

# Hugh A. Robson – A Labour Jurist Ahead of his Time

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B R U C E C U R R A N \*

**H**ugh Amos Robson was a labour jurist ahead of his time. He was an industrial relations pluralist who, despite his privileged position in society, recognized the legitimacy of unions, and the right of workers to collectively bargain through those unions, and to strike if need be, in order to reduce the invidious income inequality that existed in Winnipeg at the time. He also recognized the role of the state in imposing an industrial relations regime that would give workers more power. His views stood in marked contrast to those of the “Legal Gentlemen” who led the Citizens’ Committee of 1,000.

## INTRODUCTION

About 100 years ago, for six weeks in the spring and summer of 1919, Winnipeg became ground zero for one of the most famous and influential labour conflicts in Canadian history.<sup>1</sup> The metal trades and the building trades originally went on strike in an attempt to bring employers to the negotiating table with their trades councils. Very quickly after that, the umbrella body for the city’s unions, the Winnipeg Trades and Labour Council, called on their members to vote on a proposal for a general strike, and the members voted overwhelmingly in favour of this action.<sup>2</sup> There were skirmishes between the

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<sup>1</sup> Richard Marsden, “Labour History and the Development of Modern Capitalism” in Morley Gunderson, Allen Ponak & Daphne Taras, eds, *Union-Management Relations in Canada*, 4th ed (Toronto: Addison Wesley Longman, 2001) at 71.

<sup>2</sup> David Bercuson, *Confrontation at Winnipeg: labour, industrial relations, and the general strike* (Montreal: McGill-Queen's Press-MQUP, 1990) at 109-12.

workers and the authorities, involving violence and destruction of property.<sup>3</sup> Over May and June 1919, general strikes broke out in approximately 30 Canadian cities from coast to coast. Some of these strikes were in response to local labour conditions, while others were in solidarity with the workers in Winnipeg.<sup>4</sup>

Hugh Robson, then a respected retired jurist, was asked to conduct a Royal Commission to investigate the causes and effects of the Winnipeg General Strike. His views on the causes of the strike and the rights workers should possess were remarkably ahead of his time. He did not view labour law in isolation, but rather as being interrelated with the economic and political pressures of the time. He understood that the relationship between labour and employers was not simply governed by the law, but was also influenced by economic, social, and political pressures. This is all the more remarkable when one considers that industrial relations only gradually developed as an academic discipline over the 1920s, 1930s, 1940s, and 1950s.<sup>5</sup> Industrial relations and labour law have developed in Canada in a manner consistent with his views and recommendations. His progressive attitude towards organized labour stood in marked contrast to the reaction of many of his colleagues from the Winnipeg legal community, who framed the Winnipeg General Strike as being seditious, and attempted to criminally prosecute its organizers.<sup>6</sup>

## LABOUR RELATIONS REGIME AT TIME OF STRIKE

Legal historians Fudge and Tucker have coined the term “liberal voluntarism” for the last few decades of the nineteenth century. The building block for workplace relations in that period was the individual contract of employment, the terms and conditions of which were negotiated within a system of *laissez faire* capitalism. While workers had the freedom to join with other workers to advance their common interests, employers were concomitantly free to refuse

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<sup>3</sup> Donald Campbell Masters, *The Winnipeg General Strike* (Toronto: University of Toronto Press, 1950) at 83–88 and 107–08.

<sup>4</sup> James Naylor, “Standing Together” (April–May 2019) *Canada's History* at 26–27.

<sup>5</sup> Bruce E Kaufman, *The Origins & Evolution of the Field of Industrial Relations in the United States* (New York: Cornell University Press, 1993); Bruce E Kaufman, *The Global Evolution of Industrial Relations: Events, Ideas, and the IIRA* (Washington, DC: Brookings Institution Press, 2004).

