

**Worker Safety in Alberta: Trading Health for Profit**

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## **Introduction**

Hundreds of thousands of Albertans are injured on the job each year (Barnetson, 2012a). This level of injury reflects (in part) inadequate enforcement of occupational health and safety (OHS) rules. Inadequate injury prevention efforts result in unsafe working conditions. They are also symptomatic of successive Alberta governments' long-standing preferences for employer-friendly labour law, a preference that compromises workers' right to health.

Alberta governments have favoured employer interests to achieve electoral and economic goals. To achieve electoral success, Alberta has privileged rural interests through public expenditures and limiting workplace rights. To achieve economic goals, Alberta governments have enacted repressive labour laws to attract and retain investment, primarily in the oil industry. Such laws (operating in a boom-and-bust economy) have so weakened Alberta's labour movement that there are few political consequences for violating workers' freedom to associate, and ultimately, their right to health.

Alberta's OHS regime exhibits classic symptoms of regulatory capture by employers. These include ineffectively regulating employer safety, deeming employers to be "partners" in regulation, being reliant on employer funding of regulatory activity, allowing employers preferential access to policy making, enacting policies that reward the appearance of compliance rather than the fact, and promulgating a narrative that blames another stakeholder (i.e., workers) for workplace injuries.

In these ways, Alberta's regulatory climate undermines basic rights (i.e., freedom to associate, right to health) and principles (i.e., the public interest) associated with democratic societies. Such rights and principles comprise the main bulwark workers have constructed against capital organizing work in an injurious manner, effectively trading worker health for profit. While employers have undermined such rights to some degree throughout Canada, Alberta's oil-driven economy appears to have facilitated much greater employer evasion and weakening of these rights.

## **Human Rights and Democracy in Alberta**

Albertans possess a range of human rights characteristic of citizenship in liberal democracies. Despite widespread support for human rights, these rights remain conceptually contested. For example, Gary Teeple (2005) suggests there is nothing particularly human or universal about our civil, political and social rights. Most of these rights have only existed for a few hundred years and most humans have little ability to realize them. Rather, Teeple asserts, these "human" rights flow from a particular (and widely adopted) economic and political arrangement. Specifically, they are rights necessary to legitimize capitalist propertied relations—the very relationship that gives rise to many of the problems some human rights seek to mitigate.

Further, Teeple argues that these rights are often in conflict with one another and are accorded different weight. Most human rights are negative rights, in that they emphasize freedom from constraint. In this way, they are consistent with the tenets of classical liberalism. Yet, the regulation and public provision associated with social rights often infringe upon civil rights and are a source of conflict between labour and capital. As social rights often conflict with civil rights, they also do not typically find expression in constitutional documents. Rather, they are voluntarily codified by the state in legislation or international agreements. Consequently, social rights are much easier to change over

time than are political or civil rights and are more subject to particular political alignments and pressures.

Civil rights codify a set of relations between individuals based on the capitalist mode of production. The purpose of these rights is to protect individual liberty, property, security and justice. Civil rights required by capitalism are embedded in Canada's *Charter of Rights and Freedoms* and are protected by (and from) the state. Also embedded in these constitutional documents are certain political rights—rights allowing direct or indirect participation in the establishment or administration of government, such as the right to vote and hold public office. These political rights legitimize liberal democratic government: the ruled choose the government of the day and its policies. Yet the political choices available to citizens do not typically challenge the underlying civil (i.e., property) rights that structure relationships in society. Further, the notional political equality of citizens is significantly undermined by the economic inequalities between various groups of citizens, most commonly labour and capital.

Social rights were the last type of rights to be codified in Canada and seek to ameliorate the negative effects of capitalism. For example, when workers are unable to access the basic necessities of life, this threatens the availability of workers as well as workers' willingness to accept their subordinate position in society—both necessary components of social reproduction. For these reasons, the state may intervene in the operation of the labour market or workplace or provide necessary services or supports. This may bring social rights (typically codified in legislation) into conflict with civil or political rights and result in weak or non-enforcement as a result of political pressure on the state.

