GLOBAL PERSPECTIVES
ON LEGAL HISTORY 25

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Legal Transfer and Legal Geography in the British Empire

Philip Girard

On the Edge of Many Empires: Employers' Liability in Quebec's Industrial Age, 1880–1931
| 73–104

MAX PLANCK INSTITUTE
FOR LEGAL HISTORY AND LEGAL THEORY

Philip Girard

On the Edge of Many Empires: Employers' Liability in Quebec's Industrial Age, 1880–1931*

Work in the pre-industrial era held many dangers, but the industrial revolution brought with it new ways of maiming and killing workers. While some women were injured or killed in factory accidents, it was mostly men, and male breadwinners at that, who were the victims. This situation created two very big problems: a labour relations problem whereby worker-employer relations were embittered by inadequate post-accident economic support from employers, and a social problem of impoverished families who had now lost the support of their breadwinner. In common law countries, for much of the 19th century it was the private law of tort that provided the only legal recourse for injured workers or the families of those killed by industrial accidents. And that law, never very worker-oriented to begin with, was made even less so by the adoption of the fellow servant rule in the Anglosphere, a rule that precluded recovery where the cause of a worker's injury was the negligence of a fellow servant rather than a fault attributable directly to the employer. It was the third of the unholy trinity of anti-worker liability rules in the common law, the other two being voluntary assumption of risk and the rule that any contributory negligence by the worker was a complete bar to recovery. In addition, the courts set a high bar for proving the causal link between an employer's negligence and a worker's injury, one that caused many claims to fail.

Agitation by unions and their allies led to reforms of employers' liability law. The German scheme of 1884 was based on a state-supervised insurance scheme integrated with medical treatment and compensation for illness, which also gave employers a role in accident prevention. Britain and France preferred to reform their private law of liability in more worker-friendly directions while still preserving the role of courts as the ultimate arbiters of liability. The British Employers' Liability Act, 1880 mostly abolished the

* I would like to thank Ariel Montana for excellent research assistance in the preparation of this paper.

fellow servant rule but also limited damages to three years' earnings in the most serious cases, allowed contracting out, and maintained the fault principle.[1] Not until 1897 in Britain and 1898 in France was no-fault liability finally introduced, but there was no requirement for employers to obtain insurance and claims by workers still had to be made through the ordinary courts in France. In Britain contracting out was prohibited in 1897 but workers had the option of using the common law as amended to seek full recovery, or invoking the no-fault option where lesser, statutorily mandated compensation was available. Claims were made before arbitrators who were often County Court judges sitting in this capacity but appeals on points of law could be made to the superior courts. Coverage under the 1897 Act was quite restricted but agricultural workers were added in 1900 and the Workmen's Compensation Act, 1906 made coverage nearly universal. It left the same litigation mechanism intact but mandated costless access to the arbitrators, though workers would have to pay their own lawyers if they chose to be represented.[2]

Canadian common law provinces generally followed the English example. In Ontario, for example, the fellow servant rule was abolished in 1886 and the voluntary assumption of risk doctrine substantially undermined in 1889, with the other common law provinces following in later years. Several provinces (but not Ontario) then followed the British Act of 1897, introducing no-fault liability as an option to recourse at common law. Comparative fault, allowing an apportionment of liability between two or more parties where all were at fault to some degree, would not be introduced until the 1920s, but by that point the private law was irrelevant to employer liability as most provinces had introduced state-run no-fault compensation schemes that abolished private law actions by workers.[3] US state efforts in the field of workers' compensation generally adopted the British statute but began to oblige employers to obtain private insurance starting in 1911.[4] All these reforms, until the introduction of a public scheme in Washington state in

1 43 & 44 Vict., c 42 (UK).

2 The 1897 British law is 60 & 61 Vict., c 37; the 1906 law 6 Edw. VII, c 58. The French law of 1898 with amendments to 1924 is reproduced in Merrill (1925). On the lead-up to the 1897 Act, see Bartrip/Burman (1985).

3 Risk (1983); Phillips/Girard/Brown (2022) 411–420. On the adoption of comparative fault outside Quebec, see Brown (2013).

4 Perlin (1985).

1911 and Ontario's Workmen's Compensation Act of 1914, kept liability for worker accidents within the private law of civil liability, tort in common law and delict in civil law, with its attendant problems of access to justice for those without significant resources to hire lawyers and pay court costs. Ontario's 1914 Act abolished tort claims by injured workers, established a statutory schedule of compensation, and provided that all claims for compensation would be adjudicated by a Workmen's Compensation Board with no appeal to the courts or judicial review. The Board would levy premiums on employers and pay claims out of that fund, supplanting private insurance, though some large employers such as railways and municipal corporations were permitted to self-insure.

All of this is well known. In this paper we explore the less well-known terrain of employers' liability in Quebec during the period in question. The period 1880–1930 is conventionally treated as the first phase of Quebec's industrial revolution, and with good reason. A largely agricultural society at Confederation, Quebec's many natural resources were rapidly exploited on an industrial scale in the following decades.[5] By the early 1900s the Canadian Pacific Railway's Angus Works at Montreal had become the largest railway workshop in the world, with a labour force of between 4,000 and 8,000 workers. The electricity generation works at Shawinigan (1898) were the second largest in the world, after Niagara Falls, attracting a wide variety of industries from aluminum smelting to pulp and paper, chemical, and textile plants. This rapid growth is clearly reflected in industrial accident rates. Reported industrial accidents increased ten-fold in the two decades after 1888, and even then, all agreed such events were seriously underreported.[6] The traditional periodization works well for our topic because 1931 was the year that a workers' compensation scheme modelled on Ontario's was passed. It abolished actions in delict in this area, gave exclusive jurisdiction over workers' compensation to a *Commission des accidents du travail*, and remained essentially unchanged until the 1980s.

5 Whether these resources were the settler population's to exploit without the consent of Indigenous peoples was not a question that troubled the non-Indigenous inhabitants of Quebec (or other provinces) at the time.

6 Statistics derived from Quebec Legislative Assembly Sessional Papers, Inspection of Factories (1889–1894); Sessional Papers, Inspection of Industrial Establishments and Public Buildings (1905–1909).

This 1931 law will be the terminus of this study, which examines the winding road followed from the treatment of employers' liability under the Civil Code of Lower Canada in the later 19th century to the removal of this entire area from the private law in 1931. It proceeds in three parts: the pre-1910 law, dissatisfaction with which led to the creation of the first commission of inquiry into the law, the Globensky Commission, which reported in 1908; the first reform period (1910–1925), from the passage of the Workmen's Compensation Act, 1909 (in force as of 1 January 1910) to the 1925 report of the second major inquiry into the topic, the Roy Commission; and the lead-up to the Workmen's Compensation Act, 1931, 1925–1931. We will examine these developments through the lens of imperial, national (i. e., Anglo-Canadian) and transnational borrowings. As our title indicates, Quebec was on the edge of several empires – British, French, and American – as well as being part of a federal state in which other provinces were innovating in the field of workers' compensation. Increasingly in the 1920s the province also had to take account of the International Labour Organization's (ILO) investigations and reports on employer liability. It will be argued that the general trend over this period was a transcendence of the civil law-common law divide as the problematic consequences of industrialization led to a convergence of policy outcomes across a variety of jurisdictions regardless of which legal "family" they belonged to. By 1931 the role of France as a model for workers' compensation legislation in Quebec had been entirely supplanted in favour of the ILO-approved model adopted by Ontario in 1914.