<sup>6</sup> Tom Mitchell “‘Legal Gentlemen Appointed by the Federal Government’: the Canadian State, the Citizens’ Committee of 1000, and Winnipeg’s Seditious Conspiracy Trials of 1919–1920” (2004) 53 *Labour/Le Travail* at 9–46.

to hire union members, and could fire employees who engaged in union activity after the start of their employment. Generally, the side that prevailed would be determined by the economic power generated by labour market conditions. The common law doctrines of property and contract established a patchwork framework for the collective action of workers. At the same time, the criminal law limited the range of permissible tactics that workers acting collectively could use to advance their interests.<sup>7</sup>

In the early 1900s, state institutions began playing an increasingly important role in regulating industrial conflict, and Tucker and Fudge have dubbed this the start of “industrial voluntarism.”<sup>8</sup> During this period, both federal and provincial governments began taking an active interest in dealing with collective worker action that threatened to disrupt the economy and the social order. The culminating example of industrial voluntarism was the enactment of the *Industrial Disputes Investigation Act* (IDIA) in 1907.<sup>9</sup> The legislation did not so much create a formal labour relations regime as a mechanism for limiting strikes or lock-outs. In order for a strike (by workers) or change in the terms and conditions of employment (by the employer) to occur, the parties had to go through a process of mandatory investigation and conciliation. Each of the two parties was required to appoint a nominee to the tripartite “Board of Conciliation”, with the third being a neutral chair, and this process was overseen by the federal Minister of Labour. The board then met with the parties, conducted a “fact finding” investigation, and issued a public report. It was only upon the completion of these steps that a strike or lockout became legal. The purpose of the report was to put public pressure on the parties to be reasonable, and the process of the fact-finding was thought to give the parties the opportunity to ventilate their grievances and cool down.<sup>10</sup> The advent of mandatory conciliation, followed shortly by the need for increased labour-management cooperation during World War One, created something of a temporary period of rapprochement. However, this period of more harmonious relations ended shortly after the conclusion of the Great War, with many employers taking an increasingly intransigent attitude in their relations

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<sup>7</sup> Judy Fudge & Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900-1948* (Toronto: University of Toronto Press, 2004) at 13-14.

<sup>8</sup> *Ibid* at 14-15.

<sup>9</sup> See generally *Industrial Disputes Investigation Act*, SC 1907, c 20.

<sup>10</sup> Richard Jackson, “Collective Bargaining Legislation in Canada” in Morley Gunderson, Allen Ponak & Daphne Taras, eds, *Union-Management Relations in Canada*, 4th ed (Toronto: Addison Wesley Longman, 2001) at 184.

with trade unions, thus contributing to the conditions of the Winnipeg General Strike.<sup>11</sup> It is important to understand that, despite the existence of mandatory conciliation, at the time of the strike in 1919, there was really no “legislated labour relations regime”, to the extent that we understand that phrase today, that made the enforcement of workers’ rights possible.<sup>12</sup>

### WINNIPEG GENERAL STRIKE AND ROBSON’S REPORT

Even today, debates still rage about the General Strike, including certain facts, its causes, the goals of workers, and the impact. According to Robson, there were two specific labour disputes that were the proximate causes of the general strike. One was between employees in the building trades and the builders regarding the workers’ wages.<sup>13</sup> The other was between the metal workers and owners regarding the structure of negotiations. In this second dispute, the employees working for a group of owners wanted a union to negotiate on their behalf with owners. While some of the owners signaled some willingness to collectively negotiate with their own workers, the employees in the metal trades wished to bargain as a block with all owners, something the owners refused to do.<sup>14</sup> Workers in the building and metal trades ceased work, and this prompted the Winnipeg Trades and Labour Council, the umbrella organization for unions in the city, to call a general strike. Under this general strike, approximately 12,000 members of unions went out on strike, and about another 12,000 employers who were not unionized also joined the strike.<sup>15</sup>

The strike lasted about six weeks, and included workers “in many divers [sic] walks, skilled and unskilled” and “those highly paid and those whose earning power was low.”<sup>16</sup> Although the strike originated in the private sector, workers in the public sector also joined the strike, including workers providing

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<sup>11</sup> Fudge & Tucker, *supra* note 7 at 119–20.

<sup>12</sup> *Ibid* at 119. However, the authors also point out that workers acting collectively in Canada have always been faced with a degree of legal regulation.

<sup>13</sup> H A Robson, “Royal Commission to Enquire into and Report Upon the Causes and Effects of the General Strike Which Recently Existed in the City of Winnipeg for a Period of Six Weeks, Including the Methods of Calling and Carrying on Such Strike” (6 November 1919) (Winnipeg: The Commission, 1919, Manitoba Legislative Library) at 3 [Robson Report].

<sup>14</sup> *Ibid* at 4.

<sup>15</sup> *Ibid* at 4–5. Note that some scholars place the figure at approximately 30,000 (See Fudge & Tucker, *supra* note 7 at 107).