Repositories of human rights include various United Nations declarations and covenants, conventions of the International Labour Organization, the Canadian *Charter of Rights and Freedoms* and various pieces of federal and provincial legislation. Typically civil and political rights are treated quite differently from social rights. Consider the United Nation's *Universal Declaration of Human Rights* (United Nations 1948): Article 17 casts the right to hold property as an absolute, but the right to social security (Article 22) is conditional. This division is mirrored in the two associated covenants. The *International Covenant on Civil and Political Rights* outlines rights that are immediately enforceable and for which there is an (weak) enforcement mechanism. By contrast, the *International Covenant on Economic, Social and Cultural Rights* has no complaint or enforcement mechanisms and countries agree only to work towards fulfilling their commitments as resources allow (Normand 2008). This is clear evidence that the imperatives of the market are given priority over at least some human rights.

Two rights important to workers include the freedom to associate (which is the basis of collective action in the workplace) and the right to health (which underlies injury prevention efforts). The freedom to associate finds protection in the *Canadian Charter of Rights and Freedoms* as well as expression in provincial statutes, such as Alberta's *Labour Relations Code*. The degree to which the Charter protects workers' ability to unionize, collectively bargain and strike is in significant flux, following a 2007 decision that significantly expanded the scope of the Charter protections (Fudge 2012). The right to health exists in the *International Covenant on Economic, Social and Cultural Rights*, which includes the right to safe and healthy working conditions (United Nations 1966). This builds upon the more general right in the *Universal Declaration of Human Rights* wherein "Everyone has the right to work, to just and favourable conditions of work and to protection against unemployment" (United Nations 1948, 23(1)).

Like most jurisdictions, Alberta has accommodated workers' desire to avoid workplace injuries by enacting a variety of statutes, including the *Occupational Health and Safety Act*. This Act requires that "(e)very employer shall ensure, as far as it is reasonably practicable for the employer to do so, the health and safety of workers engaged in the work of that employer..." and empowers the government to regulate workplace safety (Alberta, 2000). There is, however, some question about the degree to which Alberta workers can realize and benefit from the freedom to associate and the right to health.

### **Workplace Safety in Alberta**

By any measure, Alberta jobsites are unsafe places to work and among the least safe in the country (Canada 2011). Each year, the government reports approximately 150 occupational fatalities and 50,000 serious injuries (Barnetson 2012a). While 50,000 serious injuries—injuries where workers could not do some or all of their jobs the next day—is a lot of injuries, it is important to keep in mind that government statistics dramatically under-report the true level of injury in Alberta. Specifically, these "injuries" are the number of claims accepted by the Alberta Workers' Compensation Board (WCB), not the number of actual workplace injuries (Ison 1986).

In fact, there are approximately 500,000 injuries in Alberta workplaces each year—10 times the level of injuries the government likes to talk about. Barnetson (2012a) notes that, in 2009, Alberta reported approximately 149,167 accepted injury claims of all kinds. Correcting for 13% of the workforce not covered by workers' compensation and the 40% of compensable injuries that are not reported brings the number of workplace injuries to approximately 285,760. Even this "corrected" number ignores most occupational disease and psychological injuries as well as unreportable minor injuries where no treatment beyond first aid was required. These minor injuries include strains, contusions, lacerations and burns of a degree that vary based upon a worker's ability to tolerate the injury without seeking medical treatment. Discussion among practitioners suggests accounting for disease and minor injuries would push the number to approximately 500,000 injuries per year.

Injuries are caused by hazards that are placed in the workplace by employers. Employers organize work unsafely because it is in employers' economic interest to do so. That is to say, contrary to the popular maxim that "safety pays", it is in fact a lack of safety that pays (Health and Safety Executive 1993, 2003; Cutler and James 1996; Hopkins 1999). Social disruption stemming from this conflict between profits and health is the reason that workplace safety laws and state enforcement mechanisms were first established (Tucker 1990).

