacted; with Jimmy Hoffa himself designated as Trustee of seventeen locals.[21] A further motivation for the introduction of the trusteeship provisions in the *LMRDA* was the absence of any statutory limitation of the length of a trusteeship: there was evidence that in the United States, some locals operated under trusteeships for decades.[22]

The *LMRDA* sought to remedy the problem of trusteeship abuse by creating a presumption of validity for the first eighteen months of a trusteeship which expired after the eighteenth month.[23] The legislation was immediately effective by invalidating many long-standing and unwarranted trusteeships. Furthermore, the presumption of validity could be overcome if the local union could demonstrate that the imposition of the trusteeship violated internal union procedures or that the trusteeship was imposed for an improper purpose.[24] Unfortunately, however, the courts subsequently adopted an interpretation of the *LMRDA* provisions which rendered the presumption of validity "virtually irrefutable"[25] and thus many

[19] See IV (B), *LIUNA*.
[20] See IV (B), *Bricklayers*.
[21] *Goldberg, supra* note 13 at 24.
[22] *Ibid*.
[23] *LMRDA, supra* note 15 (29 U.S.C.) s. 304(c).
[24] *Ibid*.
[25] *Goldberg, supra* note 13 at 25.

new, unfairly imposed trusteeships enjoyed an automatic eighteen-month immunity.

Another problematic aspect of the *LMRDA* was the noticeable absence of any regulation of union amalgamation, a process which was liable to abuse by unscrupulous parent unions to stifle local dissent. As will be described at length in Part III, even the less progressive Ontario amendments included provisions which prohibited the alteration of a local's jurisdiction without "just cause".[26] It is understandable that in 1998 the House Committee on Education and the Workforce recommended remedying the deficiencies in the *LMRDA* by eliminating the presumption of trusteeship validity and by including provisions to regulate forced mergers and amalgamations.[27]

Goldberg also noted in his analysis of trusteeships in the United States that provisions in the *LMRDA* were of limited effect where they were most needed: in situations where the union was dominated by organized crime.[28] This critical shortcoming contributed to the passing of the *Racketeer Influenced and Corrupt Organization Act* in 1970. As will be discussed in Part IV(B), it is interesting that the same deficiency which plagued the American legislation, namely the limited effectiveness of regulating internal democracy in unions with alleged ties to organized crime, has become apparent with respect to the efficacy of the Bill 80 amendments in enhancing democracy and autonomy in Canadian locals put under trusteeship.

The trusteeship provisions in Title III of the *LMRDA* also introduced some effective democratic safeguards which should be incorporated into any Canadian legislation that purports to enhance union democracy and autonomy. These beneficial provisions include: limiting the purposes for which trusteeships could be imposed, banning the transfer of funds from a local union to a parent trustee, and prohibiting delegates from trusteed local unions from voting at

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[26] *Ontario Labour Relations Act*, 1995, S.O. 1995, c. 1, Sched. A., s. 147(1). ***[OLRA].***
[27] *Ibid.*
[28] *Goldberg, supra* note 13 at 19.

conventions unless elected through a secret-ballot vote by the local union.[29] Indeed, the adoption of the last provision into Ontario law might have averted a critical stage in the rift between the Labourers Local 183 and its parent LIUNA.[30]

II. Legislative Labour Reform in Canada

A. Canadian "Statutory Abstinence"

The Canadian response to the question "what is the appropriate role of the law in regulating internal trade union affairs" is markedly different from the American. Because of the decentralized structure of Canadian unions, an emergent trend has been towards a higher degree of autonomy in union locals and more self-governance by Canadian members of international unions. Thus, the Canadian approach to regulating internal union democracy, which has been aptly characterized by Professor Michael Lynk as a form of "statutory abstinence", is a result of this political respect for autonomy, and not because of a deliberate "legislative indifference".[31]

In addition to the notion that the decentralization of the Canadian union structure leads to union locals having a high degree of autonomy, Lynk offers several rationales for Canada's legislative reluctance to intervene in internal union affairs. Lynk proposes that Canada's longstanding endorsement of a "culture of democratic practices"[32] and a low level of organized crime infiltration[33] have resulted in little demand for legislative intervention in internal union affairs. Lynk also notes that the longstanding British concept of unions as "voluntary

[29] *LMRDA, supra* note 15 (29 U.S.C.) s. 303(a).
[30] See IV (B), *LIUNA*.
[31] *Lynk, supra* note 9 at 38.
[32] *Ibid.* at 38.
[33] Although there have been notable exceptions including the Seafarers' Union in the 1950s and the alleged LIUNA misconduct in recent decades. See IV (B), *LIUNA*.

organizations" in which membership relations are purely personal and contractual has been important to Canadian legislators and to the courts.[34] The theory has been adopted into Canadian law[35] and has enjoyed much sympathy among Canadian legislators, having been memorably endorsed by Liberal Chief Opposition Whip Steven Mahoney when he remarked glibly during the Second Reading of Bill 80 that the effect of the legislation would be akin to "entering a Rotary Club and telling the Rotarians that they will be meeting on a different day of the week".[36]

B. The Role of the Ontario Labour Relations Board in Regulating Union Democracy

The prevailing view of the role of the OLRB was articulated in the decision, *RWDSU and Dominion Stores:*

> The Ontario Labour Relations Board is primarily concerned about… the trade union in its role as statutory bargaining agent. Statute doesn't purport to regulate internal union affairs… Indeed, the state is exceedingly (and we think, intentionally) sparse in respect of such matters, leaving them to be determined, for the most part, in accordance with the union's constitution.

The Board reveals its disinclination to intervene in internal union affairs, preferring to leave the task to the courts which, relying on the relatively cumbersome contract theory of union constitutions[37] can fill the "judicial vacuum". This allocation of jurisdiction for litigating labour issues between the courts and the labour boards, has been described as "wooden and formalistic",[38] and even in early 1980s former Vice Chair of the Canada Labour Relations Board James E. Dorsey expressed dissatisfaction with the reluctance of labour relations boards to assume greater responsibilities in administering labour legislation. Dorsey emphasized the

[34] As Prof. Lynk notes: the English have since abandoned this aging interpretation in favour of a more modern, interventionist approach, *Lynk, supra* note 9 at 40.
[35] *White v. Kuzych,* [1951] A.C. 585 (J.C.E.C.).
[36] *Hansard,* supra note 2 at 1530 (Steven Mahoney).
[37] Each member, by joining a union, enters in a contractual relationship with every other member through the constitution.
[38] *Lynk, supra* note 9 at 42.

importance of using labour legislation to regulate the balance between individual and union rights, declaring "the courts are not the appropriate forums for undertaking the long term supervisory and educational role that is required for an adequate response to problems in internal union structure".[39]

It is in the context of a history of legislative restraint and a remedial jurisdiction split between the OLRB and the courts that the NDP government introduced Bill 80. As a "companion piece" to Bill 40, a set of politically charged amendments outlawing the use of replacement workers during a strike, the construction provision amendments may been overshadowed by the more drastic changes proposed in Bill 40, but Bill 80 was arguably an important legislative venture in its own right. The majority of Bill 40 was immediately repealed upon the Conservative government's accession to power 1995, while Bill 80 was left intact. It must be noted, however, that the two most radical proposed provisions were deleted from the bill. The controversial "successorship clause" would have allowed a local to disaffiliate from its parent and to keep its assets and pension fund. Furthermore, although the parent was required to approve the successorship, the OLRB could declare a successor in a case where "the true wishes of the members of the locals respecting successorship are not likely to be ascertained".[40] The other deleted provision would have prohibited a parent union from altering a local's jurisdiction without first obtaining the local's consent.[41]

Thus, the critical question is why the Bill 80 provisions were not repealed. Was it because Ontarians were satisfied that the bill fulfilled its lofty objective of granting more autonomy and thereby enhancing democracy within construction union locals, or because the emendations ultimately rendered the legislation so "toothless" that repeal was unnecessary?