<sup>16</sup> Robson Report, *supra* note 13 at 5.

“necessaries of life” (police officers, fire brigade, and city Water Department).<sup>17</sup> The climax of the labour conflict occurred on Saturday June 21, when the Royal Northwest Mounted Police were called in to disburse a large assembled crowd. A streetcar was stopped, tipped over, and briefly set on fire. The Mounted Police fired more than 100 shots into the crowd, injuring about 30 and killing two people.<sup>18</sup>

In the aftermath of the strike, Hugh Amos Robson was appointed on July 4<sup>th</sup>, 1919 by the Lieutenant-Governor of Manitoba as the sole Commissioner to conduct a “Royal Commission to Enquire into and Report Upon the Causes and Effects of the General Strike which recently existed in the City of Winnipeg for a period of six weeks, including the Methods of Calling and Carrying on Such Strike.”

There is no historical written record that specifically explains why Hugh Robson was asked to be the sole commissioner. However, it is doubtless because he was perceived to be fair and impartial. By this time, he had resigned from a successful career as a King’s Court Justice to become a corporate lawyer. When Hugh Robson was appointed as the Province’s first Public Utilities Commissioner several years before his commission regarding the strike, the *Winnipeg Free Press* stated the following:

In ability, in integrity, in every qualification requisite to the right discharge of those responsibilities and duties in the best interest of the public welfare and progress, Judge Robson is so eminently qualified that Manitoba can justly esteem itself especially fortunate among the provinces of this Dominion in having such a man in such a position.<sup>19</sup>

In producing his report, Robson conducted sittings over 11 days in July, August, and September 1919. Numerous witnesses were examined, and he also made a series of independent inquiries.<sup>20</sup>

According to Robson, the goals of the strikers could be divided into two main categories. The first objective was in essence a revolutionary over-throw of capitalism and capitalists, which he termed “aggressive socialism.” The other goal, which Robson found much more palatable, was improved working conditions. He viewed this goal to be held by the “genuine labour” movement,

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<sup>17</sup> *Ibid* at 5, 21.

<sup>18</sup> Donald Campbell Masters, *The Winnipeg General Strike* (Toronto: University of Toronto Press, 1950) at 83–88, 107–108.

<sup>19</sup> “The Public Utilities Commissionership”, *Winnipeg Free Press* (24 May 1912) at 4.

<sup>20</sup> Robson Report, *supra* note 13 at 3.

wherein workers were acting reasonably and fighting for improved working conditions.<sup>21</sup> We will take each of these in turn.

In terms of aggressive socialism, Robson believed that this was headed by certain leaders who subscribed to a socialist ideology. He talked about how the “foreign element” in workers followed these socialist leaders, and how these were different from the “great mass of workers” who “accepted the existing order of things.”<sup>22</sup> Robson pointed to the *Western Labour News* as being a socialist publication which “fanned the seeds of discontent” and “had a large part in stirring up discontent and bringing it to a head”, and “accentuated the class nature of the struggle.”<sup>23</sup>

According to Robson, one union in particular was responsible for promoting a socialist ideology for the General Strike: One Big Union (OBU). Robson found that OBU’s goal was the elimination of the profit system, and the union intended to mobilize workers to overthrow capitalism. Robson believed that OBU was advocating “radical socialism” rather than “craft unionism.”<sup>24</sup> It is clear that Robson did not support the radical factions within the strike, but it’s also equally clear that Robson believed that the vast majority of the strikers were not attempting to overthrow the existing economic order. He concluded that the vast number of strikers were neither advocating revolution, nor were they guilty of criminal sedition.<sup>25</sup>

Robson’s view that the strike was not primarily an act of revolution or criminal sedition, but rather first-and-foremost an attempt by workers to better their conditions, stood in marked contrast to many of Robson’s legal colleagues. During the strike, leading members of Winnipeg’s legal community organized the “Citizens’ Committee of One Thousand.” These included A.J. Andrews (the leader), Isaac Pitblado, Travers Sweatman, and J.B. Coyne.<sup>26</sup> The Citizens’ Committee engaged in the following actions during the strike:<sup>27</sup>

- A.J. Andrews assumed the role of the principal adviser to the federal Justice Department;

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<sup>21</sup> *Ibid* at 10-11.

<sup>22</sup> *Ibid* at 10.

<sup>23</sup> *Ibid* at 11-13.

<sup>24</sup> *Ibid* at 12.