Research suggests that Alberta's high level of workplace injury is indicative of widespread employer non-compliance with Alberta's *Occupational Health and Safety Code*. In 2011, for example, the government announced a safety-inspection blitz in the residential construction industry. Despite knowing government inspectors were coming, the majority of the 387 employers inspected had safety violations (Alberta 2011a). In 90 cases, these violations posed an imminent danger of injury or death. These results are broadly consistent with the result of other safety blitzes conducted by the government (Alberta 2010a, 2011b, 2011c).

This lack of compliance may reflect an expectation by employers that there is almost no chance they will be caught violating safety rules. For example, on average, workplaces are inspected less than once every 14 years in Alberta (Alberta 2011d). And it can take safety inspectors up to 18 days to respond to reports of unsafe workplaces (Alberta 2010b). Employers also know that, if they do get caught, there is almost no chance they

will be penalized. Most commonly, inspectors simply order employers to comply with the Code—something that took employers an average of 86 days in 2010 (Alberta, 2010b). While Alberta changed its *Occupational Health and Safety Act* in 2004 and 2012 to allow inspectors to issue tickets for violations, Alberta has not enacted the regulation required for ticketing to occur at the time of writing (CBC 2011; Cryderman, 2012).

Alberta does prosecute a handful of employers each year—typically when the employer has killed or seriously maimed a worker. In 2011, Alberta levied fines in 20 cases. This represents fewer than half the number of prosecutions Alberta undertook in 1985 (Alberta, 2011e, Tucker, 2003). In many cases, the fine was paid to a community group under Alberta’s creative sentencing guidelines. Creative sentencing reduces the stigma attached to the conviction and often generates a tax deduction for the company—in effect the taxpayer subsidizes the fine. Further, some fines are paid to employer-controlled industry associations—in effect the employer pays their taxpayer-subsidized fine to other employers.

The resulting health and safety dynamic is that ineffective enforcement encourages and facilitates non-compliance that, in turn, compromises workers’ right to health (Weil, 2012). The government’s current approach to enforcement developed over a number of years (Tucker, 2003) and is consistent with its 1995 approach to regulatory reform in order to “promot(e) prosperity for Alberta through a dynamic environment for growth in business, industry and jobs” (Alberta 1995a, 2). “Necessary” regulations included those that “contribute significantly and positively to the competitiveness of the private sector...” (p.2). Consequently, occupational health and safety in Alberta shifted away from state enforcement to self-regulation by employers (Alberta 1995b) in order to create “...greater workplace self-reliance in occupational health and safety” (Alberta 1996, 2). Employers have become increasingly involved in determining and monitoring workplace health and safety state enforcement and monitoring activity diminished. Workers are cast simply as recipients of employer safety programs and Foster (2011) asserts the role of organized labour has been reduced to tokenism.

Labour groups have complained about ineffective enforcement for decades, suggesting ineffective enforcement is a policy choice, rather than an oversight. Further supporting this notion of choice is that Alberta also ineffectively enforces other employment laws such as child labour laws (Barnetson 2009a, 2010a). An important consequence of widespread non-compliance is that employers can externalize some of the costs of production onto workers, their families and taxpayers through workplace injury—the very outcome that statutory OHS laws were enacted to prevent. The inability of Alberta’s unions to resist these changes reflects the weakness of Alberta’s labour movement.

### **Organized Labour in Alberta**

Organized labour is a weak presence in Alberta workplaces and is largely excluded from public policy making. There are a number of factors that contribute to this situation. Only 25% of Alberta workers (mostly in the public sector) were unionized in 2011, the lowest rate of unionization in Canada (Alberta 2012a; Canada 2012). Further, the largest sectors in Alberta’s economy (energy, construction and finance comprise half of GDP) are mostly non-unionized while heavily unionized sectors are among the smallest contributors to GDP (health, public administration and education comprise less than 13% of GDP) (Alberta 2012a, 2012b). In this way, the dominant employment paradigm in Alberta is non-union. Further, the petroleum industries have developed sophisticated human resource practices that take wages out of competition and offer employees non-union forms of workplace representation (Ponak, Reshef and Taras 2003). While

segments of Alberta workers periodically exhibit significant support for trade unionism, this has not translated into union members or political influence (Finkel, 2012a).

