SOCIAL RIGHTS, LABOUR RIGHTS AND THE CONSTITUTION: A CAUTIONARY TALE FROM CANADA

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Every country has its literary traditions, and Canada is no exception. Indeed, we spend much of our long and bitter winters huddled around the hearth telling each other stories. That's why I'm going to build my remarks this evening around a story – a cautionary tale. You can assign it any meaning you like. However, to help you interpret it, I'm going to remind you that Canada (like most countries) has many narrative traditions, many literary tropes. I'll mention three tonight. First, there's the "trickster" motif – the character in aboriginal cultures (usually part human, part animal) who has both supernatural powers and a quirky sense of humour. These characteristics sometimes get the trickster into trouble, and sometimes get it out. Next, there's "survival" – an obvious literary theme in a land where nature is harsh, times are tough and a small-c conservative government is in power. And finally, the newest trope — "peace, order and good government". This phrase — used in our constitution to describe the functions of the Canadian state — conjures up the image of a community in which people live together sociably and politely, with due respect for the law of the land and the common good.

Now I know that story-telling is not exactly what you bargained for when you asked me to visit the Canadian Studies Program this year. You wanted serious academics. That is why I'm going to tell my story by the numbers, as all serious academics have done ever since economics was invented. So here's my cautionary tale by the numbers; interpretations follow.

A cautionary tale about workers and their rights

Once upon a time (actually in 1982) Canada adopted a constitutionally entrenched Charter of Rights and Freedoms. The Charter protects freedom of association, assembly, conscience and speech; it establishes equality rights for historically marginalized groups, for the "usual suspects"; and it guarantees due process and democratic rights. From 1982 to 2014, our Supreme Court decided some 31 labour and employment law cases under the Charter. Unions or workers won not quite half of them. However, if we put aside a disastrous first decade under the Charter when employers won 11 cases out of 16, if we look just at the last two decades, labour won 10 cases and lost only 5. This record of labour wins over the past 20 years will astonish anyone who knows anything about the Court's pre-Charter pro-employer tilt. Perhaps it will also startle Americans who have become used in recent years to thinking of their own Supreme Court as distinctly anti-labour. "Ah", some Americans will say, "the Canadian experience shows that the constitution is labour's best hope of reversing the many setbacks it has experienced since the 1970s – if only we can persuade our Court to use the Bill of Rights creatively". The Americans who say this will likely include distinguished legal thinkers, progressive media commentators, despondent labour leaders and ordinary working people desperate for some relief from years of pro-business laws, policies and court rulings.

Now a few more numbers: During this same period — 1982 to the present — Canada's Supreme Court decided 59 cases involving collective labour law, but with no Charter issue: unions won 32 of them and lost only 27. The Court also heard 21 cases brought by workers claiming they had been wrongfully dismissed: workers won 16 of those, employers only 5. A third, smaller group of cases involved litigation between unions and their members: again, unions came out ahead — 7 wins to 5 losses.

And finally, let me add, the Supreme Court's pro-labour decisions were non-trivial. Here are brief summaries of some of those decisions:

- secondary picketing is a form of speech protected by the Charter;

- union security arrangements do not violate the freedom of association of anti-union employees nor do union political expenditures;
- the right to bargain collectively is constitutionally guaranteed;
- Canadian labour laws have to meet internationally-recognized norms;
- non-union workers discharged by their employer in an abusive manner can recover damages for such abuse as well as for wrongful termination of their employment;
- human rights legislation that bans discrimination on various grounds not including homosexuality is under-inclusive and must be revised so that it also protects gays and lesbians; and
- employers must take reasonable steps to accommodate the ethno-cultural and religious practices of their workers .

I don't doubt that some of you are already e-mailing the consulate here in LA to inquire about moving to Canada; others will be texting their brokers with orders to sell off their investments north of the border. But what do these statistics really tell us?