1. Pre-1910: employers' liability under the Civil Code of Lower Canada

In this period, tensions between common law and civil law approaches to employer liability were prominent. The governing law was contained in Arts. 1053 and 1054 of the *Civil Code of Lower Canada* of 1866.[7] Art. 1053 set out the basic principle of fault-based liability:

7 Lower Canada was the former name of the territory that became the Province of Quebec after Canadian Confederation in 1867. On the origins of the 1866 Code, see Young (1994).

> Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect, or want of skill.

Employer liability was simply a subset of this general principle. Art: 1054 specified that this liability extended not only to harm caused by one's personal fault but also to "that caused by the fault of persons under [one's] control and by things which [one] has under [one's] care." Among several examples given in the section, one stated that "Masters and employers are responsible for the damage caused by their servants and workmen in the performance of the work for which they are employed." These two articles governed liability for injuries from workplace accidents, but if the worker died from these injuries, Art. 1056 came into play. This article, which had no equivalent in the Civil Code of France, was modelled on the 1846 English statute known as Lord Campbell's Act.[8] It gave a right of action to the spouse and ascendant and descendant relations of the deceased to seek compensation for "all damages occasioned by such death," provided they launched their action within a year of the death. Art. 1056 entered the Code somewhat mysteriously in 1866 and gave rise to much interpretive controversy in subsequent decades, especially on the question of whether "all damages" included non-pecuniary harms such as grief at the loss of a loved one (generally recoverable under continental civil law) or were restricted to a calculus of economic loss only (the traditional common law approach).[9]

The Quebec law of employer liability, even though fault-based, was less harsh towards injured workers than the common law, though note that the operative descriptor is "less harsh" rather than "more generous". In the first place, the three major employer defences recognized in common law either did not exist in civil law or were considerably less powerful. The defence of common employment, pursuant to which harms caused by a co-worker did not engage the liability of the employer under the common law, did not exist in Quebec, Art. 1054 expressly stating the contrary. Secondly, contributory negligence on the part of the employee was not the complete defence it was in common law as Quebec law recognized comparative fault. An employee who was determined to be, say, 20% at fault, would still receive

8 9 & 10 Vict., c 93.

9 On this debate, see generally Reiter (2019).

80% of the compensation otherwise payable. Finally, voluntary assumption of risk, though theoretically available, did not loom as large in the civil law jurisprudence as under the common law.[10] Only experienced workers who could fully appreciate the risks inherent in given tasks might find this defence raised successfully against them.[11] This contrasted with the common law, where the courts prior to abolition of the fellow servant rule held that workers accepted the risk that they might be harmed by the negligence of a co-worker.[12]

Furthermore, Quebec judges for the most part took a less stringent approach to questions of fault and causation than did common law judges. They were prepared to recognize a presumption of fault against the employer in certain situations where the cause of an accident was unknown. Thus, where a company had allowed a quantity of dynamite to accumulate close to where workers were active, and an explosion killed one of them, the court allowed recovery even though the cause of the explosion itself could not be determined. The fact of leaving such dangerous material close to workers raised a presumption of fault.[13]

Moreover, after the Quebec Factories Act, 1885 required certain safety measures to be taken in factories, a failure to comply with such measures was considered a fault that could generate civil liability provided causation was established. The long title of the act was An Act to protect the life and health of persons employed in factories. Various sections stated that where the precaution in question was not taken, the factory "shall be deemed to be

10 It should be noted that even though there was a contract of employment between the parties, the authorities were agreed that actions for workplace injuries or death were properly brought in delict, though courts would give effect to exclusion clauses in such contracts in appropriate cases.

11 The differences between civil law and common law on these points are reviewed in Walton (1900). Walton, although English, had been called to the Scottish bar in 1886, lectured in Roman law at the University of Glasgow, and was named dean of law at McGill in 1897, the first full-time professor appointed to the faculty in its fifty-year history. A prolific and perceptive jurist, he wrote widely on Roman law, Scots law, and comparative law, and later authored an introduction to French law in English with his old friend Sir Maurice Amos; see the entry on him by Hanbury/Metcalfe in the *Oxford Dictionary of National Biography* (2004).

12 Kostal (1988), discussing an 1884 Ontario decision where no liability was found following an explosion at a gunpowder factory that left five men dead and one severely disabled.

13 *Asbestos and Asbestic Co v Durand* (1900).

kept unlawfully […] so that the health of any person employed therein is likely to be permanently injured" – arguably deeming the "fault" required by Art. 1053 to exist.[14]

Quebec judges also had to rule on the validity of employer-imposed waiver clauses by which workers gave up their right to sue for injury. They initially allowed these but later changed course and ruled that they did not apply where the employer was guilty of *faute lourde* (gross negligence). Nor were such clauses binding on widows and children where a worker was killed on the job, as they had an independent cause of action under Art. 1056. Finally, there was an emerging current of jurisprudence that used Art. 1054, regarding liability for things under one's care, to effect a shift of the burden of proof from worker to employer where a piece of machinery malfunctioned.[15]

These worker-oriented judicial interpretations in Quebec were often not upheld at the Supreme Court of Canada (SCC), which featured four common law judges and two civil law judges for most of this period.[16] The success rate of workers in reported cases was between 72% and 78% in the Quebec courts, while it dropped to 53% in the SCC.[17] This was largely the result of the latter judges arguing that there should be uniformity of approach on certain legal questions within the British empire, and re-interpreting Quebec law accordingly. The SCC would not accept, for example, that failure to comply with the Quebec *Factories Act* could generate civil

14 SQ 1885, c 32. See *Montreal Rolling Mills v Corcoran* (1896), affirming the judgment of the Quebec Superior Court on this point.

15 *Shawinigan Carbide Co v Doucet* (1909). On earlier Quebec case law adopting this approach, see Howes (1991).

16 A seventh judge (i. e., a fifth common law judge) was added in 1927 in response to claims from western Canada that its growth and development meant that it "deserved" a place on the Court, though the extra position became a "western seat" only by convention, not law. Not until the enlargement of the Court in 1949 to nine judges was a third judge from Quebec added, this time as a matter of law. This restored the common law: civil proportions present at the foundation of the Court in 1875 – two-thirds common law judges, one-third civil law, reflecting the approximate population balance between Quebec and the rest of Canada. In 1949, the population of Quebec constituted 34% of the Canadian population.

