

*Motion  
Defeated*

**That the Standing Committee on Law Amendments direct its Chair to table a report at the next sitting of the House of Assembly stating that a witness, namely Mr. Rick Clarke, misled the committee when he answered certain questions put to him by the committee and that the committee recommend to the House that he be found to be in contempt of the House with appropriate consequences as the House determines.**

- During an appearance before the Law Amendments Committee, Mr. Clarke was again asked about the Michelin Bill. His response according to Hansard, was: I've been president of the Nova Scotia Federation of Labour since 1989 and the issue has never come out of our lips in all those years.
- In a January 2006 interview, the Nova Scotia Federation of Labour president, Rick Clarke, now senior adviser to the Premier, serving on his Economic Advisory Panel, co-chair of the NDP Government's LMRC, told The ChronicleHerald the Michelin Bill was bad legislation. The article went on to explain that Mr. Clarke said the bill is still a sore issue and one his organization raises with every new Labour Minister who is sworn in.

COMMITTEE ON LAW AMENDMENTS

WEDNESDAY, NOVEMBER 30, 2011

BILL NO. 102

[5:10 P.M.]

MR. CHAIRMAN: Our next presenter will be Rick Clark. Mr. Clark is with the Nova Scotia Federation of Labour.

MR. RICK CLARK: Mr. Chairman, members of the committee. You notice Peter and I didn't arrive together this time. First of all I wanted to say it's a pleasure to have the opportunity to appear on behalf of the 70,000 affiliated members of the Nova Scotia Federation of Labour and to take this opportunity to comment on the proposed amendments to the Trade Union Act under Bill No. 102.

For the record I should point out that we are an umbrella organization that's a direct Charter of the Canadian Labour Congress. We represent better than 350 local unions from across the province with a collective membership of over 70,000 affiliated members. They represent virtually in every community or types of workplaces in the province, not that every place is organized, but the type of work. Also I would like, as an organization we advocate, very much of our work is advocating on behalf of the unorganized. We are one of the few bodies that appears before this committee if it's legislation or making presentations on minimum wage changes, changes to labour standards, changes to address a precarious employment that we find unorganized workers dealing with. We feel that we do have a good representative body.

It is interesting to note that when I've been following some of the presenters that have been here who have been speaking against this legislation, some of the employers we do represent a lot of their workers as well. I can assure you there's a better chance we're speaking on behalf of their workforce than what they are.

I want to say that we're appreciative to have this opportunity and unlike others we were very appreciative also to have the opportunity to appear before the study day that was held on September 23<sup>rd</sup> and I do want to correct something. The image is out there that there was one side or a few that didn't get proper notice. We all received the same notice basically and on the 23<sup>rd</sup>, the worker representatives there were outnumbered easily, if not higher than two to one. So there was fair representation at that session on the 23<sup>rd</sup> and that's a matter that's easy to find out because there was a list that was circulated around for people to sign who were in attendance.

Again, for the record, I received complaints from people who weren't able to attend because of the notice as well, so we all share that issue. I think it was a very good day, we didn't come to an agreement, but I don't anybody thought there was going to be an agreement as we were coming through that process.

Unlike others we do value the role of the Labour Management Review Committee and the chance for consultation. I feel it is something we had to put on record because we've been debating Bill No. 100, since Bill No. 100 has been passed. Prior to Bill No. 100 there was very little consultation or advanced consultation on workplace-related legislation, at least for labour representatives or those who represent workers. When we were asked about consultation we were told very bluntly that that's what the Law Amendments Committee is for. Happily to say that has ended with the creation of the Labour Management Review Committee. Is it perfect? No.

There are processes and changes and the committee was tasked with obviously a very tough issue to start out on, but I think there is promise for it and I surely don't agree with the previous presenter that we trash it. I think, you don't throw the baby out with the bathwater, if there are problems you look at tweaking to see how things can be corrected and how processes can be corrected.

We do appear in full support - well, almost full support, I have a couple of deviations that are of concern of this bill. I do want to say that initially when we went forward of a presentation, our documentation that we had sent to the committee had embraced the Manitoba legislation. Then we suggested some deviations, should the parties decide to be looking at it and that didn't happen, so we do sit here in support of Bill No. 102 that is before this committee.

What's very troublesome is the fact that we're hearing that the first contract is unnecessary and Draconian-type legislation and it's clear by these employers and organizations who are characterizing it in this manner, also characterizing labour relations as trite compared to the economy, taxation, productivity and GDP, et cetera. Surely these organizations could not believe that continuing on with some of the same bad labour legislation and practices in this province is good for the economy.