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[39] Dorsey, J, "Individuals and Internal Trade Union Affairs: The Right to Participate," in K. Swan and K. Swinton, eds. *Studies in Labour Law*. (Toronto, Buttersworth, 1982) at 220.
[40] *Hansard, supra* note 2 at 1700 (Elizabeth Witmer).
[41] *Ibid.*

III. Bill 80: Labour Relations Amendment Act, 1993

A. Legislative Background and the Bill 80 Provisions

When Bill 80 was introduced in House of Commons, the government declared its ultimate goal: "to bring a sense of fairness and balance to the relationship between local unions, their members and their international parents".[42] Premier Bob Rae made a passionate final endorsement of Bill 80, quoting former Premier David Peterson. In 1983 Peterson, prompted by the plight of Labourers' Local 1059[43], appealed to the Minister of Labour to introduce an amendment to the *Ontario Labour Relations Act* which would "give immediate protection to the locally organized workers from the arbitrary, unfair and unilateral takeover of their local by the international head office",[44] and urged the Minister to include a mechanism whereby the parent union would have to justify the imposition of a trusteeship before implementation. Although unsuccessful, this Liberal foray into legislative governance of internal union affairs reveals that *at least* a decade earlier there were problems in the construction unions requiring government intervention and that the 1993 NDP initiative was neither as novel nor unwarranted an intrusion as the protracted debate on Bill 80 would suggest.

The legislation prompted heated debate in the Legislature over a period of a year and a half. What follows is a brief description of the provisions (now ss. 145-150 of the *OLRA*), the opposition arguments, and the government rebuttals.[45] Section 145 is definitional, with subsection (3) stipulating that in the event of a conflict between any Bill 80 provision and any

[42] *Hansard, supra* note 2 at 1520 (Robert Mackenzie).
[43] This local had been deprived to its ability to democratically elect its own officers due to the imposition of a trusteeship by its parent international, LIUNA.
[44] Legislative Assembly of Ontario, *Hansard*, (8 December 1993) at 1720 (Bob Rae). ***[Hansard].***
[45] This analysis draws largely from Elizabeth Witmer's methodological criticism during the Second Reading of the Bill, the "debate on the general principles" of the legislation stage. *per: Hansard, supra* note 2 at 1700-1720 (Elizabeth Witmer).

provision in a union constitution, the provision in Bill 80 prevails.[46] Section 146 guarantees to *all* Ontario construction locals shared bargaining rights in the non Industrial, Commercial and Industrial sectors, rights which prior to Bill 80, were only enjoyed by the "ICI" sector.[47] Particularly important are subsections (2) an (3) which provide that where a parent union is the only designated bargaining agent, the local is also deemed to be a bargaining agent.[48] The rationale for this provision, as Parliamentary Assistant Michael Cooper explained, was to prevent the parent from imposing unilateral contracts on local unions in the rare instances when the parent had been granted exclusive bargaining rights.[49] This section also recognized that where bargaining rights co-exist, there is a potential for conflict and so subsections (4) and (5) provide a mechanism for resolving such disputes: under subsection (4), the Minister has the power to require a parent and local to form a council for collective bargaining purposes and subsection (5) allows the Minister to make rules governing the operation of such a council.[50] It must be noted, however, that subsection (4) clearly limits Ministerial intervention to only those instances where it is necessary to resolve a dispute between the parent and the local regarding collective bargaining or concluding a collective agreement.[51]

Section 148 clarifies the extent of the rights given to a local union in ss. 146 and 147 and section 150 granted local unions proportionate control over the administration and use of benefit funds.[52] Specifically, s. 150(1) entitles a local union to appoint *at least* a majority of trustees of employment benefit plans exclusive of the trustees appointed by the employers.[53]

The "heart" of Bill 80, the provisions which outraged Progressive Conservatives,

[46] *OLRA, supra* note 26 at s. 145(3).
[47] *Ibid.* at s.146(1).
[48] *Ibid*. at s. 146(2) and s.146(3)
[49] Legislative Assembly of Ontario, *Hansard,* (25 November 1993) at 1640 (Michael Cooper). ***[Hansard].***
[50] *OLRA, supra* note 26 at s. 146(4) and s.146(5).
[51] *Ibid.* at. s.146(4) and s.146(5).
[52] *Ibid.* at s. 148 and s. 150.
[53] *Ibid*. at s. 150(1).

Liberals and international union representatives, was sections 147 and 149. Section 147(1) originally prohibited alteration of a local union's jurisdiction by a parent international without the local's consent. The government claimed that this provision was necessary because local trade unions needed greater input into the resolution of jurisdictional alteration matters and protection from sanctions imposed by unions as, at the time, a parent union could shrink or eliminate a rebellious local by splintering its territory among other locals. In response to the extremely vocal opposition, the government changed the standard of review to one of "just cause" and the emended provision read: "A parent trade union shall not, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992, whether it was established under a constitution or otherwise".[54] Under subsection (3), the Board, having clearly been given supervisory authority over changes made in jurisdiction by a parent affecting a local, was directed to consider four factors (and only the enumerated four factors) when evaluating whether the parent had "just cause" for the alteration: the union constitution, the ability of the local to carry out its duties under the Act, the wishes of the members of the local and whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems.[55]

As does section 147, section 149 prohibits certain conduct by the parent stipulating: "A parent trade union or a council of trade unions shall not, without just cause, assume supervision or control or otherwise interfere with a local trade union directly or indirectly in such a way that the autonomy of the local trade union is affected".[56] Subsection (2) prohibits the parent from removing an elected local officer from office, changing the official's duties or imposing a

[54] *Ibid.* at s. 147(1).
[55] *Ibid.* at s. 147(3).
[56] *Ibid.* at s. 149(1).

penalty on an official or member of the local.[57]

Section 149 thus provides greater protection to locals against interference or reprisals from parent unions. The usual method of supervision or control is the imposition of a "trusteeship", a tactic which is described at length in Part IV (B) with reference to the *Labourers* and *Bricklayers* decisions. Trusteeships are contemplated by many constitutions of parent unions and under s. 89 of the *OLRA*[58], are matters over which the Board already has a limited supervisory role. The standard of review is "just cause", but unlike s.147, which dictates the particular factors the Board can consider in determining "just cause", subsection (3) broadly states the Board can consider "such other factors as it considers appropriate".[59] Even more expansively, subsection (4) allows the Board, if it has determined that an action was taken by the parent with just cause, to "make such orders and give such directions as it considers appropriate".[60]

B. Bill 80 Criticism and Legislative Debate

While Bill 80 in its entirety provoked much debate in the House, the majority of the criticism was leveled at sections 147 and 149 and some of the bill's most vociferous opponents were international labour unions. The government was recurrently attacked for failing to provide evidence of a local union which suffered the loss or alteration its territorial jurisdiction, thereby necessitating the protective provisions. Throughout the proceedings, Ken Woods, the International Vice President of the International Brotherhood of Electrical Workers submitted many letters expressing his union's opposition, memorably (and perhaps somewhat hyperbolically) describing the proposed amendments as "the most ill-conceived, biased,