17 Lippel (1986) 41. Rates of success for workers in Quebec were also somewhat higher than those reported for Ontario by Risk (1983) 426–436, though appeals to the Ontario Court of Appeal began to be more successful for workers following 1900.

liability.[18] Consistent with its jurisprudence in the common law provinces, the Court held that the Act's provisions were mere "police regulations" not meant to generate a cause of action. It is no wonder that one Quebec advocate lamented in 1905 that the SCC had become "le cauchemar des victimes d'accidents du travail" (a nightmare for victims of workplace accidents).[19]

Quebec judges pushed back, openly lamenting that the SCC's jurisprudence on employer liability "seemed to contradict the ideas that prevail today in all civilized countries." Somewhat surprisingly, the Judicial Committee of the Privy Council (JCPC), not known as a worker-friendly court, also pushed back, applying civil law reasoning to overturn SCC judgments and restore Quebec jury awards in favour of injured workers or families of deceased workers in three important cases prior to 1910.[20]

Perhaps uncomfortable with this squeeze play where they were being criticized from above and below, the SCC eventually articulated the law of employer liability in Quebec in a 1910 case in a way that civilian jurists would likely have approved. It is also a strikingly modern formulation. Duff J observed that

> [b]y the law of the Province of Quebec an employer is bound to take reasonable care that his employees shall not in the prosecution of their duties, by reason of any defect or insufficiency in his plant or appliances, be exposed to any risk of injury which, having regard to the character of the work, is an unnecessary risk; and it is but a corollary to this rule that where the work in which the employee is engaged is of such a character that a reasonably prudent and competent employer would anticipate that, in the prosecution of it his safety may be endangered it is the duty of the employer to take all reasonable measures to protect him from that danger.[21]

Thus, the SCC allowed recovery here where the cause of the accident could not be precisely identified, exactly the situation where they had previously said there would be no liability. Ironically, this case was decided the year

18 Thus, the SCC overturned the Quebec Court of Queen's Bench decision in *Montreal Rolling Mills v Corcoran*.

19 Lamothe (1905) 117.

20 Quotation from Chief Justice Adolphe Routhier speaking for the Court of Revision in *Gauthier v Wertheim* (1905) 283. The JCPC cases were *Robinson v CPR* (1892), *McArthur v Dominion Cartridge Co* (1905), and *Miller v Grand Trunk Railway* (1906). In *Miller* the JCPC stated that the SCC's decision in *Reg v Grenier* (1899), should not be followed because it now contradicted the JCPC's decision in *Miller*.

21 *Montreal Light, Heat and Power Co v Regan* (1908) 589.

before Quebec had adopted its first workers' compensation law, which provided for liability without fault in most industrial settings. The SCC decision just mentioned was based on the prior law and thus became essentially irrelevant after the adoption of the new law.

The reaction of Quebec legal commentators to the state of the law was mixed. They were generally in favour of maintaining fault-based liability, which they saw as embodying an appropriate moral stance and consonant with natural law, but nonetheless admitted the justice of the results reached by the Quebec courts. J. C. Lamothe, a lawyer who strongly advocated for better protection for workers, wrote in 1905 that "through a humane fiction the courts ingeniously manage to find a fault [in the employer], or even to create one where it does not exist, in order to compensate the victims."[22] Walton, for his part, saw in this trend a surreptitious adoption of the French concept of "professional risk" which ordained that when accidents arose, the person profiting from the carrying on of hazardous activities such as manufacturing should bear the risk in preference to the innocent employee.[23] Pierre-Basile Mignault, Quebec's best known doctrinal writer and author of the magisterial nine-volume treatise entitled *Le droit civil canadien*, strongly supported fault-based liability and critiqued judicial analysis that employed the "humane fiction" noted by Lamothe, but even so grudgingly admitted that the results were just.[24] This dissonance between the limits of the existing law and the desire to secure more certain compensation for injured workers created a climate receptive to legal reform.

As to why the Quebec judiciary were relatively more open to worker claims than their common law confrères, one must speculate somewhat and delve into the domain of culture. The Catholic Church was unquestionably the dominant cultural force in Quebec during this period, and its ultramontane bishops sought to bring the faithful ever more securely into Rome's orbit. Catholic thought of the period, while fundamentally conservative, responded to the challenges of the industrial revolution by critiquing both socialism and unbridled capitalism. Thus, the encyclical *Rerum Novarum* issued by Pope Leo XIII in 1891 favoured the creation of trade unions and advocated just wages for workers. Such views were infused with pater-

22 Lamothe (1905) 23.
23 Walton (1910) 21–22.
24 Mignault (ed.) (1901) 372–376.

nalism and hierarchy, but nonetheless provided some counterpoint to Anglo-Protestant and common law ideas of liberal individualism that treated workers as fungible units of production rather than human beings. Moreover, Quebec law, like French law, was receptive to the idea that civil liability could include compensation for emotional harms to injured parties and their families. The admissibility of such claims forced judges to consider the subjectivity of claimants and their loved ones, again emphasizing their humanity rather than their economic value to employers.[25]

2. A first attempt at reform, 1910–1925

Even though the civil law was not as unfavourable to injured workers as the unreformed common law, the usual financial and cultural obstacles of access to court-based justice frustrated redress in many cases. Contemporaries estimated that compensation was obtained by injured workers in no more than 12 to 25% of workplace accidents.[26] The Quebec branch of the Trades and Labor Congress and other worker organizations had been lobbying for years for a better system while employer groups also complained that damages awards were too high and unpredictable. A law was put forward in 1904 and debated in the Legislative Council but withdrawn in the face of employer opposition.[27] A commission was then appointed in 1907 to study the problem, chaired by lawyer and secretary-general of the *Barreau du Québec*, Arthur Globensky, and featuring one representative each from labour and industry. It heard from both employers and worker groups but did not consult widely.[28] Quebec labour was not well organized at this time – only 6% of workers were unionized in Quebec in 1911 – and labour-side briefs were not especially effective or well argued, while those of the well-resourced manufacturers' associations were.[29] The Commission studied mostly British and European legislative solutions as US states had not yet begun legislating in the field though they would do so shortly. The Commission's suggested regime, largely reflected in the law adopted in 1909, drew mostly on the

25 Reiter (2019).
26 Lamothe (1905) 113.
27 Quebec had a bicameral legislature until 1968.
28 On the origins of the 1909 law, see Stritch (2005); Lippel (1986).
29 Stritch (2005) 571.

French law of 1898, in fact copying verbatim some of its substantive provisions. The English laws of 1897 and 1906 played a supplementary role and where these diverged from the French law, the Quebec law tended to adopt the provisions of the law that were less generous to the worker.[30]

Ironically, the second sitting of the Commission, at Montreal on 29 August 1907, occurred on the very day of the worst construction disaster in Quebec history, the collapse of the railway bridge being built across the St. Lawrence River between Lévis and Quebec City. Seventy-five men lost their lives, almost half of them Mohawk steel workers from the Kahnawà:ke reserve near Montreal.[31] Such tragedies provided a similar impetus to reform as the notorious Triangle Shirtwaist Factory fire in Manhattan four years later, in which 146 people, mostly immigrant Italian and Jewish women and girls, died.