<sup>25</sup> *Ibid* at 13.

<sup>26</sup> Mitchell, *supra* note 6 at 13.

<sup>27</sup> Fudge & Tucker, *supra* note 7 at 107-09.

- lobbied the federal government to take coercive measures to end the strike;
- organized volunteers to provide some of the services that were withdrawn by strikers;
- successfully lobbied the federal government to pass amendments that would make it possible to deport the leaders of the strike who were British-born;
- A.J. Andrews drafted a proclamation banning public gatherings and parades, which the Mayor of Winnipeg issued.

In the immediate aftermath of the strike, these lawyers on the Citizens' Committee undertook the rare step of initiating a private criminal prosecution<sup>28</sup> against the eight British-born strike leaders on charges of seditious conspiracy. In very general terms, the definition of this offence at the time was two or more people agreeing to commit acts in furtherance of an intent to alter or change governments by unlawful means.<sup>29</sup> This was initiated despite the province of Manitoba's desire to pursue conciliation following the strike, and notwithstanding the fact it "had no taste for mass arrests and expensive criminal prosecutions."<sup>30</sup> In fact, the government of Manitoba "resisted demands from members of the Citizens' Committee that it prosecute the strike leaders arrested on Andrews' watch."<sup>31</sup> In the ensuing trials, all eight strike leaders put forward defences that the purpose of the strike was to enforce the demand that employers in the metal industry recognize the workers' union (the Metal Trades Council) as the bargaining agent, and that the strike was legal.<sup>32</sup> The juries ultimately found seven of the eight men guilty, but accusations of jury manipulation and questionable evidence hang over these trials.<sup>33</sup> According to Mitchell, "an ideology of reaction perfectly suited to the circumstances confronting Andrews and his comrades among the Citizens' Committee was current in 1919 in the form of American legal conservatism."<sup>34</sup>

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<sup>28</sup> According to Mitchell, *supra* note 6 at 24, private criminal prosecutions were a basic feature of the British common law system, but had become fairly rare by 1919.

<sup>29</sup> Fudge & Tucker, *supra* note 7 at 112.

<sup>30</sup> Mitchell, *supra* note 6 at 20.

<sup>31</sup> *Ibid.*

<sup>32</sup> Fudge & Tucker, *supra* note 7 at 112.

<sup>33</sup> For an in-depth discussion of these issues, see Mitchell, *supra* note 6. See also Fudge & Tucker, *supra* note 7 at 113–14.

<sup>34</sup> Mitchell, *supra* note 6 at 16.

This paradigm tied “capitalist property to natural rights, and natural rights to constitutional law.”<sup>35</sup>

In contrast to the lawyers from the Citizens’ Committee who believed that the General Strike was a thinly-disguised revolution, Robson remained convinced that, for the most part, the strike was animated by the goals of more traditional unionism: for workers to act collectively in an attempt to improve their lot vis-à-vis employers.<sup>36</sup> He found that the immediate cause of the general strike was the refusal by the employers to recognize the demands of the workers and disputes over the method of collective bargaining.<sup>37</sup> He decided that the general strike was an attempt to put pressure on the “Metal Masters” to concede to sectoral collective bargaining.<sup>38</sup> In this kind of bargaining, a collective agreement is reached which covers all workers in a sector of the economy (here metal working), in contrast to “enterprise bargaining” where agreements cover individual firms. Additionally, he concluded that the strike was a broad-based attempt by dissatisfied workers to improve the conditions of their employment. Specifically, the causes of this dissatisfaction were, according to Robson, high rates of unemployment and feelings of job insecurity; high cost of living combined with inadequate wages (e.g., many workers were not earning a living wage); long hours; undesirable working conditions; growing economic inequalities between the workers and business owners; employers’ refusal to recognize the right of employees to organized labour; employers’ refusal to recognize the right of workers to collectively bargain; and desire on the part of workers for a closer co-operation between capital and labour, particularly for greater input in the decisions that will impact employees.<sup>39</sup>

In his concluding commentary, Robson recommended a number of improvements to the labour relations regime in Manitoba. In the process, he demonstrated a surprising degree of sensitivity towards and awareness of the plight of the workers of his time.

Some of these recommendations were legal. He recognized two very important (and related) collective rights of workers: 1) to organize into unions, and 2) to collectively bargain with their employers. For the former right, he

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<sup>35</sup> Mitchell, *supra* note 6 at 16 quoting W Wesley Pue, “A Profession in Defence of Capital?” (Fall 1992) 7 CJLS at 269.