This may be partly explained as an impact of successive Alberta governments enacting employer-friendly labour laws. These laws were designed to attract and retain investment by (historically American) oil companies (Finkel 1989; Taylor 1995; Fuller and Hughes-Fuller 2005; Foster 2012; Gereluk 2012). Taken together, these policies aid employers to resist union organizing and collective bargaining. For example, Alberta's *Labour Relations Code* requires a union to win a certification vote in order to represent a group of workers. Other jurisdictions use the "card check" system, wherein a union that demonstrates a certain proportion of workers are members is automatically certified as the bargaining agent. Certification votes result in fewer certification attempts and a lower success rate by giving an employer the opportunity to "chill" an organizing drive in a variety of (generally illegal) ways (Thomason 1994; Martinello 2000; Godard 2000; Riddell 2001, 2004, 2005; Bentham 2002; Johnson 2002; Slinn 2003, 2004).

All Canadian jurisdictions identify some behaviours as unfair labour practices (UFLPs)—behaviours that undermine the intent of the legislation. For example, employer interference in the formation or administration of a trade union is prohibited and some jurisdictions have given labour relations board the power to automatically certify unions when the employer has attempted to illegally thwart an organizing drive. This reduces the incentive employers have to engage in this behaviour (Lebi and Mitchell 2003; Godard 2004; Slinn, 2008). The Alberta Labour Relations Board does not have such remedial powers, which means, effectively, there is no consequence for employers who commit UFLPs.

Alberta has resisted calls for first-contract arbitration (FCA) provisions. FCA facilitates the establishment of a collective agreement in newly certified workplace via arbitration. Such provisions reduce the incentive for employers use the first round of collective bargaining as an opportunity to refight the certification application by stalling and otherwise pressurizing the new union. Six Canadian jurisdictions have first-contract arbitration (FCA) provisions. While FCA is rarely used, its very presence has reduced first-contract work stoppages by up to 50% (Johnson 2010; Slinn and Hurd 2011).

Alberta has also limited the labour rights of several groups of employees. Public sector employees are governed by the *Public Sector Employees Relations Act*, which prohibits strikes and precludes arbitrators from making awards on a number of matters. Similar alternative arrangements exist for police officers as well as professors. Farm, ranch and domestic employees are simply without any right to organize. Health care and construction workers have either no right to strike or face onerous requirements in order to strike.

Additionally, Alberta frequently intervenes directly in the labour market to the benefit of employers. The government has intervened in unionization to benefit "friendly" unions and punish combative ones. For example, in 2003, the government consolidated 480 health care bargaining units into 36 in a move widely seen as an effort to punish the Canadian Union of Provincial Employees (CUPE) for opposing the government's earlier (and ultimately unsuccessful) efforts to privatize health care (Fuller and Hughes-Fuller, 2005). The outcome of this restructuring significantly advantaged the Alberta Union of Provincial Employees (AUPE), which was (at the time) favoured by the government and had been engaged in an ongoing dispute with CUPE.

In 2008, the government amended the *Labour Relations Code* to invalidate certification applications where union members seek employment at a non-union firm to kick start an

organizing campaign (colloquially called “salting”). The amendment also prohibited unions from subsidizing contract bids by unionized contractors competing with non-union firms (colloquially called “merging”). These changes were requested by the non-union Merit Contractor’s Association of Alberta, were rushed through the legislature in 72 hours, and were widely viewed as revenge for union-sponsored attack ads during the previous provincial election (Alberta Federation of Labour 2008; Gilbert 2008).