[57] *Ibid.* at s. 149(2).
[58] *Ibid.* at s. 89. See Appendix "B".
[59] *Ibid.* at s. 149(3).
[60] *Ibid.* at s. 149(4).

unworkable, totalitarian attack on the trade union movement ever brought forward in the free world", asking the government: "how many building trade locals have had their jurisdictions altered, changed or removed? What wrongs is the proposed Bill 80 attempting to right?"[61]

Ironically, a reply to Mr. Woods' inquiries came not from the government, but in a letter from a union local: IBEW Local 1788, which wrote of a recent attempt by the IBEW parent to remove 1788's jurisdiction (at the behest of Ken Woods) and of the local's intent to rely on the bill, asserting "this is exactly the kind of arbitrary action exercised by international construction unions and assisted by compliant employers which Bill 80 is supposed to protect us against".[62] Local 1788 admitted that it expressed its support of the provisions "despite the constant bombardment of anti-Bill 80 rhetoric and misinformation from our IBEW International Office"[63]. Parliamentary Assistant Michael Cooper emphasized the importance of representations from local unions, pointing out that most of the people who were opposed to Bill 80 were paid by parent union while the presenters who supported Bill 80 were democratically elected officials from the locals. Furthermore, many supporters from local unions were afraid to publicly express their support because of a fear of reprisals from international parent unions.[64] This unwarranted interference, is, of course, exactly the sort of behaviour that Bill 80 was intended to remedy. Local 1788 ended its letter with a ringing endorsement: "[Bill 80] may not please those who now hold unlimited power in the United States over our union but those who live and work here in Ontario are very glad to see Bill 80. It should really be called a declaration of rights for Ontario construction workers".[65]

In response to the allegation that the government failed to provide specific examples of

[61] *Hansard, supra* note 2 at 1750 (Elizabeth Witmer).
[62] *Hansard, supra* note 49 at 1750 (Bradley Ward).
[63] *Ibid*.
[64] *Hansard, supra* note 2 at 1650 (Michael Cooper).
[65] *Hansard, supra* note 49 at 1750 (Bradley Ward).

situations in which trusteeships were arbitrarily or unfairly imposed by a parent on a local union, Cooper cited two Labourers Union cases. The first involved the imposition by the Labourers parent union (LIUNA) of a trusteeship on Toronto Local 506 to prevent the defeat of an international support candidate in local elections by a reform candidate in March 1985.[66] In the second example the government provided, LIUNA imposed a trusteeship on London Local 1059 and fined the local executive because the local had filed charges against the local business manager for using fraud to gain an election and had tried to have the business manager removed from office.[67]

Finally, there were a variety of criticisms leveled against Bill 80 in its entirety: that it applied only to the construction industry provisions and not to the entire *Ontario Labour Relations Act*, that the Minister of Labour did not adequately consult with key players before he tabled the bill and finally, that Bill 80 was "draconian" legislation which unduly interfered with the rights of construction unions to self-governance. The Parliamentary Assistant explained that the provisions applied only to the construction industry because of "circumstances which developed over time that can be traced to the unique history and nature of the trade union organization by craft in the North American construction sector".[68] Cooper also explained that, while the government entertained submissions from unions, labour councils and other industry representatives, it was futile to meet with opponents who were not interested in actual consultation and who did not intend to provide constructive input, and who asked the government only to withdraw the bill.[69]

It was, however, the constant criticism directed at what the international unions perceived as an unwarranted intrusion into their internal union affairs which prompted the most

[66] *Hansard, supra* note 2 at 1650 (Michael Cooper).
[67] *Ibid.*
[68] *Hansard, supra* note 44 at 1530 (Michael Cooper).
[69] *Hansard, supra* note 2 at 1650 (Michael Cooper).

debate in the Legislature. Opposition critics read multiple submissions from the Labourers International Union of North America, in which LIUNA asserted that Bill 80 "interferes with building trade unions' ability to govern themselves democratically"[70] and that it "will impede many unions ability to successfully administer local unions".[71] The political critics emphasized that each letter was signed by Joe Mancinelli, LIUNA Vice President of Central & Eastern Canada in an effort to lend credence to the missives. Yet it bears mention that this is the same "Joe Mancinelli" who years later, when for the first time the LIUNA representative for Eastern Canada was to be elected by an election within Canada, by placing the Toronto Labourers Local 183 under trusteeship, prohibited the Canadian election and ran unopposed for the position.

Liberal Opposition Whip Steven Mahoney frequently attacked Bill 80 as "anything but democratic", "highly socialistic and wrong", "the most draconian bill of all" and "an attempt by the government to override [construction unions'] duly formulated constitutions".[72] In a final, rousing speech, Premier Bob Rae addressed opponents' concerns that the Bill was too intrusive and affirmed the power of the government to legislate regarding the conduct of international unions operating in Canada: "If we were to say 'no interference, the logical implication… is that international trade unions should somehow be beyond the reach of the law of this province with respect to union democracy".[73] Premier Rae acknowledged that American-based unions had a history in the province which extended over one hundred and fifty years, but that the citizens of Ontario, "when they feel their right to exercise control over their affairs is threatened because of the exercise of international power that is coming up from the United States",[74]

[70] *Ibid.* at 1610 (Steven Mahoney).
[71] *Ibid.* at 1740 (Elizabeth Witmer).
[72] *Hansard, supra* note 2 at 1530 (Steven Mahoney).
[73] *Hansard, supra* note 44 at 1720 (Bob Rae).
[74] *Ibid.*

should have some mechanism to go before the Labour Relations Board and obtain a resolution to the issue. The question remains whether the amendments, despite Premier Rae's rhetoric that Bill 80 "says yes to democracy within trade unions; yes to the principle that people have a right to express themselves, yes to the rule of law within the trade union movement, just as much as we want to apply the rule of law to every other part of our society",[75] *actually* functions to enhance internal union democracy and local autonomy.

IV. Bill 80 Adjudication: A Contextual Analysis

A. The Standard of "Just Cause"

International Brotherhood of Electrical Workers, Local 1788 v. International Brotherhood of Electrical Workers

The seminal "Bill 80 case" which sets forth the Ontario Labour Relations Board's interpretation of scope of the "just cause" standard of review is *International Brotherhood of Electrical Workers* ("IBEW").[76] IBEW Local 1788 was chartered as a province-wide electrical construction local for direct employees of Ontario Hydro and held exclusive bargaining rights for those employees from 1972 onward. Ontario Hydro employees performed the majority of the electrical work but, on the rare occasions when work was contracted out, the IBEW locals who had geographic jurisdiction in the area or non-union workers would perform the job, although there is evidence that Local 1788 would also perform some of this contract work.

In 1986, however, Local 1788 negotiated an agreement with the Electrical Power Systems Construction Association ("EPSCA", the employer organization representing Hydro in bargaining) stipulating that 1788 would perform all work, including for contracted employers

[75] *Ibid.*
[76] *International Brotherhood of Electrical Workers,* [1996] OLRB Rep. February 70. ***[IBEW].***

"in or on Hydro property for the Transmission Division of Hydro".[77] The other thirteen locals did not oppose the designation as Ontario Hydro very infrequently contracted work and the locals were fully employed because of the booming provincial economy. In 1987, IBEW International Vice President Ken Woods "rubber stamped" the agreement, and even assented to a request by Local 1788 to modify its constitution to reflect its negotiated jurisdiction.