The bill that became the Workmen's Compensation Act, 1909 incorporated the main recommendation of the Globensky Commission, which was the adoption of the no-fault principle. It was introduced in the *Assemblée législative* by the Minister of Public Works and Labour, Louis-Alexandre Taschereau, who would go on to serve as premier from 1920 to 1936 and whose government would preside over later, more radical changes to the law of workers' compensation.[32] The passage of the law was not really in doubt

30 Rapport de la Commission d'enquête sur les accidents du travail (1908), known as the Globensky Commission after its chair. Stritch (2005) 568 states that most of the Commission's recommendations were taken from the English law, but this is correct only insofar as some of the French law's provisions were broadly similar to those of the English law. Distinctive provisions of the French law not found in English law, such as the enhancement of compensation in cases of "inexcusable fault" by the employer and the reduction of recovery for wages above a certain amount (both discussed below), were copied in Quebec and are not mentioned by Stritch. Walton (1910) and most other contemporary commentators and judges saw the 1909 Act as based essentially on the French law of 1898. The influence of the French sociologist Frédéric LePlay on both the French and the Quebec law is examined in Prémont (2002).

31 "Grand Désastre National" (30 August 1907). The Mohawk had discovered their aptitude for this kind of work when part of the Kahnawà:ke reserve was expropriated for the base of the new CPR bridge in 1886. The railway trained some of them to do the work, who then trained others, beginning a tradition of high steel work on skyscrapers that continues today. A second attempt to build the Lévis bridge also ended in disaster in 1916, when it collapsed with the loss of eleven lives. See Crabb (2022).

32 No official record of the debates existed at the time, but various newspapers reported them. A non-official reconstruction of these accounts is provided for most but not all

because the Liberals had a comfortable majority, but party discipline was not as rigorous as it later became and it was always possible that some members might dissent. Taschereau was at pains to point out that the proposed reforms were not meant to be a partisan issue, and both his remarks and those of the opposition were relatively measured, focusing on substantive issues rather than trying to score points for their party.

The law's main innovation was to carve out an exception from the general law of civil liability by stating that accidents in the industrial sectors covered by it would render employers liable even without fault. This addressed the criticism that the cause of many accidents could not be determined precisely, leaving the worker without a remedy. Employers were not required to purchase insurance (an amendment to this effect was proposed by the opposition but failed), but the Act might have incentivized them to do so.[33] It might also have attracted more insurance companies to provide coverage now that potential liability was capped by the Act, making it easier to assess risks and calculate premiums. Coverage under the Act was far from universal and aimed principally at workplaces containing dangerous machinery: after a list of industrial enterprises and transportation businesses (including the building of transportation infrastructure), its residual clause included workers in "any industrial enterprise […] in which machinery is used, moved by power other than that of men or of animals," wording taken from the French law of 1898. Employment in agriculture and on sailing ships was specifically excluded, even though both were dangerous occupations, and the general run of white- and pink-collar employment, domestic service, and artisanal work was also excluded.

The quid pro quo for more certain compensation was the provision of something less – markedly less – than full compensation. Those suffering from permanent and total incapacity to work (at any job, not just their former employment) would receive only half their wages in the form of a life pension, while those with partial permanent incapacity (e. g., the loss of a hand or an eye) would receive half the amount by which their earning

sessions after 1907 on the website of the Assemblée nationale du Québec: Débats de l'Assemblée législative (débats reconstitués), https://www.assnat.qc.ca/en/travaux-parlementaires/journaux-debats.html. The version of the 1909 and 1926 debates found there is relied upon here. Until 1968 the *Assemblée nationale* was called the *Assemblée législative*.

33 Insurance companies had to be licensed by the cabinet to offer the benefits mandated by the Act, to ensure that only solvent established companies entered this business.

power was reduced. Temporary incapacity entitled the worker to one-half their wages for the period of incapacity, beginning only on the eighth day after the accident (in France, it was the fifth day). Even these amounts were subject to significant limits. Workers earning more than $1,000 per annum were excluded from the Act entirely and could sue only under the fault-based provisions of the Civil Code. For those earning between $600 and $1,000 per year, only one-quarter of the excess of their wages over $600 would enter the calculation, and only one-half of that, or 12.5%, would thus be added to the basic $300 per year pension. This provision was also taken from the French law, but there no upper limit to claimant's wages was imposed. These caps were the most controversial part of the bill during debate. The opposition wanted them raised or done away with entirely, but Taschereau insisted that industry could not afford any more and would be uncompetitive with that outside Quebec if the law were any more generous. The Liberals were especially concerned to attract American capital to Quebec at this time to help develop its resources and stem the tide of out-migration to the US, and hence reluctant to add what might be seen as undue burdens to industry.[34]

The families of workers who died on the job would receive a lump sum of four times the average yearly wage of the deceased, subject to a floor of $1,000 and a ceiling of $2,000. This was different from France, where the compensation took the form of a life pension for the widow and minor children, if any. During the debate on the bill, Taschereau said the government had adopted the English approach of a lump sum because "Nous n'avons pas ici l'assurance d'État, les pensions aux vieillards, etc." (We don't have state-sponsored insurance here, or old age pensions, etc.). In France, where the welfare state was more advanced, there was a *Caisse nationale des retraites pour la vieillesse*, which provided old age pensions and acted as a guarantor of pensions ordered by the court to families of deceased workers or those suffering permanent incapacity, in case the employer or insurance company did not pay. State-sponsored old age pensions were still two decades away in Canada.

34 Vigod (1986). Taschereau was the son of Jean-Thomas Taschereau, one of the original appointees to the Supreme Court of Canada in 1875, and the father of Robert Taschereau, who would also be named to the Supreme Court of Canada, becoming chief justice 1963–1967.

Another significant difference with the French Act was the failure to compensate for medical expenses except in the case of the worker's death, and even here the amount specified was a flat $25 for both medical and funeral expenses. The French Act, by contrast, made the employer responsible for the medical, pharmaceutical, and (where applicable) funeral expenses of the worker. Only the last were subject to a cap (of 100 francs) though the former were calculated pursuant to a tariff established by local authorities in each region of France.

The statutory compensation remained within the domain of private law and could be obtained only through an action begun in the Superior Court of Quebec (unless, of course, the employer voluntarily paid up). This action had some unusual features, some of which benefitted employers while others benefitted employees. To the satisfaction of employers, juries were excluded and the suits were to be heard in summary fashion.[35] There was some sense in this as the main factual issues that juries would have previously decided – was there fault and if so, what should the compensation be – were now settled by the legislation itself. But s. 27 of the Act required a worker to be authorized by the judge to bring the action "upon petition served upon the employer." The judge "shall grant such petition without the hearing of evidence or the taking of affidavits, but may before granting the same use such means as he may think useful to bring about an understanding between the parties."[36] This provision had proved contentious in the *Assemblée* debates on the bill, with opponents protesting that the judicial authorization merely complicated matters and notice to the employer alone should be sufficient. They failed, however, to have the requirement removed.