<sup>36</sup> Robson Report, *supra* note 13 at 5.

<sup>37</sup> *Ibid* at 4.

<sup>38</sup> *Ibid* at 5.

<sup>39</sup> *Ibid* at 6-9, 24.



recommended that the recently proclaimed *Industrial Conditions Act*<sup>40</sup> be used. The statute created a standing Joint Council of Industry, which was comprised of five individuals, two union representatives, two management representatives, and a neutral. A worker, union, or employer could refer a dispute to the Joint Council, who would investigate and issue a public report.<sup>41</sup> It is clear that Robson held out great hope for the prospect of the Joint Council to facilitate collective bargaining, resolve disputes during the lifetime of the collective agreement, and resolve strikes.<sup>42</sup> With regard to the later right, Robson expressed a hope that, with time, those employers who refused to recognize the legitimacy of their workers' unions would do so. However, he called for "progress of thought" on the part of employers, rather than advocating for the enforcement of this right against recalcitrant employers. In this way, he was still stuck in the voluntarist roots of the past.

Robson also implicitly recognized a third right thought to be critical to organized labour – the right to strike.<sup>43</sup> He adopted a sympathetic tone towards the cessation of work by the workers,<sup>44</sup> and never suggested that the General Strike was either illegal or illegitimate.

Other recommendations in the Report were more policy-based. He was careful to recommend the continuation of a capitalist system, and in this regard he did not adopt a critical perspective of labour relations. He did, however, advocate a more involved role for government in labour relations, claiming the government had a duty to ensure that labour and employers maintained a "proper regard for each other."<sup>45</sup> He went on to acknowledge that, from time to time, if economic inequality became too great, it was appropriate for the government to intervene. He stated, "If Capital does not provide enough to assure Labour a contented existence with a full enjoyment of the opportunities of the times for human improvement, then the Government might find it necessary to step in and let the state do these things at the expense of Capital."<sup>46</sup>

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<sup>40</sup> *Industrial Conditions Act*, SM 1919, c 43.

<sup>41</sup> *Ibid*, s 4.

<sup>42</sup> Robson Report, *supra* note 13 at 30–31.

<sup>43</sup> Tonia Novitz, *International and European Protection of the Right to Strike* (Oxford: Oxford University Press, 2003).

<sup>44</sup> See e.g. Robson Report, *supra* note 13 at 17: "It should be said that the leaders who had brought about the General Strike were not responsible for the parades or riots which took place, and, in fact tried to prevent them. The leaders' policy was peaceful idleness..."

<sup>45</sup> Robson Report, *supra* note 13 at 27.

<sup>46</sup> *Ibid*.

He also encouraged a taxation system for the re-distribution of wealth, better education funding for talented children from low socio-economic families, and certain state-provided medical services.<sup>47</sup>

## HOW LABOUR LAW AND INDUSTRIAL RELATIONS HAVE CHANGED SINCE ROBSON'S REPORT

Since the Winnipeg General Strike, there have been two significant developments in our understanding of the relationship between management and labour, both of which indicate the enlightened and advanced thinking exhibited in Robson's Report.

The first development is the emergence of Industrial Relations as an academic discipline. While the roots of this discipline started in the 1800s, it really only attracted serious academic study starting in the 1920s, and continued to develop in the 1930s to the 1950s.<sup>48</sup> In very general terms, Industrial Relations is the interdisciplinary study of the relationship between management and labour. It draws on systems theory, which "situates the actors (unions, employers, and governments) within their social, political, economic, technological, and legal environment."<sup>49</sup> In his report, Robson implicitly drew on systems theory to understand the various forces that caused the strike, such as low wages, the growing perception among workers of income inequality, and the rising political forces of socialism. Robson also implicitly adhered to a theory in Industrial Relations known as "industrial pluralism" that became firmly established in the discipline in the 1940s and 1950s. Industrial pluralism is the concept that employees often have divergent interests from those of management interests, and this may bring the two sides into conflict.<sup>50</sup> An awareness on the part of Robson of industrial pluralism as a driving force behind the general strike can be seen in the following passage: "Labour has seen manufacturers and the merchandising class prosperous during the war, and in too many cases self-indulgent, whereas the condition of the very labour essential

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<sup>47</sup> *Ibid* at 28-29.