The government has expanded the labour force via migration to limit the labour market power of workers and facilitate union avoidance tactics (Barnetson and Foster, 2012b). And the government intervenes directly in collective bargaining, but only when it benefits employers (including itself). For example, Alberta’s *Labour Relations Code* allows the government to prevent a strike by appointing a disputes inquiry board (DIB). DIBs. Alberta labour-side practitioners view the imposition of DIBs as a means by which the government delays strike action to allow employers to prepare for the strike. During a 2002 teacher strike, the government passed back-to-work legislation after a public emergency declaration by cabinet was struck down by the courts as baseless (Reshef 2007; Barnetson 2010b). By contrast, the government refused to intervene in numerous labour disputes characterized by employer intransigence and, in some cases, violence, such as strikes at Palace Casino, the Calgary Herald, Lakeside Meat Packers and the Shaw Conference Centre in Edmonton (Foster 2012).

Further explanation for the weakness of organized labour can be found within the labour movement itself. Since the Second World War, the movement has been markedly conservative (Finkel 1989; Reshef and Rastin 2003; Foster 2012 but see also Gereluk 2012). More recently, the movement has been divided between the Alberta Building Trades Council (with a business union orientation) and the Alberta Federation of Labour (with a social union orientation). Further, the Alberta Federation of Labour has itself been the site of both inter-union disputes and significant staff turnover, which has reduced its policy salience and capacity. Additionally, many Alberta workers do not see trade unions as useful. Practically speaking, there may be some truth to this. Alberta’s energy-driven boom-and-bust cycles mean that workers have substantial personal labour market power during the booms (i.e., they do not need unions) while unions have experienced difficulty protecting worker interests during the busts (Gereluk 2012; Taylor 1997). Further, a significant portion of Alberta’s workforce comprises migrants from other provinces who may exercise exit options rather than resist unfavorable working conditions (Hiller 2009).

The upshot is that Alberta’s labour movement, while not powerless, is not a key player in provincial policy and is often unable to shape public policy. By contrast, there is significant anecdotal evidence that employers can shape public policy and such favoritism has few political consequences for the government. For example, Shultz and Taylor (2006) note a loosening of child labour laws in 2005 to benefit the restaurant industry. Subsequently, Alberta introduced a two-tiered minimum wage for servers, again at the behest of employer lobby groups (Barnetson 2011).

The lack of effective class-based resistance is sometimes explained in terms of Alberta having a unique “quasi-party” political system (Macpherson 1962), as the result of single-member plurality electoral systems (Bell 1992), or a unitarist political culture that masks conflicts on the basis of class or race (Pal 1992). An institutionalized preference for non-partisanship (or, at least, the appearance of non-partisanship) in electoral politics that emphasizes economic prosperity is certainly consistent with the seeming contradiction of a (notionally) free-market government repeatedly intervening in the labour market to benefit employers.

## **Impact of Oil and Agricultural Industries on Public Policy**

While broad acceptance of a need for “non-partisan” government focused on economic matters may explain how legislators are able to advance employer interests, it does not really explain why they do so. Part of the explanation may be ideological: successive Alberta governments have embraced liberal (and subsequently neoliberal), capitalist values (Harrison and Laxer 1997; Harrison 2005). Yet it is also useful to examine the electoral benefits politicians can yield by maintaining a repressive and injurious labour relations system.

Historically, agriculture was economically and politically important in Alberta (Leadbeater, 1984). Prior to 1945, the agricultural community supported limits on farm worker rights, including excluding farm workers from the ambit of employment legislation. Farmers colluded with the state to suppress farm worker wages and the federal and provincial governments acted (often via law enforcement) to prevent union organizing among migrant farm workers (Barnetson 2009b). Despite the growing prominence of petroleum, rural Alberta has retained political importance through the development of a symbiotic electoral relationship with the provincial government. As argued in Barnetson (2012b), both farmers have sought to maintain their communities in the face of urbanization via significant government support programs (Doern and Tupper 1989; Wilson 1995). In return, rural communities almost always elect Progressive Conservative candidates to the legislature and Conservative governments have ensured electoral boundaries are drawn so there are a disproportionately high number of rural ridings (Archer 1993; Neitsch 2011; Wilson 1995).