This is not the first time we've heard this type of argument. Whenever there is any type of labour legislation proposed and it doesn't necessarily have to be changes to labour relations, it's anything that benefits or changes made to issues that impact on workers. We hear the same basic three arguments: it will only benefit unions not workers; they reflect that an intelligent, positive labour environment is somehow bad for business; and then, of course, the big question, it's like trying to bargain now, why do we need it? There is never a justified or satisfactory answer to why do we need it, no matter how much time you take in trying to explain it.

As I said, it's not only in regard to this legislation. I've been around long enough, that a little better than 25 years ago the same questions, the same argument hit the fan on steroids, when we gave the right to refuse under the Occupational Health and Safety Act to workers in this province, along with the right to participate and right to know. It was going to be the demise of business, it was going to be a job killer, it was going to kill investments and history has shown that that hasn't happened. The same applies every time there's an increase on minimum wage, the same arguments, it's a job killer, business is going to leave, people won't invest and again, statistics prove that that hasn't been the case anywhere, but particularly in the job loss area.

We do want to dispute that there's no need for this discussion because we believe that any discussion that people are willing to have that talks about bettering the labour relations in this province is discussions worthy of having. Although we may not have - and everybody is looking for it if you would, the blood on the weapon, that there has been some major problems, we have got a history of long bargaining in this province, we've got a history of strikes that have gained, unfortunately, national notoriety over the years. As somebody that has bargained, I want to say that even if you bargain and get a collective agreement in place and it has been a long time, there's a bitter taste left in the mouths of both the employer and the worker and it has a negative impact on relations for years to come. If you've never represented an organized workplace you would never know that.

Mr. Chairman, I realize it's 10 minutes, so I'm going to skip a few of these points because I just want to come forward in that we are very open to this legislation, we believe it is necessary. And the last issue I want to challenge before I talk to two points in the bill, itself, is that . . .

MR. CHAIRMAN: Two minutes.

MR. CLARK: . . . it doesn't benefit workers, that it benefits unions, there is no statistic, there is no study, there is no examples to support that this is an organizing tool in any other jurisdictions. We have the seven out of 11 jurisdictions in this country and that argument has been made time and time again, but if you actually do careful research you will find that it's not factual, there hasn't been big spikes in organizing in any of the other jurisdictions because of the legislation.

I would suggest to you that this is about workers, it provides the rights that are alluded to in the preamble of the Trade Union Act, for workers, to ensure that they get their collective agreement as a result. That's not necessarily - and you notice I'm not pointing a finger at one side or the other because the legislation provides for either side to invoke???? the process. Either side can be dragging their feet in collective bargaining and what happens is the worker is the collateral damage out of this. So if we get poor relations in a bargaining session then this can be invoked by either side that provides justice for the worker as prescribed.

I would like to say that Bill No. 102 is not Manitoba legislation because Manitoba legislation is all inclusive. We have concerns that part two of the Act is excluded from this legislation. We have concerns about what government did under Bill No. 100, it brought everybody under one roof, now we're taking one part of the legislation and treating it different than the others. We don't feel that there is enough through put into that.

The other positive that we want to really point out is the first clause that talks about the training sessions that are available. That answers a lot of the concerns that we're hearing from people, that we have people not knowing how to bargain. Now once the certification order is issued there is the opportunity for people to be trained on negotiating a first collective agreement.

In winding up, I read it and CCPP, who is an independent body, I read their presentation and it certainly is worthy of a second reading.

MR. CHAIRMAN: Thank you. Mr. Bain.

MR. KEITH BAIN: Mr. Chairman, I know, Rick, you're today representing the Nova Scotia Federation of Labour, but you're also co-chair of the Labour Management Review Committee that was set up on Bill No. 100. In a letter the committee sent to the minister on November 15<sup>th</sup>, it was stated that the committee, which initially under Bill No. 100 was set up to make recommendations to the minister, couldn't reach consensus as far as whether or not first contract arbitration should be available. I'm just wondering if you would comment on that? Again, I apologize because I know you're here with the Federation of Labour, but . . .

MR. CLARK: I have no problem with that, I certainly can't talk about presentations that may have been made before, but I can talk to you, first of all, the legislation, as I understand the legislation, is that it's not by vote, it's try to reach a consensus. The committee does not own the issue, the issue that is something that is referred to it and if we can reach a consensus or make recommendations then it's forwarded to the minister with those recommendations.

We had some great deliberations, even on the last day and that was after all the consultation and after all the media, and we still had a great consultation, but we couldn't come to a final conclusion on a recommendation so it went ahead non-consensus. I'm not surprised with it when you look at the media coverage and the pressure that was on that. I used to say when I collective bargain, you can't bargain in the media and I just think that it was issues that happened, but there was great discussion and consultation internally. I would suggest to you that despite the fact that there was great discussion and consultation internally. I would suggest to you that despite the fact that there wasn't a consensual

position, there was great relationship through that discussion, even on the last day before we sent the letter off.