Local 1788 enjoyed its jurisdiction over Hydro employees *and* contractors for the next six years, until the economy took a downturn and in 1993, at the urging of the other IBEW locals, Vice President Woods again changed Local 1788's bylaws. The alteration removed and redistributed among the other Locals the jurisdiction with respect to contractors of Ontario Hydro which Local 1788 had achieved through practice and negotiation. Local 1788 was, predictably, upset with what it perceived as the parent union's "arbitrary, discriminatory and illegal"[78] action and immediately launched a proceeding under the new Bill 80 provisions, alleging the parent international had violated s.147 of the *OLRA* by altering the local's jurisdiction without "just cause".

In its determination that the international had violated s.147 but had done so with "just cause", the OLRB articulated several important principles delineating the scope of s.147 which have been cited in many subsequent decisions:

> We are satisfied that "just cause" in section 147 of the Act creates an objective standard which requires something other than that a parent trade union act in a manner which is not arbitrary, discriminatory or in bad faith…. The question to be asked… is this: "Was the parent union's decision a fair and reasonable one having regard to all of the circumstances? [79]

The Board clearly rejected using the same approach it takes towards Duty of Fair

[77] *Ibid.* at para. 31.
[78] *Ibid.,* at para. 58.
[79] *Ibid.* at para. 88.

Representation adjudication, explaining that "a trade union could act in a manner which is neither arbitrary, discriminatory nor in bad faith and still make a decision in such matters which someone else, like the Board, might consider to be 'wrong'" and that the Legislature make a conscious decision to use phrase "just cause".[80] The Board also mentioned the connotations of the phrase in the grievance procedure context: "well grounded, fair and equitable", a context which normally requires the Board to examine and evaluate the basis for the decision under consideration but the OLRB qualifies this interpretation as "not necessarily transferable to section 147".[81] Thus the somewhat murky ratiocination which emerges is: the fundamental inquiry into the nature of "just cause" is an objective analysis of the fairness and reasonableness of the parent's decision making which can (but not necessarily) take into account the basis for the decision and the parent's conduct but which *must* consider the factors delineated in s. 147(3). Moreover, unlike the permissive s.149, *only* the factors set forth in subsection (3) may be considered in determining "just cause" under s.147, although this limitation is somewhat softened by subsection (4) which grants the Board a degree of latitude in not being bound by the constitutional consideration.[82]

The Board considered the first and fourth factors under s.147(3) determinant to its finding of "just cause": the union constitution and the "facilitation of viable and stable collective bargaining without causing serious labour relations problems".[83] The Board noted that the IBEW constitution explicitly empowered the International President to change local jurisdiction when "harmony and progress do not prevail, or when disputes arise" but that the decision must be "consistent with the best interests of the IBEW in obtaining and controlling

[80] *Ibid.* at paras. 84 & 85.
[81] *Ibid.* at para. 87.
[82] *OLRA, supra* note 26 at s.147(4).
[83] *Ibid.* at s. 147(3)(4).

the work in question.[84] The Board found that the parent had just cause to intervene because "harmony and progress" were not prevailing: the other IBEW locals were annoyed that Local 1788 had exclusive jurisdiction over Ontario Hydro work and so the international's decision to "restore" to the thirteen other locals their jurisdictional positions as they existed prior to 1986 was a "fair and reasonable resolution of the dispute and solution to the problem".[85]

The other finding the Board made was that the international parent's alteration of Local 1788's jurisdiction would "more probably than not" facilitate viable and stable collective bargaining without causing serious labour relations problems as per s.147(3)(4). The Board discounted the "approval" that Local 1788's received, suggesting that the international and the other locals had been "asleep at the switch" when they vetted Local 1788's application to have its constitution altered to reflect the "expanded" *de facto* jurisdiction, and that IBEW Vice President Woods "did not understand the true nature of the jurisdictional issue".[86] The Board admitted that the process was "less than optimal",[87] that Woods neglected to follow many constitutionally-mandated procedures prior to altering a local's jurisdiction (such as giving notice and holding a hearing) and that the Vice President engaged, overall, in a rather clumsy and "tortuous" process when removing Local 1788's jurisdiction. Nonetheless, the Board concluded that it was not limited to considering the parent's conduct in the decision-making process: "a parent union could do everything wrong… and still end up with a decision that is fair and reasonable in the circumstances".[88]

This assertion by the Board that the presence of significant procedural defects will not have a determinative effect on its finding of "just cause" is disconcerting. How could the

[84] *IBEW, supra* note 76 at para. 65.
[85] *Ibid.* at para. 101.
[86] *Ibid.* at para. 98.
[87] *Ibid.* at para. 64.
[88] *Ibid.* at para. 89.

Board, on the one hand, ground one of its findings of cause in an article of the IBEW constitution which permits jurisdictional alteration "where harmony and progress are not prevailing" while on the other hand, discount the fact that the parent union's failure to follow proper procedures resulted in such grievous errors as the provision of incorrect information to a decision-maker who did not even understand the issue?[89] It is also difficult to ascertain how the Board could deem such a convoluted decision making process "fair and reasonable": Local 1788 enjoyed both *de facto*, and then (with the official, if in the Board's opinion, "soporific", approval of the parent and the other Locals in 1986) *de jure* jurisdiction. Yet years later, at the urging of the other locals when the economy deteriorated, the parent then unceremoniously stripped Local 1788 of the jurisdiction it had cemented in the EPSCA agreement with its employer.

The OLRB also failed to realize, from a practical perspective, that the so-called "restoration" of jurisdiction to the other locals by the international could actually potentially jeopardize the viability and stability of future collective bargaining. For years, Local 1788 had performed the majority of the electrical power systems work for Ontario Hydro; tasks in sophisticated nuclear facilities requiring specialized expertise. To take the jurisdiction from a local whose members who were competent and skilled in a specialized field and to distribute the work to other locals whose members had little experience with such employment does not seem conducive to the continued success of the IBEW on Ontario Hydro jobsites.

Indeed, after this decision many disaffected members of Local 1788, led by former Business Manager Joe Mulhall, left the IBEW and formed the Canadian Union of Skilled Workers, a union which operates exclusively in the electrical power systems sector. Thus, the Board's decision in *International Brotherhood of Electrical Workers* precipitated the formation

[89] *Ibid.* at para. 71.

of the union which now constitutes one of the biggest threats to the IBEW in the electrical power systems sector and the objectives of the IBEW's constitutional mandate to "promote the best interests of the IBEW in obtaining and controlling the work" and of s.147(3) to "facilitate viable and stable collective bargaining" which the OLRB attempted to promote were, ultimately, frustrated.

Lake Ontario Carpenters District Council of the United Brotherhood of Carpenters and Joiners of North America v. United Brotherhood of Carpenters and Joiners of North America

Another OLRB adjudication clarified the scope of the s. 147 protection against parent-directed alteration of jurisdiction in the context of a forced amalgamation. The international, UBCJA demanded the Lake Ontario Carpenters' District Council[90] to wind up its affairs and to amalgamate with three other Ontario Locals (which had a combined membership of seven thousand workers) into one large "Central Ontario District Council" ("CODC").

The LODC argued that the international breached both s.147 of the *OLRA* by altering it jurisdiction without cause and s.149 by "assuming supervision and control and otherwise interfering" with the LODC "in such a way that its autonomy was affected".[91] UBCJA countered that it had just cause for its actions, citing economic incentives and the declining membership in LODC's jurisdiction.