Several things actually. The first is this: Prior to the Charter, and during the first decade of Charter litigation, the Court gave labour very little to cheer about. However, once the Court began to understand what the Charter signified and how it could be used, things definitely changed. Adoption of the Charter, one might argue, has dramatically enhanced labour's legitimacy and expanded its legal rights. Second, as I've suggested, the same judges that held for labour in the context of Charter litigation did so in other labour-related controversies. From this one might further conclude — contrary to my first point — that it wasn't the Charter itself that mattered, but rather the pro-labour sympathies of the judges who interpreted it. After all, our Charter and your Bill of Rights are very similar documents but while our court seems to be sympathetic to labour across the board, yours clearly isn't. The lesson seems to be that judicial appointments matter. And third, the data appear to challenge the received wisdom amongst progressive labour law scholars (myself included) that judges, precedential reasoning and the litigation process are all inherently conservative. This suggests that my tale should have a happy ending for progressives. If Canadian labour's record

of Charter success tracks that of other marginalized groups – and in Canada it mostly does – then prospects for a litigation-led strategy of social transformation seem promising indeed. Women, aboriginal peoples, immigrants, the disabled, racial and religious minorities — anyone seeking social rights — should take note.

However, I'm not quite at the end of my cautionary tale, so I ask you to bear with me while I put yet more numbers before you.

You'll recall that the Charter guarantees Canadian workers — guarantees everyone — freedom of association, assembly and expression. However, from the advent of the Charter to 2014, according to one count, some 212 amendments to labour laws were passed by various legislatures restricting union rights and power.[1] During that same period, union coverage in Canadian workplaces declined from 38% to under 30% - much of which is in the broader public sector; in the private sector it has shrunk to about 16%. In the mid-1970s, before they were protected by the Charter's guarantees of assembly and expression, Canadian workers struck or were locked out for an average per worker of 10.6 hours per year; by 2011 after thirty years of Charter protection, these benchmarks of union militancy had fallen by over 90% to just about one hour per worker. And this decline shows up in another startling statistic: overall, during the Charter era, labour's share of Canada's GDP has declined from about 62% to about 58%.

The Charter proclaims the equality of members of specific named groups — the "usual suspects", and those identified by the Court as "analogous". After thirty plus years of brilliant litigation victories by equality-seeking groups, immigrants still work at a discount of about 10% from native-born employees; women's wages lag men's by 13%; and aboriginal wages lag those of non-aboriginals by 33%. Overall, Canada's gini coefficient, a standard measure of inequality, increased between 1981 and 2010 by 19.4%. (After taking into account the effect of taxes and social transfers, the increase was still 13.5%.)

So: what is the caution of my cautionary tale, the moral of my story? What lessons should we draw from this huge discrepancy between what the constitution seems to

require and the outcomes that social, economic and political forces have produced? What should we make of labour's thirty years of setbacks, of its declining power, influence and affluence, despite unusually sympathetic treatment by Canada's highest court? What should we say about the steep rise of inequality in a country whose constitution was amended just three decades ago to enshrine equality as one of its fundamental values? There's no one answer to these questions, so I'll provide three. I'll frame up each of my answers with one of the literary tropes I mentioned earlier — the trickster, survival and peace, order and good government.

The trickster

The trickster first. Constitutionalists — people who believe in the centrality of the constitution in our national life and legal system — inevitably encounter the trickster. In this context, the trickster is, of course, the judge. After all, judges are believed to have supernatural powers: they can right wrongs, reconstruct societies, trigger attitudinal change and micro-manage institutional reform. Judges are clearly human (though constitutionalists sometimes forget this) but to signify their role as tricksters, in Canada their robes are trimmed with animal fur. And finally, as my narrative suggests, judges have a great sense of humour. Here are some examples of the Supreme Court in its trickster mode:

- Picketing, the Court ruled, is a form of constitutionally protected speech; but then it added an ominous "unless": unless it constitutes "a tort, crime or other wrong". Anyone familiar with picketing, and court judgments on the subject, knows that almost any form of picketing is likely to be found wrongful in some respect;
- The Court ruled that the rights of public sector workers in British Columbia had been violated by legislation stripping them of collectively bargained rights and, in many cases, of their jobs. It then remitted the case for further proceedings to determine appropriate remedies. In a conversation with someone involved in those proceedings, I learned that the workers were never reinstated in their jobs, that they recovered about 25 cents of every dollar they lost, and that the legislation the Court struck down was subsequently re-enacted in slightly altered form, and is still in force.