MR. BAIN: Okay, thank you for that. I just wondered because I know that after hearing your presentation and knowing about the letter, I appreciate that. Thank you.

MR. CHAIRMAN: Thank you. Mr. Samson.

MR. SAMSON: Thank you, Mr. Chairman, and thank you, Rick, for your presentation. If I'm not mistaken, you co-chaired the Premier's Council on the Economy, is that not correct?

MR. CLARK: Yes.

MR. SAMSON: I'm just curious, during your deliberations on discussions on how to grow the Nova Scotia economy, did that committee or council have any discussions around first contract arbitration?

MR. CLARK: No, that was never brought before that committee.

MR. SAMSON: Okay, I just wanted to confirm that. One of the other issues is, I believe the Federation of Labour in the past has made comments regarding its opposition to the current legislation that exists in Nova Scotia regarding Michelin. I'm just curious if you could advise us today, as the President of the Federation of Labour, whether it's still your belief or your association's belief, that the Government of Nova Scotia should repeal that legislation?

MR. CLARK: Well, I guess the way I would respond to that, to be quite honest with you, you must have dug further into the archives than Peter has because I've been the President of the federation since 1989 and that has never come out of our lips in all those years.

MR. SAMSON: So you support the legislation then?

MR. CLARK: I never said repealing it. It's there, it's never - I've been around, I've been on the executive when the legislation came through and I know there were efforts trying to change it. I learned a long time ago I'm not a better, I'm not a gambler but you don't whip a dead horse. It's an issue that has never been on our agenda, and that's 20-odd years.

MR. SAMSON: Thank you for that. Just one final question, during the - I believe it was in the Fall, the Federation of Labour had its annual meeting. During that time the Minister of Labour, Ms. More, appeared before the Federation of Labour and there was a question and answer session. I believe on their Web site the Federation of Labour it does

make mention of that. It talks about having some pointed questions asked to the minister and then it links up to a video. That video was featured on the CBC news report and afterwards it appears that the video has been removed from the site, so no one can actually now see what discussions took place between the membership of the Federation of Labour and the minister.

I'm just curious, could you advise us if you are aware, who asked to have that video removed from the Federation of Labour site?

MR. CLARK: No. It could well have been myself because we had another speaker because we didn't know - it didn't go on our site because we - it might have been linked to something on our site but if we don't have the speaker's authority to post something, we don't do that. We have two speakers that we had to have stuff taken or said that if you don't have the authority, you take it down.

MR. SAMSON: Just on that point, every other video is still intact, of different speakers speaking and everything else, so that doesn't seem to have been an issue. But this specific one where there were questions, I believe there were some comments made to the minister about this is payday and we need this to be able to trust your government. That seems to have been the only one that has been removed. I was just curious.

MR. CLARK: I'm not a lawyer but I do know that if you are recording someone, if you are doing it without their knowledge, you could be liable for criminal action, so we're very conscious of that.

MR. SAMSON: Thank you.

MR. CHAIRMAN: Thank you very much. Thank you, Mr. Clark, for coming. Our next speaker is Sean Reid, Mulgrave Machine Works Limited.

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Bill is still a bitter pill; Unions fume about Michelin law

Steve Proctor Business Editor

Paulette Sadoway tightens her grip on her pen and her eyes narrow at the mention of the phrase "Michelin bill."

It's been part of the province's labour landscape for 27 years, but for the Atlantic representative of the Canadian Labour Congress, the legislation still evokes red-hot anger.

"It's bad law. It was drafted to help one company at the expense of workers and to this day, it deprives hard-working individuals of their right to join a union," she said of the bill passed by the government of John Buchanan in 1979.

Although widely known as the Michelin bill, the legislation was an amendment to the Trade Union Act requiring that "interdependent manufacturing plants" owned by the same employer be unionized as a whole, not on a plant-by-plant basis. Any company with those interdependent plants is entitled to take advantage of the provisions, but so far Michelin has been the only company to do so.

The passage of the bill deflated the United Rubber Workers' efforts to unionize Michelin workers in this province in 1979. Since then there have been a dozen or so other attempts, but the 3,400 workers at the company's plants in Granton, Waterville and Bridgewater remain union-free. Perhaps not surprisingly, the effort to unionize Michelin is considered by some the toughest labour battle in Canada.

The Canadian Labour Congress was part of the second failed attempt to unionize workers in the mid-1980s and a supporter of subsequent efforts by the Canadian Auto Workers union.