It is not clear how the encouragement to mediate these disputes prior to litigation was dealt with in practice, or whether it was taken up at all given that it was left to the discretion of the judge to make the attempt. With the worker's entitlements clearly set out in the Act, one suspects that any pretrial mediation may have involved an employer offering less in return for prompt payment and forgoing the "hassle" of a trial. For even though liability was no-fault, workers were by no means guaranteed success. They were still responsible, according to author Thomas Foran, for introducing evi-

35 The law of New France had not authorized the use of juries, but they had been introduced under the British for both criminal process and civil claims.

36 Workmen's Compensation Act, SQ 1909, c 66.

dence on all the elements of the claim: the contract, the accident, the nature of the work, and the fact that it happened by reason of or in the course of the work.[37] He might have added that the worker also had to prove that their work fell within an employment sector covered by the Act, and the nature and extent of his or her injuries. Aside from this evidentiary burden, s. 6 contained some defences for the employer: no compensation was to be granted if the accident "was brought about intentionally by the person injured," and the court was empowered to "reduce the compensation due to the inexcusable fault of the workman, or increase it if it [was] due to the inexcusable fault of the employer." This provision, which re-introduced a certain element of morality and subjectivity into a law meant to foster predictability, was taken from the French law of 1898 and had no counterpart in Anglo-Canadian law.

The prescription period for the action was short, only one year, but the Act contained other provisions that were more favourable to the worker. The benefits provided by the Act could not be excluded by contracts of employment and the compensation was entirely at the charge of employers. They could not make any deduction from employees' wages therefore, even with their consent, unlike some European systems that were jointly funded by employers and employees. The benefits were inalienable and exempt from seizure, and employees had a privilege (lien) on the property of the employer to secure their payment. In case of employer bankruptcy, however, this privilege might not provide much protection. Requests for augmentation of compensation based on aggravation of a disability could be brought up to four years after the initial judgment, though employers could petition to reduce compensation based on alleged diminution of a disability. The court could also grant a provisional daily allowance to the worker at any stage of the proceedings, including while an appeal was pending.

Interpretation of the 1909 law in many respects followed the pattern of the earlier jurisprudence, with the Quebec courts tending to a more generous interpretation of the Act while the SCC was more stringent. Although the Act did not make any provision for occupational disease, the Quebec courts allowed recovery for hernias suffered at work as "accidents," and in one case allowed recovery on a permanent disability basis for a worker who

37 Foran (1915).

had gone insane after losing his arm in an industrial accident and had to be confined to an asylum.[38] In cases where it was not clear whether the worker had been injured or died from an industrial accident or some other cause, the courts sided with the worker. Some parts of the forestry business, a very dangerous sector that was initially neither expressly included nor excluded by the Act, were included via judicial interpretation. A good example of both these tendencies is *Moore v Storey*, a 1923 decision of the Quebec Court of Appeal.[39] Here a young man in good health was placed by his employer alone on a platform attached to a tree on the bank of a river. He was given an implement with which he was to direct floating logs to prevent a jam. An hour later he was found drowned without anyone having witnessed the event. The court declared he was presumed not to have committed suicide, but rather that he fell accidentally from the float into the water. While on a literal interpretation the floating of logs could be seen as coming within the category of "any transportation business by land or by water" mentioned in the Act, it seems likely that the failure to mention expressly forestry activities in the Act, when it was such an important business in Quebec, reflected a legislative decision not to extend coverage to it. Yet the court awarded death benefits to the man's family, having found that the activity in which he was engaged was covered by the Act.

During this period the Quebec courts looked mostly to French juristic writing to interpret their own law, and this may have influenced their approach. French labour was better organized and more militant than in Quebec, and interpretation of the law in France tended to be more generous to the worker. The Quebec legislator did not, however, follow the French model of including domestic servants and agricultural workers, and their express exclusion prevented the courts from adding them.

With respect to the effect of inexcusable fault on the claim of the worker or liability of the employer, unique to the French law and taken from it, here was a place where the Quebec law was actually more generous than the French. Quebec had not copied the clause in the French law that set a ceiling of 100% of the worker's pre-accident salary on such claims, and Quebec judges tended to interpret the notion of inexcusable fault quite broadly while also making rather generous awards under this section. This was one

38 *Leprohon v Ogilvie Flour Mills* (1919).
39 *Moore v Storey* (1923).

of the ways that the low ceiling of $2,000 on claims could be avoided. In the case cited earlier about the worker who lost an arm and was confined to an asylum, the court found inexcusable fault on the part of the employer and awarded $5,000 to his curator, representing the estimated cost of keeping him in the asylum for the rest of his life.[40]

It was never doubted that the fault required under this "inexcusable fault" provision need not be a personal fault of the employer, who was most often a corporation in any case, but could be a fault of an employee that resulted in the serious injury or death of a co-worker. Whether that fault had to be an intentional act or omission, or could arise merely from gross negligence, was debated, with the Quebec courts coming down on the latter side. In a case where an employee of a railway company was supposed to transmit a message to train A to stop in order to prevent a collision with train B, and negligently failed to transmit the message with consequent loss of life, including employees of the railway, the Quebec courts held that this was an inexcusable fault for which the employer was responsible. They also held that the violation of certain laws by an employer could constitute an inexcusable fault, notably hiring minors under the age permitted by law. Legal authors criticized this approach, preferring to blame the parents who permitted their children to work under such conditions, but the courts maintained their position. With respect to compensation in cases of inexcusable fault of the employer, some courts calculated the amount of recovery as if in an ordinary case of negligence, even though such claims were abolished by the Act. This too was subject to doctrinal criticism.

However, even generous interpretation could not make up for the Act's various flaws. It provided an entitlement to only half the worker's regular salary as compensation for total permanent disability, and then only to a maximum salary of $600 per annum. For workers earning between that sum and $1,000 annual salary, only one-quarter of the wages above $600 were to enter into the calculation. For workers earning over $1,000, the Act did not apply at all and they were left to their recourse under the ordinary law. In cases of permanent partial disability, the award would be reduced in proportion to the percentage of disability found. These sums were to be paid as a pension, or "rent" in the English version of the Act, but another cap inter-

40 Ibid. Chase-Casgrain (1922) reviews the cases to that point on the employer's inexcusable fault, and the examples in the following paragraph come from this source.

vened here. Section 2 stated that "the capital of the rents [...] shall not exceed $2,000" – a provision that gave rise to much debate. The Act did not provide any medical benefits or hospital coverage except in the case of the worker's death, as noted above, and left recovery to the ordinary processes of execution of judgments if the employer did not voluntarily pay up. The risk of employer insolvency thus lay on the injured worker. Perhaps the biggest disadvantage of the 1909 law, however, was simply that it left liability to be determined by the ordinary courts, with the possibility of multiple levels of appeal, the prospect of long timelines to resolution when the need for income was immediate, and the need for legal representation.