There is highly suggestive commentary that the government uses municipal grants to reward supporters and punish detractors. There are numerous examples of Conservative MLAs pressuring various groups and individuals to not complain about government policy or funding decisions by threatening to withhold funding or otherwise punish complainants. Recent examples include school boards, municipalities, and physicians (Rusnell 2011, 2012a; Kleiss 2012a). Further, there is significant evidence that municipalities and public bodies ( beholden to government for grants) have been contributing and soliciting (taxpayer) money to the conservative party (CBC 2011b; Rusnell 2012b, 2012c; Rusnell and Russell 2012).

Revenue from oil-and-gas royalties has also allowed the government to fund significant (and often rural) public infrastructure and programming. In addition to the oil industry’s direct contribution to the economy, it drives activity in a large number of other areas (e.g., construction, manufacturing, automotive sales and servicing, and the service and hospitality industries). Declining oil-industry production, exploration and construction ripples through Alberta’s economy (e.g., 1986 and 2008) causing widespread job losses and a large reduction in tax revenue. One outcome of these dynamics is that the government faces few political threats when it continues a long tradition of privileging employer interests in the oil and gas industry. As noted above, during the 1950s and 1960s, Alberta’s Social Credit government sought to maintain a weak labour movement to facilitate the development of the oil industry (Finkel 1988, 1989, 2012b). Caragata (1979) argues that workers in the oil industry were disinclined towards unionism. By contrast, Roberts (1990) indicates significant interest among oil-and-gas industry workers in unionization. The truth likely lies somewhere in the middle, with demand for unionization influenced by employer and state policies designed to keep prevent unionization if at all possible.



Alberta's boom-and-bust cycle has also triggered state intervention to curtail workers' ability to resist employer demands for retrenchment. This includes legislative change in the 1980s to facilitate union avoidance (Gereluk 2012), public-sector wage rollbacks and job losses in the early 1990s (Taylor 1997; Foster 2012), as well as further changes to labour laws and the expansion of child labour (Barnetson 2010a; Schultz and Taylor 2005) and migrant worker (Barnetson and Foster 2012b) populations to loosen the labour market in the 2000s. There is voluminous evidence of favorable treatment for the oil industry in other areas, such as environmental regulation (Griffiths and Woynillowicz 2003; Buzcu-Guven and Harriss 2012; Tenenbaum 2009; Kelly, Schindler, Hodson, Short, Radmanovich and Nielsen 2010; Royal Society of Canada Expert Panel 2010) and resource taxation (Boychuk 2010). The upshot of these circumstances is that the oil industry has created pressures, opportunities and inducements for Conservative politicians to continue and exacerbate Alberta's tradition (found originally in agriculture) of privileging the interests of employers over workers. In workplace health and safety issues, there is evidence that employers have effectively captured the regulatory system and turned it to their own ends.

### **Regulatory Capture of Alberta's OHS system**

Regulatory capture occurs when a state agency designed to act in the public interest instead acts to advance the interests of an important stakeholder group in the sector it regulates (Shapiro, 2012). Regulatory capture is an aspect of public choice theory. Essentially, groups with a significant stake in the outcome of regulatory decisions aggressively seek to gain advantageous policy outcomes. Focused efforts are often successful because the public (who individually have only a small stake in the outcome) tend to ignore regulatory decision-making.

Under a situation of regulatory capture, the dominant stakeholder group can then use the captured regulator to impose costs on other stakeholders, even if such costs are contrary to the public interest. Captured regulators may see themselves as partners of the captors they are supposed to regulate and may even find themselves financed by that group. It is important to recognize that regulatory capture is a contested concept (see Croley 2012) and that a number of new approaches to regulatory capture have emerged, such as soft capture via the provision of biased information (Agrell and Gautier 2012).