- Exclusion of agricultural workers from Ontario's version of the Wagner Act violated their freedom of association, our Supreme Court has said; but it has also said that they do not enjoy a constitutional right to protection under any particular legislative scheme of collective bargaining. In addition, the Court made it very clear that our version of the Wagner Act is not chiseled in constitutional stone.
- And one more example: workers' rights were undoubtedly enlarged by the Court's decisions protecting them against wrongful dismissal litigation; but virtually all the "workers" who won these cases were managers, professionals or other privileged employees; virtually none were rank-and-file blue or white collar workers.

So you see, my cautionary tale about workers and their ephemeral rights can be read as part of a long tradition of trickster stories. Of course, it can only be read that way if you believe in constitutionalism in the first place.

Like any other "ism", constitutionalism involves a set of beliefs and values embedded in a canonical text. Judges play a key role in constitutionalism as the interpreters of that text, the personification of its virtues and the ultimate guardians of its values. This explains why judicial review is regarded as the hallmark of a constitutional democracy, why access to justice is regarded as an essential prerogative of citizenship and why the pronouncements of courts are regarded, not just by jurists, with awe approaching idolatry. But constitutionalists are not *quite* idolaters. Because they are mostly intelligent and practical people, they acknowledge that the constitution isn't self-executing. It must therefore be interpreted by judges and lawyers and implemented by politicians, civil servants, policemen and ordinary citizens. Hence my casting of the judge as trickster — as someone who, despite their supernatural powers, is recognizably human, fallible and even mischievous. Such a person is the legitimate subject of criticism. Consequently constitutionalists feel free to criticize the trickster without abandoning their faith in the constitution itself.

Naturally, the nature of that criticism will vary. Constitutionalists who are sympathetic to workers and inclined to favour equality will cite the pro-labour judgments that I

referred to earlier and insist that workers are better off with their new rights than without them, even though those rights have not yet been translated into social or economic gains. They will argue that we need more Charter and not less. They will point to the open-textured language of the Supreme Court's judgments and try to persuade you (and themselves) that this language invites the further and better elaboration of rights. And they will make the case for the Supreme Court being bolder, more interventionist, in providing remedies for Charter violations. Those who aren't sympathetic to labour or much bothered about equality will attempt to explain away the trickster's role. For example, they will tell you — quite fairly — that the apparent discrepancy between labour's expanding constitutional rights and its real-life experience of decline resulted not from the trickster's tricks but from human misunderstandings and misperceptions. Labour's Charter victories, they will say, were never as sweeping as the numbers in my cautionary tale suggested. The Court gave due warning of the limits of its judgments, they will contend: it was guarded in its language and parsimonious in the exercise of its remedial powers.

Of course, constitutionalists of both persuasions, despite their differences, will agree on certain things. They will emphasize the need to get the adjudication process "right", to correct flaws in judicial reasoning, in evidentiary and remedial arrangements and of course in the procedures by which appointments are made to the Supreme Court. Since they want very different outcomes, pro- and anti-labour constitutionalists will no doubt define the "right" solutions to these problems very differently. But — this is the key point — they will speak the same language, muster similar arguments, and claim the authority of the same great principles. In this sense, then, faith in law and the constitution — and belief in the indispensability of the trickster — unites people of different ideological dispositions, occupations and levels of sophistication.

This unifying feature of a shared constitutional faith is no doubt a force for good in many respects. However, like any other faith, if carried to extremes it can have negative consequences as well. As my cautionary tale suggests, one of those negative consequences is a lack of interest in the trickster effect, in the actual real-world consequences of judicial decisions — including their perverse consequences and non-

consequences. In 2006, I co-authored an article entitled “Does the Charter Matter?” We looked at all the social data we could find in an effort to discover whether the intended beneficiaries of the Charter were in fact better off as a result of its adoption. Here is what we found: (1st) some intended Charter beneficiaries were doing a little better, some a little worse, and most about the same; and (2nd) the position of groups that had clearly benefitted (such as gays and lesbians who ironically weren’t mentioned in the Charter but were deemed “analogous” to groups that were)[2] had also improved in other countries but as a result of changes in social attitudes and without litigation. Maybe our findings were correct, maybe not, though they do align with those of Rosenberg’s controversial 1991 study of the US Supreme Court. However, what has struck me forceably is that since our article was published, true believers in constitutionalism have essentially ignored it. If you believe hard enough, it seems, evidence doesn’t matter.