3. Mounting dissatisfaction, 1925–1931

After World War I, Quebec labour became better organized and more insistent in its demands for reforms to the Act, and at this point the English-French, common law-civil law dichotomy began to assume rather less importance as events in common law Canada and in the international sphere began to make an impact in Quebec's legal universe. The year 1922 witnessed an important milestone with the establishment of the Roy Commission of inquiry into workers' compensation. The recommendations in its 1925 report, albeit rather weak, helped to put the province on the road to the eventual adoption of the 1931 law that would govern the field for over half a century, but the path between these two bookends was anything but smooth. A first, rather timid, law embodying some of the Roy Commission's recommendations was passed in 1926 but never proclaimed into force.[41] A second attempt was passed and proclaimed in force in 1928, the main innovations of which were to impose compulsory (private) insurance on employers and to create a *Commission des accidents du travail* which would now have exclusive jurisdiction over accident claims. Only three years later, however, after strongly resisting government-sponsored insurance, the Taschereau government gave in. It repealed the 1928 law and substituted a new law directly copying Ontario's that authorized the *Commission* to levy premiums and pay benefits. This brought Quebec in line with the other Canadian provinces and completed the break with the French tradition begun in 1928.

41 Workmen's Compensation Act, SQ 1926, c 32.

The Roy Commission's method of work, its membership, the sources of law it found relevant, and the discourse surrounding it all highlight an important transformation in this area of law, one pointing to the triumph of public law over private law as the administrative state expanded its reach. Its methods featured recognizably modern techniques of social science research, as compared with the modus operandi of the Globensky Commission: 4,900 questionnaires were sent out to union workers, employer groups, and bar, insurance, and medical associations. The response rate was apparently high though not specified in the report and all the responses were analyzed. Public hearings, 21 in all, were held in seven different cities across the province in the spring of 1924, where the Globensky Commission had sat only in Montreal and Quebec City. The Commission's membership comprised the tripartite grouping common in labour matters: two representatives each for business and labour, presided over by an ostensibly neutral chair.[42]

Often a judge was chosen for the role of chair of such commissions, but Ernest Roy was not named to the Superior Court of Quebec until just after he was named chair of the Commission. He offered his resignation as chair but it was not accepted. A lawyer and journalist, he had served two terms as member of the Quebec Legislative Assembly, 1900–1908, then switched to federal politics in 1908. Roy served only one term as a Liberal MP, however, before being defeated in the 1911 election that saw the end of Sir Wilfrid Laurier's long reign. In some respects his neutrality might have been questioned, as he was president of a large company that manufactured cars, munitions, and agricultural implements, and director of an insurance company.[43] It is hard to say whether he favoured one side over the other, however, as the Commission's final report avoided some of the most difficult questions that had to be decided, especially whether a public system of insurance administered by a government agency was desirable.

The labour representatives had been carefully chosen to straddle the confessional, social, and political divides among Quebec's workers. Pierre Beaulé was the president of the newly founded (1921) *Confédération des Travailleurs Catholiques du Canada* (CTCC), an entity representing unions of both skilled

42 Rapport de la Commission d'étude sur la réparation des accidents du travail (1925) (hereafter, Roy Commission Report).

43 Assemblée nationale du Québec (2009), Ernest Roy (1871–1928).

and unskilled workers, mostly in Quebec, that supported the social teachings of the Catholic Church and rejected affiliation with US bodies such as the American Federation of Labor.[44] Gustave Francq was active in the Quebec branch of the Trades and Labor Congress of Canada, which represented skilled workers, was allied with the American Federation of Labor, and in which religion played no role. Both groups, however, in their rejection of socialism and support for a broadly conciliatory approach to relations between labour and capital, were considered "safe" by the Quebec state.[45]

The Commission asked representatives of employer and worker groups to meet on their own outside of the Commission's formal meetings to see if they could agree on the answers to various questions put to them. They could not, except on some fairly minor issues, but this impasse seems to have led the employer and worker representatives on the Commission itself to compose "supplementary reports" that were appended to the Commission's own report. This time the positions taken by these two groups were the inverse of their roles before the Globensky Commission, where the employers had been much better prepared than the employee groups. The two-page employer report contained assertions and conclusions based on little evidence, beginning with the questionable observation that "it is incontrovertible that the great majority of industrial accident cases are resolved to the satisfaction of both parties."[46] The employer representatives could live with some responsibility for medical expenses and were prepared to support compulsory (private) insurance provided that large employers could self-insure, but opposed any increase in the 50% recovery rate, the inclusion of occupational diseases under the Act, and the removal of accident claims from the jurisdiction of the courts.

The 20-page worker report, prepared by Francq, was fulsome, packed with data, and well argued. Francq had also prepared the "comparative law" part of the Commission's report. He went to Europe for personal reasons in the spring of 1924, but the Quebec government paid some of

44 Non-Catholics could join the CTCC but could not vote or hold executive positions. The CTCC was "pan-Canadian" nationalist rather than focused on Quebec nationalism. On the origins and features of the CTCC, see Rouillard (2004) 49–60.

45 On Francq's career, see Leroux (2001). FTQ refers to the *Fédération des Travailleurs et Travailleuses du Québec.*

46 Roy Commission Report (1925) 47 (author's translation).

his travel expenses to enable him to study on site the laws of England, France, Belgium, and Switzerland. His report for the Commission included summaries of their laws, as well as a useful table containing details of the worker's compensation laws across Canada on twenty different variables. It revealed that all Canadian provinces except Prince Edward Island now had workers' compensation boards like the one pioneered in Ontario in 1914. These had adopted a different model from that found in most US states, where reform had obliged employers only to purchase private insurance rather than creating a public agency which replaced private insurance by levying premiums directly on employers and paying out benefits.[47] In the end, however, as Justice Roy decided not to cast a "deciding vote," the Commission's final report outlined the basis of disagreement between the two groups more than providing solutions. On the most controversial questions, it observed only that a system of compulsory insurance (without advocating either a private or public model) "would render great benefits to both employer and worker" and did not clearly recommend that claims be taken from the courts.[48]

Francq's work on another body just after he finished his work with the Commission would also have an impact on the legislation eventually adopted in Quebec. He was the Canadian representative on the Committee on Compensation for Industrial Accidents of the International Labour Organization (ILO), the first affiliated agency of the newly founded League of Nations, and spent the spring of 1925 in Geneva in this capacity. The ILO study of this question, published in 1925, contained recommendations largely in tune with labour's demands in Quebec. These related to subsidizing medical care for injured workers, creating an independent body to administer accident funds, providing coverage for some industrial diseases, and removing the cap on annual income for those covered by the Act.[49] None of these were popular with employers, as the Commission had discovered.

The Roy Commission had left the government a free hand as to what reforms it wished to implement. When the 1926 Act was introduced in the

47 At this point only Washington State had created a public commission (in 1911) with powers similar to Ontario's.

48 Roy Commission Report (1925) 45 (author's translation).

49 International Labour Organization (1925).

Assemblée by the Minister of Public Works and Labour, Antonin Galipeault, he was only too pleased to refer to the ILO's recommendations as he told the house that the ILO itself frequently referred to Quebec's own worker protection legislation in its deliberations. Here he rattled off a long list of statutes passed in Quebec in the previous decade but unabashedly presented these as Liberal achievements, unlike his predecessor who had tried to focus on the substance of the 1909 bill and to lower the partisan temperature. Galipeault's efforts went in the opposite direction, rousing the anger of the opposition who claimed that they had provided the ideas for some of the legislation he was trumpeting as Liberal accomplishments.[50] In fact, Galipeault was misrepresenting the ILO's findings. Far from lauding Quebec as a leader, it found Quebec and Saskatchewan were the only two provinces which did not subsidize medical care for injured workers, have an independent body that administered accident funds, or provide universal coverage of eligible workers, regardless of annual income.[51] The ILO report did not criticize Quebec directly, but allowed readers to come to their own conclusions based on its findings.