<sup>48</sup> Bruce E Kaufman, *The Origins & Evolution of the Field of Industrial Relations in the United States*, 1st ed (New York: ILR Press, 1992); see Bruce E Kaufman *The Global Evolution of Industrial Relations: Events, Ideas, and the IIRA* (Washington, DC: Brookings Institution Press, 2004).

<sup>49</sup> Morley Gunderson, Allen Ponak & Daphne Taras, "Introduction to Canadian Industrial Relations" in Morley Gunderson, Allen Ponak & Daphne Taras, eds, *Union-Management Relations in Canada*, 4th ed (Toronto: Addison Wesley Longman, 2001) at 5.

<sup>50</sup> See e.g. James T Carney, "In Defense of Industrial Pluralism" (1982) 87 *Dick L Rev* 253.

to the prosperity, instead of improving, grew worse.”<sup>51</sup> In summary, Robson appeared to recognize that the Winnipeg General Strike emerged in response to economic and political pressures of the day.

Since the time of Robson’s Report, labour law has continued to evolve in Canada in a way that is consistent with Robson’s acceptance of labour’s right to organize, collectively bargain, and to strike. The “single most important piece of labour legislation in North American history”<sup>52</sup> was the passing of the *National Labor Relations Act*<sup>53</sup> in 1935, popularly known as the Wagner Act after one of the US Senators who wrote and sponsored the bill.<sup>54</sup> The Wagner Act’s model of labour relations is a legislatively complete system that specifically outlines how the rights of workers to organize, collectively bargain, and to strike are to be operationalized. This model is based on the principle of exclusive majoritarianism at the workplace or “enterprise” level. The Wagner Act sets out the right of employees in a workplace to attempt to organize for representation by a union, followed by a vote overseen by a national labour board to “certify” the union as their exclusive bargaining agent. Once a union is certified for a group of employees (called a bargaining unit), an employer is obliged to collectively bargain with the union (now the “bargaining agent” for the employees) for a collective agreement covering the employees.<sup>55</sup> The employer is expressly obliged to recognize the certified union, and bargain in good faith with it.<sup>56</sup> Employees are given the express right to strike,<sup>57</sup> and to engage in other “concerted activities for the purpose of collective bargaining or other mutual aid or protection.”<sup>58</sup>

Although the Wagner Act model of labour relations was introduced in the United States, Canada adopted it over time in a piece-meal fashion. In 1944, in the midst of WWII, the federal government introduced PC 1003, which implemented the Wagner Act model for all workers across Canada for the

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<sup>51</sup> Robson Report, *supra* note 13 at 27.

<sup>52</sup> Jackson, *supra* note 10 at 181.

<sup>53</sup> 29 USC: Labor.

<sup>54</sup> Jackson, *supra* note 10 at 208.

<sup>55</sup> Labour Law Casebook Group, *Labour and Employment Law: Cases, Materials, and Commentary*, 9th ed (Toronto: Irwin Law, 2018) at 475.

<sup>56</sup> See *National Labor Relations Act*, *supra* note 53, s 8.

<sup>57</sup> *Ibid*, s 13.

<sup>58</sup> 29 USC §§ 151, s 7.

duration of the war.<sup>59</sup> By the end of the 1940s, all the provinces, including Manitoba, had passed legislation that expressly adopted the Wagner Act model, and this model remains in place to this day.<sup>60</sup> In addition to the American structure, there were a number of “Canadian” innovations. These included mandatory conciliation by a government body (a hold-over from the *Industrial Disputes Investigations Act*), an associated “cooling off period”, and mandatory grievance arbitration. Additionally, strikes and lock-outs are prohibited for the duration of the collective agreement, but are expressly allowed within certain parameters in order to obtain leverage in the context of bargaining for a new or renewal collective agreement.<sup>61</sup> Generally, sympathy strikes by workers outside the bargaining unit (along the lines of those seen during the Winnipeg General Strike by workers who were not in the metal or building trades) are not permitted.