"If it wasn't for the Michelin bill, at least two of the three plants would be unionized, I guarantee it," Ms. Sadoway said. "As long as it stays on the books, it is an affront to unions everywhere. It really says to workers, this government doesn't take your rights that seriously."

Rick Clarke, president of the Nova Scotia Federation of Labour, said passage of the Michelin bill has done more than simply stymie unionization attempts at the three tire plants.

He said the bill, which former NDP leader Alexa McDonough once called "very, very, vulgar," ruined labour-government relations in the province for more than two decades.

"The relationship with the province had begun to fade prior to 1979, but the passage of the bill really wrecked a good thing," Mr. Clarke said. "Union representatives walked away from all labour-management studies and all government committees. Discussions on almost all labour issues ground to a halt.



"For about 20 years, the only changes made to the Trade Union Act were hurtful."

The situation has begun to improve over the past couple of years, but Mr. Clarke said the bill is still a sore issue, one his organization raises with every new labour minister that is sworn in.

"It's a bad piece of legislation, but that is the only kind the government has pushed out from backrooms in the last three decades," he said.

Noting that Michelin announced the construction of the Bridgewater plant within a few months of the passage of the Michelin bill, Mr. Clarke said it is has always been appalling to see the Trade Union Act used as a economic development tool.

For Jim Micali, Michelin's president of North American operations, the issue of the unionization is simple. There have been 12 to 14 attempts to unionize Nova Scotia workers, the workers have voted No "and that has been the right answer," he said.

In a late December interview at the company's South Carolina corporate headquarters, Mr. Micali said the company provides healthy wages and excellent benefit packages, and works hard every day to communicate directly with employees to ensure any concerns are quickly dealt with.

"There has never been a unionization campaign in the U.S., but (those) in Nova Scotia have all been distracting to employees and managers," he said. "The people have spoken clearly. They don't need a union, and we heartily concur."

Goodrich plants haven't decertified.

"There is little question Michelin is anti-union, and this legislation was crafted specifically for them," Ms. Haiven said. "It is sad that the Michelin bill exists. It is used in classrooms and lecture halls across North America as the ultimate example of anti-union legislation."

But she said she suspects the Michelin bill isn't the only example of the multinational getting special treatment.

Ms. Haiven also wants to know why a fatal accident on the Michelin property in January 2002 was not subject to more intense scrutiny by the province's Labour Department.

A 49-year-old employee, Margaret Sinclair of West River Station, died Jan. 8, 2002, when she was struck by the blade of a truck that was plowing at Michelin's Granton plant just after 6 p.m. No charges were laid in connection with the death. Dale Bennicke, the Labour Department's acting regional manager at the time, said an investigation into the accident concluded there weren't any violations of health or safety rules by Michelin or the plowing contractor.

"If that had happened in another workplace, occupation health and safety officials would have been all over them," Ms. Haiven said. "It might have been an independent contractor, but it was on their property."

It has been five years since the last union drive, but the United Steelworkers of America has served notice it might not be much longer. The international union has set up information offices near the company's plants and is inviting workers to visit and learn about the potential benefits of unionization.

Steelworkers regional spokesman Ken Dawson said his group might succeed where previous efforts have failed because the union has workers in other tire plants, including the Kitchener, Ont., operation that Michelin took over in 1990.

Larry Wark, area director with the Canadian Auto Workers and the man who spearheaded several of his organization's unsuccessful efforts, said he's prepared to share his expertise but believes the steelworkers have "a huge bogeyman" to slay before they will succeed.

Although the company's flagship plant in France is unionized, he said no group has yet been able to convince workers that the Nova Scotia plants won't be closed if the workforce unionizes.

"That's the bogeyman we've been unable to defeat," Mr. Wark said.

As for the Michelin bill, he said it was supposed to give the company "some breathing room" so it could invest and prosper.

"Surely after 30 years they have enough money to fight unions, and they no longer need the legislative advantage," he said.

Organizing efforts take money and they get people's hopes up, Mr. Clarke said. If they fail, people get despondent and it becomes harder for future attempts to succeed. But he said Michelin's workers, earning an average of \$49,000 a year, have indirectly benefited from the union attention because the company rushed to improve many issues around health and safety, or contracting out, that sparked unionization attempts in the first place.

"It's not the Michelin bill keeping Michelin in Nova Scotia," Mr. Clarke said. "When it becomes more profitable to move elsewhere, they'll move. That's just the way multinationals are organized. The most progressive employers never use unionization as a reason for leaving an area."

As for the Michelin bill itself, resentment within the labour community will continue to simmer, but neither Mr. Clarke nor Ms. Sadoway believes there is enough new heat to make it an issue in the next provincial election.

Ms. Haiven said she hopes for better and suggested the New Democrats should be challenged to make the removal of the Michelin bill part of their next campaign.

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