Both in the unproclaimed 1926 law and its 1928 successor, no state insurance scheme was provided for. In 1926 Galipeault stated that the proposed reforms looked to the Commission's recommendations, the work of the ILO, and the law of France. The Roy Commission, as we have seen, left the government with a largely free hand, and on the major question of whether compensation claims should be entrusted to a commission, Galipeault stated simply that it preferred the position of the employer, despite the ILO recommending a commission. As for the Ontario commission, Galipeault was of the view that Quebec had little to learn from it. Neither France nor England had such a commission, he observed. Thus, the French model continued to be the touchstone for the government in 1926, with lip service paid to the ILO, while the Ontario / Canadian model was held at arm's length.

In justification of his rejection of the Ontario model, Galipeault maintained that insurance costs in Ontario were 30% higher than in Quebec under private insurance, owing to the high costs of government administration.[52] Charles Smart, the Conservative member for Westmount, asserted

50 Débats de l'Assemblée législative (débats reconstitués) (23 February 1926).

51 International Labour Organization (1925) 6–7.

52 Galipeault reported that in 1923 the Ontario Workmen's Compensation Board had only $4 million to administer but had 75 employees and spent $200,000 on salaries. Even if

the contrary and one would have expected him to know as he was a wealthy industrialist with textile factories in Montreal, Toronto, Winnipeg, and Welland, Ontario. Unlike the employer representatives on the Roy Commission, he supported the creation of a commission and constantly pressed the example of Ontario on the government – to no avail. This is one of the unexplained differences between Ontario and Quebec: why large employers generally supported the creation of a state-run entity in Ontario in 1914 but most of their Quebec counterparts did not until many years later.

The 1926 law did make some improvements, which were retained in subsequent laws even though the 1926 law itself was never proclaimed into force. It got rid of the salary cap on eligibility for compensation while at the same time stating that a worker's salary above $2,000 would not be considered in fixing the amount of the indemnity. Recovery of medical and hospitalization expenses (to a maximum of six months for the latter) would now be allowed. The law also followed French law on a point where the government had declined to do so in 1909: it required pensions, rather than lump sums, to be paid to widows and minor children upon the death of a worker due to a workplace accident. But the limitation of recovery for accidents to only one-half of a worker's salary was kept in place, at a time when it was two-thirds in most Canadian provinces.

Why the 1926 law was not proclaimed is something of a mystery, the only reference to this fact in the debates on the 1928 bill being the observation of the Minister of Labour, M. Galipeault, that it would have led to the ruin of small and medium-sized industries in Quebec.[53] In 1928 two new laws made a marked departure with the past. The Workmen's Compensation Act, 1928 at last made insurance compulsory for employers (in 1926 premier Taschereau had observed during the debates that three-quarters of employers in Quebec had no insurance), but still relied on private insurers to offer coverage.[54] It continued the more generous compensation scheme created in 1926 and removed the salary cap but replaced it with a cap of $10,000 on the total benefits to be paid out in case of permanent total incapacity. Payments to

these figures are correct, administrative costs of 5% do not seem excessive, especially when one considers that private companies build profits into their rates that are unlikely to be less than 5%. Testimony before the Roy Commission was to the effect that administrative costs at the Ontario Board absorbed 4% of premiums levied.

53 Masson (8 March 1928) 3.

54 SQ 1928, c 79.

injured workers as well as families of deceased workers were now to be made in the form of monthly pensions rather than lump sums or the quarterly payment of pensions in those cases where pensions had been permitted. More significantly, the law added the "meat chart" that was being adopted elsewhere in Canada and the US. This was a table that laid out the percentage of wage recovery to be awarded in cases of permanent partial incapacity such as the loss of one eye, one or more fingers, one hand, one leg, etc.

These matters had formerly been left to judicial discretion but now, in a piece of companion legislation, a *Commission des accidents du travail* was to be created. It would have exclusive jurisdiction over claims for compensation, and the adoption of the "meat chart" was meant to allow for ease of administration by this body. The role of the superior courts was finally to be removed, and neither appeals from nor judicial review of decisions of the *Commission* were allowed.[55] In another move away from the French model and towards the North American, the provisions for "inexcusable fault" of either employer or employee were removed, though compensation could still be denied to a worker guilty of "serious and wilful misconduct" which contributed to the accident – a provision contained in the laws of other Canadian provinces. The law creating the *Commission* also gave it extensive powers aimed at improving safety in industrial establishments and providing for the rehabilitation of injured workers. The first chair of the *Commission* would be lawyer Robert Taschereau, nephew of the premier.

Unlike 1925–1926, when employers before the Roy Commission and via members in the *Assemblée* had voiced support for keeping workers' compensation in the courts, such concerns were muted in the debates over the 1928 law. It passed in the *Assemblée* by a majority of 64 to 4, with two opposition members and two government members voting against it.[56] This represented a sea change in employer attitudes, and likely gave the government the confidence to proceed even further a few years later.

After his predecessor had adamantly denied in 1926 and 1928 that Quebec had anything to learn from Ontario, and that there was any place for state-run insurance in Quebec, in 1931 the new Minister of Public Works and Labour, Joseph-Napoléon Francoeur, put before the *Assemblée* a bill institut-

55 SQ 1928, c 80.
56 Montreal Daily Star (8 March 1928).

ing state-run insurance that was a virtual copy of the Ontario Workmen's Compensation Act.[57] The existing *Commission des accidents du travail* was maintained and now given the task of calculating and levying insurance premiums for all employers in Quebec who had more than seven employees (employees in businesses with fewer than seven employees were left to their private law remedies under the Civil Code). The list of businesses subject to the Act was expanded once again, but domestics and agricultural workers remained excluded. The Workmen's Compensation Act, 1931 maintained the changes made by the 1928 Act and extended compensation to those suffering from a limited number of industrial diseases. It also extended the powers granted to the *Commission*, providing it with extensive powers of surveillance over injured workers, the dependents of deceased workers, and employers. The Ontario Act had twelve major divisions, all of which were reproduced in almost identical language in Quebec's 1931 law.[58]

On one issue the Quebec statute went further than Ontario's. One of the major issues raised by the opposition and by labour groups in the debates in both 1928 and 1931 was the tenure of the members of the *Commission* and its ability to appoint its own staff. The 1928 Quebec law had not granted the commissioners tenure during good behaviour and had provided that the cabinet would appoint the staff of the *Commission* and fix their salaries. The Ontario law gave the commissioners tenure during good behaviour and permitted them to hire their own staff and fix their salaries, though these had to be approved by cabinet. The 1931 Quebec law reiterated all these provisions but went on to state that the commissioners could be removed only on a joint address to both houses of the Quebec legislature, the same process contemplated for removal of superior court judges under the British North America Act, 1867.[59]