One gets the sense that Robson would be very pleased with the legislative model that has developed in Canada. It enables the enforcement of the right of workers to organize, which Robson supported, and provides a defined process to enforce that right, something that Robson appeared to desire but was uncertain how to accomplish. In his Report, rather than call for enforcement of workers’ right to organize, he merely expressed hope that the passage of time would lead to a change in attitude of intransigent employers (“This must be left to progress of thought”) and denied that employers’ refusal to recognize unions was widespread (“There is such general recognition that it cannot be supposed to be a complaint common to all labour”).<sup>62</sup> One gets the sense that part of what was behind this weakness was the inability to envisage how recognition could be accomplished. The specifics of Canadian labour legislation now make it unnecessary for unions to wage the kind of recognition strikes that were necessary in the Winnipeg General Strike. One must also imagine that Robson would be pleased with the way that the widespread nature of the General Strike would be limited under the current model, with its focus on localized workplace bargaining rather than bargaining at the sectoral level and with its mechanisms to prevent sympathy strikes from occurring.

In the century that has passed since the delivery of Robson’s Report, there have also been developments in international law and Canadian constitutional

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<sup>59</sup> *Wartime Labour Relations Regulations*, PC 1003 (17 February 1944).

<sup>60</sup> Fudge & Tucker, *supra* note 7 at c 10.

<sup>61</sup> Jackson, *supra* note 10 at 185.

<sup>62</sup> Robson Report, *supra* note 13 at 25.

law that support Robson's views that workers have the rights to organize, collectively bargain, and to strike. These rights have been recognized in a number of International Labour Organization (ILO) treaties, including Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organize,<sup>63</sup> and Right to Organise and Collective Bargaining Convention (No. 98),<sup>64</sup> and a number of United Nations treaties, including the International Covenant on Economic, Social and Cultural Rights<sup>65</sup> and the International Covenant on Civil and Political Rights.<sup>66</sup>

In Canada, the federal government passed the *Canadian Charter of Rights and Freedoms* in 1982,<sup>67</sup> section 2(d) of which states: "Everyone has the following fundamental freedoms: [...] (d) freedom of association." After initially declining to do so,<sup>68</sup> the Supreme Court eventually reversed itself and ruled that this Charter right vests in workers a constitutionally protected right to organize,<sup>69</sup> to collectively bargain,<sup>70</sup> and to strike.<sup>71</sup>

## CONCLUSION

Hugh Amos Robson was a lawyer and jurist remarkably ahead of his time. He viewed the Winnipeg General Strike as legitimate, and unlike some of his legal contemporaries, believed that the workers were, for the most part, exercising their rights in an attempt to obtain better terms and conditions of employment. His legal contemporaries viewed the General Strike as a challenge to constituted authority and the existing social order, amounting to nothing short of seditious conspiracy on the part of the strike leaders. Although Robson's views on the nature and extent of workers' rights to organize, collectively

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<sup>63</sup> This was ratified by Canada in 1972.

<sup>64</sup> This has not been ratified by Canada.

<sup>65</sup> Ratified by Canada in 1976.

<sup>66</sup> Ratified by Canada in 1976.

<sup>67</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [Charter].

<sup>68</sup> *Reference Re Public Service Employee Relations Act (Alta)*, [1987] 1 SCR 313, 38 DLR (4th) 161; *Public Service Alliance of Canada v Canada*, [1987] 1 SCR 424, 38 DLR (4th) 249; *Retail, Wholesale and Department Store Union v Saskatchewan*, [1987] 1 SCR 460, 38 DLR (4th) 277.

<sup>69</sup> *Dunmore v Ontario (AG)*, 2001 SCC 94.

<sup>70</sup> *Health Services and Support-Facilities Subsector Bargaining Association v British Columbia*, 2007 SCC 27.

<sup>71</sup> *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4.

bargain, and strike were not particularly well elaborated in the Report (nor could they be expected to be given the mandate of the Commission), they were certainly consistent with developments in North American labour legislation, international law, and Canadian constitutional jurisprudence over the next century. Although he could be accused of being something of an apologist for the existing social order of his day, his sympathy for workers, his understanding of the social, political, and economic context in which they found themselves, and his recommendations were all remarkably enlightened and innovative. Such enlightenment and innovation demonstrated by Robson is still necessary today, as Canadian workers are even now facing some of the same problems he observed, such as unemployment, precarious employment, and economic inequality, along with many more recent pressures, such as globalization, a fissured workplace,<sup>72</sup> and a gig economy.

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<sup>72</sup> This term, coined by David Weil, suggests that corporations are using technology to shed functions that were once managed internally to subcontractors, vendors, and franchises. See David Weil, *The Fissured Workplace: Why Work Became So Bad For So Many and What Can Be Done to Improve It* (Cambridge: Harvard University Press, 2014) at 7–20.