The Board held in favour of the parent international, relying on the same two considerations in its analysis of just cause it had relied on in the *Local 1788 v. IBEW* decision. The Board acknowledged that UBCJA did not follow its own constitutional procedure[92] but

[90] The "LOCD", approximately 425 members.
[91] *OLRA, supra* note 26 at s. 147(3).
[92] *United Brotherhood of Carpenters and Joiners of America*, [2001] O.L.R.B. Rep. March/April 491 at para. 66. ***[Carpenters]***. The UBCJA constitution permitted the General President of the parent to order an amalgamation only after s/he had

rejected the LODC's submission that the OLRB erred holding in *Local 1788 v. IBEW* that a significantly defective procedure was not fatal to a finding of just cause, repeating the dictum*:* "the parent union can do everything wrong… and still end up with a decision that is fair and reasonable in the circumstances".[93] Aside from this troubling failure of the OLRB to ascribe significant weight to the absence of procedural fairness in the parent's decision making, it is also disconcerting that in its substantive analysis under s.147(3), the Board failed to address the "other" two considerations: the "ability of the local trade union to carry out its duties under the Act" and "the wishes of the members of the local trade union".[94] Clearly, the amalgamation would render the LODC incapable of "carrying on its duties under the act" as the effect would be the total elimination of the four LODC locals, and the Board conceded: "nothing could affect [the LODC's] autonomy more".[95]

Yet the OLRB concluded "construction trade unions are not frozen in the form that existed at the time that the statute was amended" and that "local minorities" do not have "a statutory veto over trade union reorganization".[96] Nowhere in the bill, either counsel's submissions in the *Carpenters* dispute or in the legislative debate preceding the passage of Bill 80 was there ever any suggestion so drastic as granting a local a right of veto over international action. Bill 80 originally proposed a requirement of the consent of a local before any alteration of its jurisdiction by the parent which was diluted to a requirement of demonstrated "cause". There is, in Bill 80, no statutorily protected right to meaningful consultation with the local either before or after the alteration of its jurisdiction. There is only a directive that the OLRB

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determined it was "in the best interests of the Union and its members, locally or at large, to establish or dissolve any local". The General President did not consult with any of the members of the LODC before demanding the locals to wind up their affairs.

[93] *IBEW, supra* note 76 at para. 89.
[94] *OLRA*, *supra* note 26 at s. 147(3)(2(and s.147(3)(3),
[95] *Carpenters, supra* note 92 at para. 84.
[96] *Ibid*. at para. 91.

consider ”the wishes of the local members” as one of the four factors in its analysis of just cause- a factor which is clearly not weighted heavily as OLRB dismissed the unanimous opposition of four locals, comprising four hundred members over an area spanning 140 kilometres as mere “local minorities”.

While economic advantages would undoubtedly accrue to the parent from the consolidation, it is important to note that the vastly expanded geographic jurisdiction over which LODC members would be required to travel would have negative economic consequences for the members who would incur increased travel costs. To see a potential financial benefit to the parent supersede the wishes of its own members seems inconsistent with an international union’s mandate to secure the best possible opportunities for its members. Additionally, evidence was submitted that the LODC, if not experiencing membership growth, was self-sufficient and prospering, while the other larger locals were struggling financially. A tactic that is socially preferable and more conducive to stable and viable collective bargaining than the forced amalgamation of unwilling locals would have been to actively pursue (perhaps by organizing non-union sites) jobs in those locals which were experiencing a dearth of opportunities.

B. Interference Affecting Autonomy: Abuse of the Trusteeship Power

As discussed in Part I, the Title III provisions of the *Labor-Management Reporting and Disclosure Act* purport to regulate the imposition of trusteeships by parent unions and the Canadian counterpart to these safeguards are found in s 89 of the *OLRA* (see Appendix B). Ostensibly, a trusteeship allows the international to assume total control of a local in an emergency situation to restore stability. Unfortunately parent unions have abused this privilege to stifle local dissent and eliminate potential political rivals. While the *LMRDA* and s.89 impose

restrictions on the use of trusteeship power,[97] only s.149 of the *OLRA* aggressively attempts to curb potential abuse of trusteeship power by parent unions by unequivocally and expansively prohibiting any parent "interference" which affects the autonomy of the local.[98] The approach to the "just cause" inquiry which the OLRB devised the *IBEW* decision and affirmed in the *Carpenters* dispute has also been adopted with respect to s.149(1) in *International Brotherhood of Electrical Workers and Ken Woods.*[99] Thus, the OLRB will conduct a similar inquiry, only instead of being limited to consideration of the four factors described in s.147(3), the Board is granted greater latitude and may, under s.149 "consider such other factors as it considers appropriate".

Ontario Provincial Conference of International Union of Bricklayers and Allied Craftworkers v. International Union of Bricklayers and Allied Craftworkers

The relationship between the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers ("OPC")[100] and its parent international ("IUBAC") was one of extreme conflict, as Vice Chair David McKee of the OLRB wryly remarked that throughout the course of the extensive litigation between the two parties, "rarely did anyone pass up an opportunity to offend and annoy".[101] The Bricklayers' dispute is one of the rare instances in which the OLRB determined that there had been a violation of Bill 80 for which the parent international did not have "just cause", although as will shortly be discussed, this finding was only made because the international had meted out the harshest penalty available.

In 1998, the OPC launched an application under s.154 of the *OLRA* to have the

[97] *OLRA, supra* note 26 at s. 89. The provision requires the parent union to file a plan with the Board for lifting the trusteeship within 60 days of the imposition and also provides for automatic invalidation of the trusteeship after twelve months.
[98] *Ibid.* at s. 49(1).
[99] *International Brotherhood of Electrical Workers and Ken Woods,* [1997] OLRB Rep. Dec. 1022.
[100] Comprised of eleven Ontario locals
[101] *Coelho*, [2001] O.L.R.D. No. 1731 at para. 176. ***[Bricklayers].***

international removed as a bargaining agent because the parent only had a consultative role; for years the OPC had conducted all the bargaining. Furthermore, the international had demanded a $1.35 contribution towards an American training program be added to the bargaining agenda, a levy which the Ontario locals opposed. In response to this s.154 application, IUBAC immediately placed the OPC under trusteeship, dismissed the local officers and instructed the Trustee to withdraw the s.154 application and add the $1.35 levy to the bargaining agenda.

The OLRB was not required to decide the merits of the Bill 80 complaint which the OPC predictably filed in response to the imposition of the trusteeship as the Board allowed an interim application by the OPC, directing the s.154 application to proceed in spite of the Trustee's withdrawal. The Board noted that "it would be a novel proposition if an American parent could insulate itself from a challenge under s.154 this way"[102] and that it would be contrary to the principles of justice and fairness if the Board were to uphold a trusteeship that was imposed because the local union would not assert a bargaining position that was contrary to the wishes of its members. The OPC won its s.154 application and proceeded to conduct, alone, the next round of bargaining. It was in this round of bargaining that the OPC took the opportunity to eliminate a dues check-off to the international which had been included in prior agreements. The international responded by immediately revoking all eleven of the OPC locals' charters.