Alberta's OHS system exhibits several characteristics of regulatory capture. The ineffective enforcement of Alberta's OHS laws (thus negating the purpose of the regulation) is detailed above. This issue of who funds OHS in Alberta is trickier to unravel. Of the \$23.3 million Alberta spent on OHS in 2009, roughly \$21.7 million came from employer premiums transferred to the government from the Alberta Workers' Compensation Board (WCB) (Alberta 2010b). Following a scathing series of newspaper articles about injury and death in Alberta during the summer of 2010, the government increased spent to \$27.7 million in 2011/12 and has budgeted \$29.4 million for 2012/13. This amount appears to be entirely offset by transfers from the WCB (Alberta 2012c). In this way, OHS is (indirectly) funded by employers. This funding is contingent upon continued approval by the WCB's Board of Directors, which is dominated by employer and government members. While it is unclear if aggressive enforcement would alter the willingness of the WCB to fund OHS activities, a number of labour- and employer-side practitioners privately suggest this risk exists.

Since the 1990s, industry-funded safety associations have increasingly entered into "partnerships" with the government. These partnerships allow employers play a formal

role in determining policy and standards as well as sponsor various safety awareness campaigns and perform safety auditing functions. A 1997 strategic plan for Alberta's Partnerships framework explains the thinking underlying this approach:

Partnerships is based upon the premise that more can be achieved through a cooperative, collaborative approach than by a one sided, dictatorial or interventionist approach. Leverage and synergy is possible without duplicating efforts and 're-inventing the wheel'. Partnerships strives to promote a culture of increased proactive health and safety attitudes and behaviour in the workplace. These cannot be legislated! (Alberta 1997, 3)

This model prioritizes employer autonomy over safety and government is viewed as a facilitator of employer-driven initiatives. Foster (2011) notes that organized labour is offered the opportunity to collaborate with employers by encouraging workers to "take ownership" of their own safety. Workers have no role in the framework, other than passive recipients of new initiatives (Alberta 1997). In Alberta, the partnerships model divided the labour movement: the building trades unions opted to participate in the safety associations, while unions affiliated with the AFL declined to do so. The "collaborative" processes established by government to review standards created employer dominated "working groups" deliberating over small changes for extended periods. This led to a "culture of compromise" among labour representatives on the groups, which undermined the effectiveness of labour's capacity to improve safety for workers (Foster 2011).

In 2002, with employers facing rising workers' compensation premiums, the Government of Alberta challenged employers to reduce workplace injuries by 40% within two years. As part of the Partnerships in Injury Reduction (PIR) program, the government linked receipt of a Certificate of Recognition (COR) and employer claims costs to WCB premium reductions. Employers who passed an audit of their health and safety management system (performed by certified auditor, generally from a safety association) received a COR (Alberta 2007). First-time COR recipients receive a 10% reduction in their WCB industry rate during their first year. Further, by reducing WCB claim costs or maintaining claim costs at least 50% lower than the industry average for two consecutive years, employers can receive further discounts to an overall total of a 20% discount (WCB 2007). These incentives are in addition to incentives that exist under the WCB's own experience-rating system, which provided 9264 employers approximately \$77 million in WCB premium savings in 2010 (WCB 2011a), up from \$15.2 million in saved by 2233 employers in 2000. Additionally, the WCB issued \$230 million in special employer premium rebates in 2011 (WCB 2011b). A 2010 audit raised troubling questions about whether PIR has made workplaces safer (Alberta 2010b).

Alberta has had promulgated the careless work myth in its injury prevention efforts. The careless work myth explains occupational injuries as the result of workers being accident prone, careless or even reckless. Historically, the careless worker myth has often been used in reference to workers of particular ethnicity and gender (Aldrich 1997; Messing 1998) to shift blame for injuries away from employers (Bale 1989; Witt 2004). Worker carelessness is a part of a broader narrative of "freedom of choice" that absolves employers and society of moral responsibility for worker injuries (Graebner 1984). In this narrative, workers chose the jobs they hold, and thus the level of risk they experience. As industrialization reduced worker autonomy and increased worker proximity to machinery, employers had a greater role in creating injurious working conditions, and the careless worker myth shifted blame back to laborers.