As you’ll perhaps have guessed, I’m not a true believer. For me, evidence does matter. The dismal social statistics I cited this evening, like those we developed in 2006, suggest that the Constitution is often trumped by political economy and/or social and cultural forces. This leads me to the second of my three literary tropes: survival.

Survival

Canada is a vast, cold and sparsely settled country located next to a warmer, wealthier, more populous and powerful neighbor. Not surprisingly, the struggle to survive — as individuals and as a nation — is a theme that recurs frequently in our historical narratives and in our literary imaginary. Survival, as it happens, is also an apt way to describe the plight of Canadian labour — notwithstanding all the nice things the Supreme Court has had to say about it.

Now I realize that in suggesting to an American audience that Canadian labour is fighting for its very existence, I am likely touching a raw nerve. Labour in your country seems to be in even more dire straits. Indeed, it’s so desperate that some very intelligent progressive scholars are urging US labour to cling to the rock of the constitution.[3] But at the same time, your constitution no longer seems quite the rock it

once did. I shouldn't comment on American law, as I'm no expert. However, it seems to me, as an outsider, that in the past twenty or thirty years, your Supreme Court has become convinced that the constitution should be read as favouring corporations rather than workers. It has licensed corporations to spend as much as they care to, to buy all the political influence they might possibly desire[4] and endowed them with a religious personality that allows them to slough off the obligation to contribute to the health care of their employees.[5] It has winked at outrageous anti-union tactics by employers,[6] acquiesced in unconscionable delays in enforcement proceedings,[7] and become complicit in the frustration of the Wagner Act by upholding challenges to the NLRB's quorum.[8] It has accepted that employers can force workers to agree to arbitrate violations of their statutory rights rather than take them to public tribunals established for the purpose. And it has turned aside virtually all attempts to ground workers' rights in the constitution.[9] Some rock!

But even if they seem likely to receive a more sympathetic hearing in our Supreme Court than in yours, I'm not sure that Canadian workers would ever regard the Charter as its last, best hope. When the Charter was being adopted, in the early 1980s, unions didn't ask to have labour rights or social rights specifically entrenched, no doubt because they feared that business would seek similar constitutional protections. Of course, as my cautionary tale recounted, labour has used the Charter when it had to: tactically, defensively, on a case-by-case basis. And it has won its share of victories, and more. Emboldened, perhaps, by those victories, lawyers and academics who advocate for labour rights gradually warmed to the idea that the Charter could perhaps offer them shelter against the stormy blasts of hostile governments, employers newly empowered by technology and globalization, and a working class that no longer answers to that name. Indeed, for a while the Supreme Court's decisions did cause hearts to flutter. Progressive academics began to fantasize about transforming workplaces and labour markets through litigation.[10] Hard-boiled union-side practitioners — who seldom expected (and seldom received) sympathy from judges — began to abandon their long-standing suspicion of the courts.[11] Even Charter sceptics and critical scholars grudgingly conceded that constitutional litigation might after all produce positive outcomes. But then, as more recent decisions began

to reveal that the dominant theme in the Supreme Court's earlier jurisprudence was the trickster theme, old attitudes reappeared. Today, I'm convinced, most experts would advise Canadian labour to find a better rock to cling to than the Charter.

That "better rock", to return to Canada's literary traditions, is struggle. Struggle has many dimensions. Arguably, litigation itself is a form of struggle: but if court victories end up in real-life losses, what's the point? Another form of struggle is political: a labour-friendly political party retains some leverage within Canada's multi-party parliamentary system and a broad coalition of social forces — including labour — continues to support the Canadian welfare state. Then there is economic struggle: in some parts of the country there are still enough unionized workers left to generate a good-sized demonstration or an effective strike. And finally there is cultural struggle: foreign corporations dominate many sectors of our economy; when they exploit labour or trample on its rights, they are not only nasty employers, they are "un-Canadian".

In general, struggle in these non-constitutional forms has enabled Canadian labour to survive, or at least to decline somewhat less dramatically than American labour. To cite one recent example, a proposal by the leader of Ontario's Conservatives to adopt right-to-work legislation was denounced almost immediately — but too late — by members of his own party; voter concerns about stirring up labour conflict cost the Conservatives an election they should have won. And struggle has protected and even expanded some rights that workers won in earlier, happier times. We still have a decent nation-wide publicly-funded health care system; the Canada Pension Plan is financially sound and likely to be enhanced soon; Quebec makes day care available to all parents for $7.00 a day; Ontario has adopted an inflation-protected $11 hourly minimum wage; Nova Scotia provides statutory redress, including reinstatement, for unorganized workers dismissed without cause.