Vice Chair McKee offered this helpful description of the scope of "just cause" when conducting an analysis under s.149: "just cause will be found only where the parent's actions are consistent with its own internal values and are likely to protect or enhance, in the long run, the statutory rights, duties and privileges of the local".[103] The OLRB, therefore, had no

[102] *International Union of Bricklayers and Allied Craftworkers,* [1998] OLRB Rep. March/April 285 at para. 121.
[103] *Coelho,* [2001] O.L.R.D. No. 1744 at para. 16. ***[Bricklayers].***

difficulty in finding that the decision of the parent to revoke the charters was not "fair and reasonable in the circumstances" and that the behaviour of IUBAC was neither consistent with its own internal values nor enhanced the statutory rights of the local and the international thus violated s.149 of the *OLRA*. The Board also helpfully delineated a summary of principles from previous adjudications which informed its evaluation of just cause for a trusteeship imposed in violation of s.149. Having been adopted as critical considerations in Bill 80 adjudications involving trusteeships, the principles included a recognition that locals were entitled to be in conflict with their parents but also that a parent might have cause to impose a trusteeship (and does not need the local's consent) if the local's actions constitute a threat to the values of the union, the survival of the local or to correct a specific problem (although the parent must give up control once the problem is fixed). Finally, the Board noted that the mere desire of a local to pursue a more independent course is not "in and of itself" just cause for interference by means of a trusteeship.[104]

The Board acknowledged that the OPC was "not without blame" by unilaterally removing the dues check off provision, but gave great weight to the failure of international to offer the OPC any process to explain themselves. The OLRB was also critical of IUBAC for choosing to respond to the OPC, knowing that the Ontario locals wanted more autonomy, in an authoritarian manner that exacerbated the situation, adopting what Vice Chair McKee described as a "scorched earth policy".[105] This analysis by the OLRB, in which the lack of process demonstrated by IUBAC weighed heavily, stands in stark contrast to the Board's refusal to find a seriously defective procedure dispositive in the IBEW adjudication. Vice Chair McKee attempted to reconcile the differing approaches by explaining that the extent to which

[104] *Ibid.* at para. 25.
[105] *Bricklayers, supra* note 101 at para. 182.

procedural fairness is relevant to a finding of just cause is entirely contextual.

The OLRB refused to grant the OPC a declaration of successorship and attempted, instead, to craft a remedy which would change the relationship between the two combative parties. The Board noted that by leaving the charters revoked, the OLRB would be "doing the locals a favour",[106] but insisted that such a remedy did not address the remaining problem: the failure of the parent union to "know its proper role in a relationship that has inherent in it competing and contradictory interests and independent sources of power and authority to promote those interests".[107]

The international interpreted the Board's refusal to sever the relationship as a "victory" and imposed a set of "non-negotiable" demands upon the OPC, including the swearing of a pledge of loyalty and the transfer of control over the OPC's assets and finances to IUBAC. When the OPC, understandably, refused to accede to the demands, the international effected another trusteeship which the OLRB subsequently found to be in violation of s.149. Again the Board refused to end the relationship between the OPC and IUBAC, and instead imposed a lengthy set of conditions on the international in an Order, which included a requirement that the parent provide written reasons within five days of the imposition of any trusteeship. Ultimately, however, the Ontario locals were so frustrated with the OLRB process which continued to "yoke the parties in a hostile relationship"[108] that the majority of the locals withdrew from IUBAC and formed the Brick and Allied Craftworkers Union of Canada.

Thus only when a parent repeatedly and blatantly abused its institutional authority to override the statutory rights of locals without regard to any standards of local autonomy at all did the OLRB find a breach of Bill 80 "without cause". Furthermore, in a situation in which

[106] *Ibid.* at para. 173.
[107] *Ibid.* at para. 174.
[108] *Ibid.* at para. 187.

litigation had continued for five years and fostered an acrimonious relationship between a parent and local that was clearly beyond repair, it is difficult to understand how any remedy which did *not* allow for the OPC's secession would "facilitate viable and stable collective bargaining without serious labour relations problems". The OLRB cited the withdrawal of the disaffiliation provision from Bill 80 during the Second Reading debate as a rationale for its refusal to recognize the process, asserting that that "independence… is not a value the Act seeks to protect".[109] Yet the "resolution" of the Bricklayers dispute suggests that the OLRB felt the Act did, apparently, seek to preserve a relationship characterized by autocratic and aggressive behaviour, mutual rancour and conflict.

Labourers' International Union of North America, Local 183 v. Labourers' International Union of North America

The final Bill 80 adjudication which provides an interesting perspective on the efficacy of Bill 80 in the context of a parent-imposed trusteeship is culminating decision in the decade-long dispute between Labourers (Toronto) Local 183 and its parent international, LIUNA. As in the Bricklayers litigation, the factual background between the parties is lengthy and convoluted, and only a brief outline of the facts is necessary. In 2004, the General Executive Board Counsel for Canada (GEBCC), a committee appointed under LIUNA's Canadian Ethical Practices Code but which operates independently of LIUNA, investigated Local 183 for alleged misconduct. The GEBCC found that Local 183 had committed sixteen violations of the LIUNA constitution and an emergency trusteeship of Local 183 was immediately effected by the international. Brian Keller of the Canadian Independent Hearings Office was appointed to review the validity of the trusteeship using "just cause" as his standard of review. The "Keller Report" of April 2006 found that four of the alleged violations on the LIUNA constitution

[109] *Ibid.* at para. 185.

merited the imposition of the trusteeship: the misuse of union funds by Local 183 for conducting secret surveillance of LIUNA officials suspected of consorting with organized crime figures, the forgery of collective agreements, the failure to credit benefit entitlements and to enforce collective agreements.[110]

It is important to note that at this stage in the dispute between Local 183 and its parent international, for the first time in history the LIUNA representative for Central and Eastern Canada was to be elected at a national convention, rather than appointed by LIUNA.[111] Local 183 intended to nominate a rival candidate to the incumbent International Vice President Joe Mancinelli,[112] and with the support of 30,000 member local it is likely that Local 183's candidate would have defeated Mancinelli. The imposition of the trusteeship, however, effectively precluded Local 183 from fielding its candidate to the national convention[113] and Mancinelli ran unopposed.

Local 183 filed a complaint with the OLRB that the trusteeship was imposed without just cause in violation of sections 147 and 149 of the *OLRA*, while LIUNA countered that the trusteeship was not an "alteration of jurisdiction" within the meaning of s.147, and that if section 149 *had* been breached, the doctrine of issue estoppel should operate to obviate the need for an OLRB evaluation of just cause.

On June 12, 2006 the OLRB found in favour of LIUNA. Because the trusteeship did not change the scope of Local 183's entitlement to administer bargaining rights, the imposition of the trusteeship did not constitute an "alteration of jurisdiction" and did not violate s.147. The

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[110] *Universal Workers Union, Labourers' International Union of North America, Local 183,* [2007] O.L.R.D. No 344 at para. 27. ***[LIUNA].***

[111] *Universal Workers Union, Labourers' International Union of North America, Local 183,* [2006] O.L.R.D. No. 3098 at para. 5. ***[LIUNA].***

[112] *Ibid.* at para. 5.

[113] Indeed, after LIUNA cancelled Local 183's nomination meeting for the election of delegates to the national convention, Local 183 appeal to the OLRB for interim relief. The OLRB granted the relief on May 9, 2006 and demanded the Trustees hold the election. Unfortunately, LIUNA prohibited any former executive members from running and, rather than sending only the delegates who were approved by the international, Local 183 chose not to send any.