Why this sudden volte-face on the role of the state in workers' compensation? As noted earlier, employer views were beginning to be more receptive to a state-run model in the later 1920s. Nonetheless, the 1920s saw considerable ideological conflict within Quebec over proposed reforms to workers' compensation. The split was not just between employers and

57 The version in the Revised Statutes of Ontario 1927, c 179, has been used for comparison purposes.

58 SQ 1930–1931, c 100.

59 The Ontario law did not indicate any process for deciding whether a commissioner had transgressed the good behaviour requirement.

employees but also followed other fault-lines in Quebec society. What Quebec scholars call clerico-nationalist opinion, that is, a nationalist viewpoint heavily coloured by a conservative version of Catholicism, was not at all happy with the growth of state power in the field of workers' compensation. Their ideas can be traced most easily in the *Revue du droit*, a periodical founded in 1922 precisely to oppose "liberal" views on law and to advocate for legal interpretation through a clerico-nationalist lens.[60] While sympathetic to the plight of workers, its editors pronounced that fault-based liability was based in natural law and should not be altered by mere human agency (in line with Pope Leo XIII's 1879 encyclical *Aeterni patris*). The initial 1909 reform could be tolerated because it left compensation in the hands of the courts and did not involve the state directly. But abolishing private law claims and giving exclusive adjudicatory authority to a government agency was tantamount to socialism and had to be resisted at all costs.[61] Consistent with these views, the editorial board of the *Revue* also opposed changes to the law in France that expanded accident insurance coverage to domestics and agricultural workers, measures which contributors to the *Revue* found totally beyond the pale (though without stating why). While the new Quebec law did continue to exclude domestics and agricultural workers (as did other provinces), in most other respects the government ignored the critiques voiced by the segment of Quebec opinion represented by the *Revue du droit*.

Louis-Alexandre Taschereau had introduced the first workers' compensation law in 1909, become premier in 1920, won two elections with a strong majority after that, and would win a third majority a few months after the passage of the 1931 law. His government had a clear mandate to carry out whatever legislative programme it wished. It is a measure of its caution and its commitment to keeping the province's capitalists onside that even with this amount of support it still moved haltingly to reform the law of workers' compensation, moving through three stages in 1926, 1928, and 1931. The rise of working-class militancy in the 1920s generated some pressure for reform but divisions in Quebec labour between Catholic unions and the secular international (i.e., American) unions blunted its effectiveness on

60 Belley (1993)

61 Lemieux (1924) and Ogden (1932). The main demand of these authors was not to abolish the commission but to permit workers to retain the option of suing in the ordinary courts.

some issues.[62] On workers' compensation, however, Quebec labour was relatively united, and they wanted the Ontario law implemented. The workers' column in Quebec City's *Le Soleil* opined that this was probably the first time an Ontario law had been so faithfully copied in Quebec. The author then pithily summarized the campaign: "the workers wanted it, the government promised it, and now we have it."[63]

Pressure from workers had been constant in the 1920s, but what changed by 1931 seems to have been the position of employers, whose voices were noticeably silent during the passage of the Act. The insurance industry remained vocally opposed, but the employer concerns that had been voiced to oppose or blunt change in previous debates were absent in 1931. It can be inferred that Quebec employers had finally come round to the view that adopting a commission similar to Ontario's would not be the end of the world, and might indeed be more advantageous to them than continued dependence on private insurance. Here, the outside scrutiny of the ILO and the cross-Canada move to state-run compensation boards in the 1920s was critical. As Pierre Beaulé said after the passage of the bill in 1931, workers had stuck with the model advanced by the ILO in the early 1920s and had finally seen it enacted.[64] The Roy Commission's report drew these models to public attention and – in Francq's supplementary report if not in the Commission's own report – provided a rationale for Quebec to adopt them. In doing so the 1931 law represented the province's first significant entry into the new world of the administrative state. It also signified buy-in to a distinctive Canadian model of workers' compensation for industrial accidents, one that essentially excluded private insurance in a manner similar to that chosen for the Canadian health care system decades later.

4. Conclusion

The Quebec Liberals had claimed for decades that the amelioration of the lives of the working population was a priority for them. They had passed a number of worker-friendly laws, although many of these were symbolic and those that did create new rights were often weakly enforced.[65] The 1931 Act

62 For an exploration of this conflict, see Ewen (1998).
63 "L'ouvrier satisfait de la loi" (18 March 1931) (author's translation).
64 Ibid.
65 Vigod (1986) 134–135.

was different: it represented a significant step forward in the evolution of the Quebec state's administrative capacity and of the welfare state, creating a powerful arm's-length body that would take over a traditionally judicial role and exercise regulatory authority over workplace safety. This is not to say the Act represented an unalloyed benefit for workers. The *Commission des accidents du travail* would in due course give rise to new problems. The results of its opaque decision-making process could not be challenged in court and were therefore much less amenable to public scrutiny. The relatively low benefits provided suggested that workers were unworthy of the full compensation that was the basis of the private law of liability for personal injury. And the *Commission* was empowered to exercise a type of ongoing surveillance and interference in workers' lives that had not existed under the private law. But for many claimants it did provide a modicum of security that was an improvement over the uncertainty of private law recourses.

World War I destroyed the German, Austro-Hungarian, and Ottoman empires, fundamentally transformed the Russian Empire, and left those empires remaining, primarily the British and French, in an enfeebled state. As they declined, other sources of inspiration had to be found. Quebec had long featured a sort of legal Venn diagram, with overlapping influences from Britain and France. The example of workers' compensation shows how this diagram was transformed in the 1920s, with the British and French portions receding, and that occupied by other Canadian provinces and international bodies increasing. It thus represented the dawn of an era in which comparative public policy could prevail over comparative law. The world of comparative public policy was a multi-polar one, in which loyalty to the solutions suggested by one's legal metropole could be trumped by those of a rival tradition. This new world also saw the emergence of new players at both the sub-national and transnational level. Within Canada, Quebec's borrowing from Ontario was only one example of inter-provincial borrowings both among the common law provinces and across the common law-civil law divide, a process that tended to elevate the province of Ontario into a new legal metropole. Meanwhile, the ILO was an early example of a supra-national body that floated above national legal traditions, comparing and contrasting them and presenting what were packaged as "best practices" that did not necessarily align with any one legal tradition. In this new multi-polar environment, no legal tradition had a monopoly on efficient, effective, and legitimate solutions to the myriad problems thrown up by industrial society.

Abbreviations

AC	Appeal Cases (Reports of the Judicial Committee of the Privy Council)
CS	Cour supérieure (Reports of the Quebec Superior Court)
KB/QB	King's Bench / Queen's Bench (Reports of Quebec's appellate court)
SCR	Supreme Court Reports (Reports of the Supreme Court of Canada)
SQ	Statutes of Quebec

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