But all that said, the particular historical circumstances that have allowed a progressive third party to survive in Canada may change. Union density may decline to the point where struggle can no longer be sustained. Our welfare state may succumb to the same ideological attacks that have been so successful in America. And worst of all, Canadian workers may abandon the struggle for survival because they no longer

believe they can prevail. As a small country with open borders and close connections to the US, Canadians are particularly vulnerable to what I call “globalization of the mind”. By this I mean that we tend to absorb over time the values and concepts that percolate across the border via conventional and social media, between the covers of corporate HR manuals and in academic journals. If progressive sentiment perishes in America, if American workers give up entirely on struggle, it will be hard for Canadian workers to persevere.

So if labour wants to protect its gains and recoup its losses, it will have to struggle harder, not litigate more frequently. Which brings me to the last of our three literary tropes: peace, order and good government.

Peace, order and good government

Unlike the “survival” motif, with its emphasis on never-ending struggle, “peace order and good government” assumes a degree of societal harmony. Social justice isn’t mentioned specifically, but it is clearly implied: if we want peace and order, we have to treat everyone decently. And note: we believe in “good government”— not “no government” or “small government” or “limited government”. If there’s to be peace and order and decent treatment of everyone, “good” government will be as big and as active as it needs to be in order to get the job done. Moreover, this vision of “good” government isn’t built on a platform of absolute rights. Of course our Charter “guarantees” certain rights and freedoms. However, it makes them subject to “such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. It also allows governments to enact laws “notwithstanding” the Charter if they explicitly accept political responsibility for doing so, and if those laws have a shelf life not exceeding five years. These are clear constitutional reminders that rights are not absolute.

In many of its judgments, moreover, the Supreme Court appears to have acknowledged that “good” governments, committed to “peace” and “order”, have an obligation to attempt to reconcile conflicting values and mediate contending social forces. For example:

- Provinces that wish to leave the Canadian federation have an obligation to conduct a fair referendum and to negotiate the terms of their exit with the remainder of the country.
- Resource companies or pipelines that wish to conduct operations on the lands of First Nations must negotiate with them in good faith.

And one more example, this time from the field of labour and social rights:

- Government legislation depriving public sector workers of their constitutionally protected right to bargain collectively was struck down because it was not preceded by "meaningful consultation" with their union.

This inclination to promote negotiated rather than zero-sum solutions is also manifest in what some leading Canadian constitutionalists refer to as an implicit "dialogue" between judges and legislators. When the Court strikes down legislation, they note, it often suspends its declaration of invalidity for some time in order to allow the government in question to enact a new statute free from the defects of the old one. Moreover, it generally sends discrete signals as to what changes have to be made in the statute or its administration if it is to pass constitutional muster. Proponents of the dialogue theory argue that this approach tends to minimize the risks of conflict between the courts and legislatures, and in the end, it therefore maximizes the chance of enacting legislation that both meets government policy objectives and is Charter-compliant. An example:

- Québec's public health care regime bans the private provision of medical services. However, the regime failed to provide timely access to certain procedures. The Court ruled that if it could not remedy the patient backlog, Québec had to allow patients to seek (and physicians to provide) access to those procedures outside the public system. To the best of my knowledge, the dialogue is ongoing and its outcome remains a work in progress.

From all of these examples, you might well conclude that Canada is a country that puts a premium on compromise and promotes concern for the common good. I suppose compared to some countries, whose names I won't mention, that may be true. And I

suppose, as some argue, that this isn't just a constitutional requirement; it's an approach that's secreted in our national DNA and in our political traditions, possibly because compromise and collective action are necessary for survival in a cold climate. Nonetheless, some Canadians would argue that when it comes to peace, order and good government, we have talked the talk, but not always walked the walk, that — for example — aboriginal peoples, Québecers, the poor, and Asian immigrants have historically been denied the blessings of "good government" , that globalization and neo-liberalism are eroding the Canadian welfare state and that a spirit of compromise is giving way to one of extreme political partisanship.