Board determined that the trusteeship did interfere with Local 183's autonomy but that the doctrine of issue estoppel applied and that, as per the findings in the Keller Report, the four violations of the constitution were sufficient cause. The Board issued an Order which directed Local 183 immediately to transfer control to the appointed trustees and the Order prohibited LIUNA from suspending or expelling any officer or staff of Local 184 without leave of the Board. Furthermore, LIUNA was required to file a plan for the Board within one month, which outlined a procedure for lifting the trusteeship.[114]

Events subsequent to the Board's adjudication in conjunction with the OLRB's reliance on the Keller Report findings suggest that the Board did not interpret and apply the Bill 80 provisions in a manner which promoted "greater democracy and local control in the relationship between internationally based parent construction unions and their Ontario locals". The first problematic outcome of the *LIUNA* decision was the inability of the OLRB to ensure that the international administered the trusteeship over Local 183 in accordance with the Board's Order. Local 183 was forced to return to the OLRB on numerous occasions to seek relief in the form of cease-and-desist orders for such violations of the Board Order by LIUNA as carrying out surveillance of members of Local 183, terminating employment of Local 183 members and improperly and unjustly discharging certain staff members of Local 183.[115] Vice Chair McKee's description of the Bricklayer international's post-adjudication actions, "upon being declared the victor", [IUBAC] felt entitled "to burn down the walls and sack the city",[116] was equally applicable to the behaviour of LIUNA. Not only did LIUNA fail to comply with

[114] *Universal Workers Union, Labourers' International Union of North America, Local 183,* [2006] O.L.R.D. No. 2141 at para. 6.
[115] *Universal Workers Union, Labourers' International Union of North America, Local 183*, [2006] O.L.R.D. No. 3610 at para. 2.
[116] *Bricklayers, supra* note 101 at para. 39.

the Board's Order, but the international acted with impunity in conducting a post-adjudication "purge" of Local 183 members who LIUNA felt were unsympathetic to the international.

The second troubling aspect of the Board's decision was the ORLB's acceptance of the findings of the Keller Report despite the compelling materials which were filed in rebuttal. The Report stated that the local breached its constitutional obligations towards it members by failing to adopt a recommendation by a forensic account to ensure that all workers received the appropriate benefits in accordance with the local's collective agreements,[117] and that this breach provided "just cause" for the imposition of the trusteeship. Yet the same accountant who was interviewed by Keller clearly explained in Local's 183 that although at the time Keller conducted his investigation the local had not entered a *written* agreement to adopt the recommendation, the local had entered into a "working arrangement" which had been finalized and adopted by the time the Report was released.[118]

Another ground which Keller deemed "just cause" for the imposition of the trusteeship was Local 183's expenditure of $130,000 "to determine the extent, if any, between certain members of the Local and organized crime figures"[119]. While the information was not submitted by Local 183's counsel, it was later revealed that the local's suspicions were well founded: the surveillance footage commissioned by Local 183 showed LIUNA executives and some members of Local 183 meeting with known organized crime bosses. Cosmo Manella, the LIUNA executive who was the Director of the International "Tri-Fund" was recorded meeting with Cosimo Commisso, head of the Toronto organized crime syndicate, as well as with the Musitano brothers who were affiliated with a Hamilton "family".[120] Mancinelli dismissed the

[117] *LIUNA, supra* note 110 at para. 32.
[118] *Ibid.* at para. 43.
[119] *Ibid.* at para. 35.
[120] *W-5 Report* ,"No Solidarity" (26 November 2006) CTV News. Available Online: <http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20061124/wfive_borderdrug_061124/20061126/>.

allegations as a "smear campaign coming from Dionisio and a bunch of disgruntled employees who, quite frankly, we threw out of office".[121] What is particularly troubling is that LIUNA was only able to effect this unceremonious removal from office shortly after the meetings between the LIUNA members and the organized crime figures took through the imposition of a trusteeship sanctioned by the OLRB.

The Canadian LIUNA adjudication suggests an effect contrary to the very purposes for which the American trusteeship provisions in the *LMRDA* were enacted: to eliminate organized crime elements in unions by removing from office and positions of influence all those who were part of the corrupt regime. It is arguable that the OLRB actually cemented LIUNA's stranglehold on Local 183 by upholding a trusteeship which facilitated LIUNA's "purge" of Local 183 members who were not amenable to its agenda. Professor Goldberg noted the limited effect of the *LMRDA* provisions regulating trusteeships in unions dominated by organized by crime,[122] and some American labour scholars have even suggested eliminating the invalidation provision in circumstances of extreme corruption so as to allow the Trustee "as long as it takes to reestablish the democratic process"[123]. While the Labourers Local 183 may not be "dominated" by organized crime, the implications of an OLRB-sanctioned trusteeship which was imposed under suspicious circumstances and on tenuous grounds are certainly cause for cause.

Conclusions

This examination of leading Bill 80 adjudications reveals serious deficiencies in both the legislation and in the Board's interpretation of the provisions. The standard of an

[121] *Ibid.*
[122] *Goldberg, supra* note 13 at 19.
[123] Clyde Summers, "Union Trusteeships and Union Democracy" (1991) 24 *U. Mich. J.L. Ref.* at 701.

"objective" but yet "highly contextual" analysis of just cause which emerged in the *IBEW* decision and which was endorsed in successive OLRB adjudications remains prone to inconsistent interpretations. In *Local 1788 v. IBEW* the Board maintained that significant deficiencies in process were not fatal to a finding of just cause, while in the *Bricklayers* adjudication, the Board gave much weight the international's failure to provide a hearing or written reasons in accordance with the principles of natural justice. Not only does this "contextual" approach do little to promote fairness and predictability but the Board also, by condoning a parent's decision as "fair and reasonable" even in disputes where the international admittedly "did everything wrong", reveals a disturbing indifference to an important legal principle. As per the *Bricklayers* decision, the statute should recognize that a failure to afford natural justice is dispositive in a just cause analysis.

Also "unevenly balanced" by the OLRB are that statutory considerations under s.147(3). In two of the leading Bill 80 cases discussed in Part IV, the Board relied solely upon the first and fourth factors, the union constitution and the facilitation of viable and stable collective bargaining. Consideration of the "wishes of the local members", which *should* be a factor of critical importance in legislation designed to enhance autonomy and promote democracy in internal union affairs, has been consistently undervalued by the OLRB.

My own brief analysis indicates that the Board will only find that a breach of Bill 80 is without cause when the international parent has engaged in the most egregious conduct possible. Perhaps the OLRB's inclination to give "just cause" a broad interpretation is a manifestation of the tribunal's reluctance interfere with internal union affairs; an administrative hesitance which is itself, a result the historic Canadian "statutory abstinence" in labour legislation.

Notably, when the OLRB did decide in favour of the local in the *Bricklayers* dispute, the Board chose a remedy so ineffective that the Ontario locals seceded from the parent union. Indeed, one could say that Bill 80 has been quite successful in promoting local "autonomy": in three of the four Bill 80 cases discussed, the dissatisfied locals disaffiliated from their parent internationals and formed independent unions. Clearly, however, the creation of rival national unions by disgruntled former members of American-based internationals was not an intended objective of the legislation.

Alternatively, by sanctioning forced amalgamations, such as in the *Carpenters* dispute, the OLRB is also not promoting the objectives of Bill 80. How does legitimizing parent orchestrated consolidations of unwilling locals promote "greater democracy and local control"? I agree with the American contemporary union activists who assert that democratic unions do better at organizing and bargaining than autocratic ones. One needs only to look to the ancient Greek city-states to understand that society flourishes where the *polis* (or local) is strong, internally democratic and largely self-governing. Yet the OLRB, by sanctioning the international's consolidation of unwilling locals in the absence of meaningful consultation and without regard for natural justice, is potentially promoting the "iron law of oligarchy".[124]

Bill 80 originally required the parent to obtain a local's consent before it could alter the local's jurisdiction, and given the leniency with which the Board has approached its interpretation of "just cause", it is arguably a provision which should have remained in Bill 80 if it were to have any effectiveness in achieving the government's stated, lofty objectives. Even the incorporation into the *OLRA* of the *LMRDA*'s less onerous requirement of written reasons prior to the implementation of a trusteeship (or, by extension, any alteration of jurisdiction) would undoubtedly enhance the effectiveness of Bill 80 in promoting union democracy.