Blaming workers for their injuries is part of a broader employer strategy to evade liability and risk for workplace injuries. This strategy includes withholding evidence of harm, requiring high standards of proof of causation and, when such proof is provided, requesting additional research, criticizing the methods, prohibiting publication of the research, misrepresenting the findings, hiring a more compliant researcher to create evidence there was no risk, blaming workers and consumers for their injuries, and then arguing the harm is simply an unavoidable (or otherwise acceptable) cost of doing business (Bohme, Zorabedian and Egilman 2005; Michaels, 2008). It is also consistent with a pervasive and negative view of workers. Consider the stigmatization of workers' compensation recipients as malingerers, exaggerating the extent of their injuries to maximize benefits from WCB and time away from work (Kirsh, Slack, and King 2011; Reasons, Ross, and Paterson 1981). Compensation costs and duration are thought to be increased by the cheat in the same way that injury incidence and costs are caused by the careless worker. We see similar stereotypes elsewhere in the public policy literature, such as the "welfare mom" and the unemployment insurance "cheat" (Mirchandani and Chan 2008; Reutter, Stewart, Veenstra, Love, Raphael and Makwarimba 2009). These stereotypes blame individuals for their circumstances while minimizing the contribution of other factors (e.g., employers organizing work unsafely and not providing real return to work options). Indeed, these negative perceptions of workers frame the employer as the victim, thus completing a reversal of blame.

In 2008, Alberta released "Bloody Lucky", a gory workplace safety campaign. This campaign was sponsored by the Young Worker Provincial Advisory Committee, a collection of provincial safety associations. The videos comprising the campaign clearly and inaccurately portray workers as the cause of their own injuries. Bloody Lucky is the culmination of a trend in Alberta safety campaigns (that intensified after 1995) of blaming workers for their injuries (Barnetson and Foster 2012a). Analysis of this campaign demonstrates that the bureaucrats involved with the campaign have difficulty identifying blaming behaviour and view such a messaging as important in securing political support for the campaign. The result of this campaign is that the state has mis-informed young workers about the nature of workplace hazards and appropriate mitigation strategies by publically shifted blame for injuries away from employers.

### **Workplace injury as a bellwether for democracy**

There is substantial evidence that employers have disproportionate access to and say in Alberta's occupational health and safety system. Indeed, Alberta's workplace health and safety system exhibits characteristics suggesting a significant degree of regulatory capture by employers—the very group it is supposed to regulate. The result of this arrangement is that Alberta workers face high levels of workplace injury due to ineffective state regulation. State facilitation of employers trading worker health for profit poses a significant impediment to workers realizing their right to health

This special treatment of employers by the state is also evident in Alberta's employment standards and labour relations regimes as well as in Alberta's approach to immigration. Significantly limiting workers' freedom of association in order to attract and retain investment in the oil industry has created a weak labour movement. This, in turn, reduces the political cost of operating an ineffective injury-prevention system. Consequently, the costs associated with work-related injuries are externalized onto workers, their families and society. This outcome broadly follows Teeple's analysis of the hierarchy of human rights that predicts social rights are subject to weak or non-enforcement due to political and economic pressure exerted upon the state by employers.

Alberta's decisions to limit workers' freedom of association and right to health reflect incentives, opportunities and pressures caused or exacerbated by Alberta's oil-based economy. Alberta enticed foreign investment by limiting the power of trade unions, a pattern that continues to this day. The revenue generated from the oil industry allows the government to ensure electoral success via public expenditures in rural Alberta. Employers sought to minimize production costs via ineffective state enforcement of workplace safety measures, including regulatory capture of Alberta's OHS system. In these ways, this case supports the notion that there is a democratic deficit in Alberta, at least partly related to the petroleum industry.

The right to health and freedom to associate represent potentially potent legal counterweights to the ability of employers' common law right to organize work as employers see fit, including organizing it in an injurious manner. While employers throughout Canada have undermined the effectiveness of these social rights since the 1970s, Alberta employers appear to have been unusually effective in doing so. Alberta's oil-based economy may be an important explanatory factor in this arrangement. Oil revenue has allowed single political parties to maintain power for decades at a time. Groups and rights that threaten either the economic or electoral basis of this power are constrained through a combination of state and employer action.

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