Setting straight the historical record is important in its own right, and as a first step in defining the future course of governance and politics in Canada. However, I will leave history for another occasion. Rather I will make two fundamental points about the here-and-now: one about compromise as a constitutional principle or value, the other about the Supreme Court's role as a mediator of social and economic conflict.

The constitutional principle first. Compromise is usually arrived at through negotiation. Negotiation outcomes, in turn, are significantly — if not exclusively — determined by power. The promotion of compromise without the redistribution of power is likely to produce outcomes that favour the powerful and disfavour the weak. Two quick examples:

- Unions of farm workers and bank workers have seldom been able to negotiate collective agreements in Canada even in the rare few cases when employers were legally obliged to bargain with them in good faith. Contrast this with the success of players' unions in professional sport.
- As noted, governments have a constitutional obligation to respect the treaty rights and aboriginal land titles of First Nations, and a duty to consult with them if their land is to be used for public infrastructure or private development. But with few exceptions, First Nations have been unable to use this supposed bargaining leverage to gain significant improvements in their living standards. Outcomes are likely to be much better for the small number of First Nations that

never surrendered their land to the Crown and consequently have a near-absolute right to bar pipelines and other intruders.

But the Supreme Court's failure to acknowledge that power trumps the duty to consult, negotiate or compromise, is not the only problem. Assuming for the sake of argument that the compromise principle might actually shift the balance of power and enhance prospects for social justice, the Court is poorly situated to put that principle into practice. Its institutional structures and adjectival procedures, its imperfect understanding of political, economic, cultural and social forces, its limited repertoire of investigative techniques and remedial powers all disqualify it from doing the job well. Again an example:

- The province of Newfoundland and Labrador adopted pay restraint legislation that overrode its own previous agreement to provide pay equity for female health care workers. While finding that the legislation violated the equality provisions of the Charter, the Court accepted the government's plea that it was too poor to pay up. In a way, this was a compromise: a moral victory for the workers, a fiscal victory for the government.

But was this a compromise that anyone could have confidence in? The court didn't ask to audit the government's books; nor did it have any means of doing so; nor if an auditor had found that the government could pay after all, would the court have been able to sensibly decide what other expenditures should be curtailed, or which taxes raised, to meet the government's pay equity obligation.

The caution of my cautionary tale

So I return to the moral of my story, the caution of my cautionary tale, of which there are several, actually. I'll state them in summary form referencing the literary tropes that I've mentioned.

1. Don't put your trust in the trickster. Political economy and social forces generally trump the constitution. If you're looking to advance social or labour rights, if you're looking to promote peace, order and good government, struggle generally trumps litigation.
2. Whether you're litigating or struggling, compromise generally seems to produce a kinder, gentler society than zero-sum outcomes.
3. As unfortunate and paradoxical as it might seem, struggle is often the best way to get to compromise.

To conclude: as a Canadian visitor, I feel a moral obligation to avoid damaging the good neighbourly relations between our two countries. That's why I will end with a series of disclaimers similar to those you have to suffer through before you can watch a late night movie. I am not aspersing the wisdom or candour of your Supreme Court justices who, to their credit, do not wear fur on their robes. I am not ignoring the exceptional experience of America, a land so favoured by fate as to make struggle appear pretty much unnecessary and even inappropriate. And I would not for a moment suggest that if you're seeking social justice, you're more likely to find it in a nation committed to "peace, order and good government" rather than in one built on the motif of "life, liberty and the pursuit of happiness". No, I'm just a Canadian wandering abroad and offering his own rueful, idiosyncratic views on law, literature and politics. In our other official language, I'm *un Canadien errant* — which just happens to be the title of a much-loved song written by a Québecer exiled in the aftermath of our own revolutionary struggles of 1837-38. That song was revived some years ago by Leonard Cohen, another wandering Canadian — as it happens while he was living in California. This seems like a good, coincidental note to end on. So I will.

Hallelujah.

[1] Canadian Foundation for Labour Rights https://www.google.ca/?gfe_rd=cr&ei=SrMUVIHuOcrB8gft3oCYAw&gws_rd=ssl#q=canadian+foundation+for+labour+rights (viewed Sept 13 2014)

[2] Cite Vriend

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[4] Citizens United cite + 2013 or 2014 USSC case on campaign contributions

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[8]

[9]

[10] Articles by academics supporting Fraser . other?

[11] See Langille book re Fraser / right to bargain and strike