[124] *Murray, supra* note 8 at 102.

Premier Rae admitted that Bill 80 was introduced "because we're the government and we are in a position to finally do something for the men and women of Ontario".[125] While it is admirable that the New Democratic Party was taking advantage of its majority government position to pass labour legislation - "something" intended to benefit the citizens of Ontario by enhancing local union autonomy and internal democracy - it is unfortunate that ultimately the NDP's legislation has proven to be "not enough".

[125] *Hansard, supra* note 44 at 1720 (Bob Rae).

Appendix A

***Ontario Labour Relations Act*,** 1995, S.O. 1995, c. 1, Sched. A.

Sections 146 to 150

145. (1) In sections 146 to 150,

"constitution" means an organizational document governing the establishment or operation of a trade union and includes a charter and by-laws and rules made under a constitution; ("acte constitutif")

"jurisdiction" includes geographic, sectoral and work jurisdiction; ("juridiction")

"local trade union" means, in relation to a parent trade union, a trade union in Ontario that is affiliated with or subordinate or directly related to the parent trade union and includes a council of trade unions; ("syndicat local")

"parent trade union" means a provincial, national or international trade union which has at least one affiliated local trade union in Ontario that is subordinate or directly related to it. ("syndicat parent") 1995, c. 1, Sched. A, s. 145 (1).

(2) Repealed: 2000, c. 38, s. 29.

Same, trade union constitution

(3) In the event of a conflict between any provision in sections 146 to 150 and any provision in the constitution of a trade union, the provisions in sections 146 to 150 prevail. 1995, c. 1, Sched. A, s. 145 (3).

Employees not in industrial, commercial, institutional sector

146. (1) This section applies with respect to employees in a bargaining unit in the construction industry other than in the industrial, commercial and institutional sector referred to in the definition of "sector" in section 126.

Bargaining rights

(2) If a parent trade union is the bargaining agent for employees described in subsection (1), each of its local trade unions is deemed to be bargaining agent, together with the parent trade union, for employees in the bargaining unit within the jurisdiction of the local trade union.

Party to the collective agreement

(3) If a parent trade union is a party to a collective agreement that applies to employees described in subsection (1), the local trade union is deemed to be a party, together with the parent trade union, to the collective agreement with respect to the jurisdiction of the local trade union.

Council

(4) The Minister may, upon such conditions as the Minister considers appropriate, require a parent trade union and its local trade unions to form a council of trade unions for the purpose of conducting bargaining and concluding a collective agreement,

(a) if an affected local trade union, parent trade union or employer requests the Minister to do so; and

(b) if the Minister considers that doing so is necessary to resolve a disagreement between a parent trade union and a local trade union concerning conducting bargaining or concluding a collective agreement.

Rules of operation, etc.
(5) The Minister may make rules governing the formation or operation of the council of trade unions, including the ratification of collective agreements, if the parent trade union and the local trade unions do not make their own rules within 60 days after the Minister's decision under subsection (4).

Compliance
(6) The parent trade union and the local trade unions shall comply with rules made by the Minister. 1995, c. 1, Sched. A, s. 146.

Jurisdiction of the local trade union
147. (1) A parent trade union shall not, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992, whether it was established under a constitution or otherwise.

Notice
(2) The parent trade union shall give the local trade union written notice of an alteration at least 15 days before it comes into effect.

Determination of just cause
(3) On an application relating to this section, the Board shall consider the following when deciding whether there is just cause for an alteration:

1. The trade union constitution.
2. The ability of the local trade union to carry out its duties under this Act.
3. The wishes of the members of the local trade union.
4. Whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems.

Same
(4) The Board is not bound by the trade union constitution when deciding whether there is just cause for an alteration.

Complaint
(5) If a local trade union makes a complaint to the Board concerning the alteration of its jurisdiction by a parent trade union, the alteration shall be deemed not to have been effective until the Board disposes of the matter. 1995, c. 1, Sched. A, s. 147.

Province-wide agreements
148. (1) This section applies if, on May 1, 1992,

(a) a parent trade union was party to a collective agreement whose geographic scope included the province and which applied to employees described in subsection 146 (1); or
(b) a parent trade union had given notice to bargain for the renewal of such a collective agreement.

Sections 146 and 147
(2) Sections 146 and 147 do not operate to authorize a local trade union to enter into a separate collective agreement or a separate renewal collective agreement or to alter the geographic scope of the collective agreement. 1995, c. 1, Sched. A, s. 148.

Interference with the local trade union
149. (1) A parent trade union or a council of trade unions shall not, without just cause, assume supervision or control of or otherwise interfere with a local trade union directly or indirectly in such a way that the autonomy of the local trade union is affected.

Same, officials and members
(2) A parent trade union or a council of trade unions shall not, without just cause, remove from office, change the duties of an elected or appointed official of a local trade union or impose a penalty on such an official or on a member of a local trade union.

Board powers
(3) On an application relating to this section, when deciding whether there is just cause, the Board shall consider the trade union constitution but is not bound by it and shall consider such other factors as it considers appropriate.

Orders when just cause
(4) If the Board determines that an action described in subsection (1) was taken with just cause, the Board may make such orders and give such directions as it considers appropriate, including orders respecting the continuation of supervision or control of the local trade union. 1995, c. 1, Sched. A, s. 149.

Administration of benefit plans
150. (1) If benefits are provided under an employment benefit plan primarily to members of one local trade union or to their dependants or beneficiaries, the local trade union is entitled to appoint at least a majority of the trustees who administer the plan, excluding the trustees who are appointed by employers.

Same, more than one local trade union
(2) If benefits are provided under such a plan primarily to members of more than one local trade union or to their dependants or beneficiaries, those local trade unions are entitled together to appoint at least a majority of the trustees who administer the plan, excluding the trustees who are appointed by employers.

Same, members outside Ontario
(3) If, in the circumstances described in subsection (2), benefits are provided to members outside of Ontario or to their dependants or beneficiaries, the local trade unions are entitled together to appoint that proportion of the trustees (excluding trustees appointed by employers) that corresponds to the proportion that the members in Ontario of the local trade unions bear to the total number of members participating in the plan.
Effect of agreement
(4) Subsections (1), (2) and (3) apply despite any provision to the contrary in any agreement or other document.

Appointment process
(5) Unless otherwise agreed by the interested local trade unions, the appointment of trustees under subsection (2) or (3) shall be determined by a majority vote of those local trade unions voting, with each local trade union being entitled to cast a single ballot.

Appendix B

Locals under Trusteeship

Trusteeship over local unions

89. (1) A provincial, national or international trade union that assumes supervision or control over a subordinate trade union, whereby the autonomy of such subordinate trade union, under the constitution or by-laws of the provincial, national or international trade union is suspended, shall, within 60 days after it has assumed supervision or control over the subordinate trade union, file with the Board a statement in the prescribed form, verified by the affidavit of its principal officers, setting out the terms under which supervision or control is to be exercised and it shall, upon the direction of the Board, file such additional information concerning such supervision and control as the Minister may from time to time require.

Duration of trusteeship

(2) Where a provincial, national or international trade union has assumed supervision or control over a subordinate trade union, such supervision or control shall not continue for more than 12 months from the date of such assumption, but such supervision or control may be continued for a further period of 12 months with the consent of the Board. 1995, c. 1, Sched. A, s. 89.

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