Childcare • Safety law • Teenage Girls

OUR TIMES

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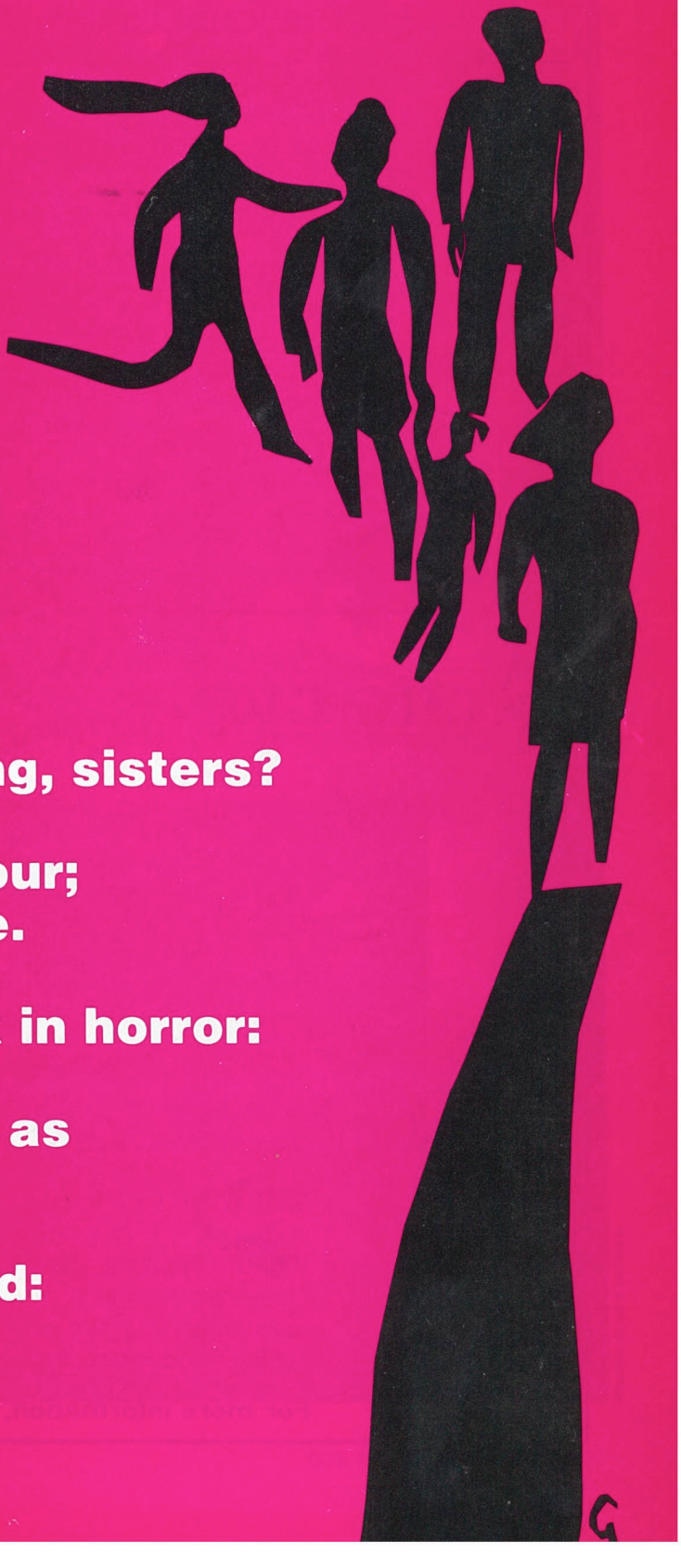
A WOMAN'S PLACE IS IN HER UNION



CHEAP LABOUR

Poetry by Helen Potrebenko

Don't you hear them talking, sisters?
Don't you hear them?
They're talking cheap labour;
they're talking you and me.

One day we will look back in horror:
my god, we were asking
for something as simple as
equal pay for equal work.
Such a simple thing with
which to shake the world:
equal pay for equal work,
or even:
pay for work.

LETTERS

Law equity resolution

To the Editors:

In Canada we have equality for all in principle, but in real terms, we have no such thing. Women are indeed second class citizens in this society where money equals power.

The Rosa Becker case is a well publicised example of the inequity of the laws and an indictment of the present judicial system. She was the common-law wife of an Eastern Ontario farmer who divorced him and after eleven years of court proceedings, she was successful, but she ended up without a cent of her $150,000 Supreme Court award. Her husband refused to recognize the court's ruling. He married, disposed of their assets, and put their property in his new wife's name. Finally, last year when two of the properties involved in the litigation were sold for $68,000, Rosa's lawyer seized the money for legal fees. She did not receive one cent. Rosa Becker committed suicide as a protest against the injustice of the legal system.

Those of us who have homes and families to look after in addition to our jobs, male and female alike, are well aware of the rate of marriage break-down. Add union activism and you have a juggling act. Law equity is not just a women's issue, it affects families. . .it affects all children when one parent is unnecessarily impoverished by family break-up.

Sisters have shared their experiences with me in confidence. Others have said, "I did not even try to get my half share of our home or business, I knew I didn't have a chance to collect it." I am not saying that the division of family assets is a problem in every case, but it is a significant problem with a large number in our society.

It is a well documented fact that women today earn 65 per cent of the dollar that men earn. The Pay Equity legislation is an attempt to address this imbalance. It is also well documented that when a couple separates, the woman's standard of living goes down by 70 per cent and the man's goes up by 43 per cent. Now I ask you, in a justice system in which *money is the only power*, how can women hope to exercise their right to equality?

For example, it has taken a secretary, mother of four children, five years to save a $2,000 retainer for legal counsel. She felt humiliated at the legal aid office when she was questioned about every detail of her life. She was told that she "earned too much," ($18,000) to qualify for legal aid. Meanwhile, her husband has bankrupted their company, dissipated their assets, formed new companies and new relationships, and is living very well in his new house and cottage. The secretary is working five days and three nights a week and lives in a rental co-op, somehow managing to support her children and help her eldest through university.

In my own case, I learned that possession is 100 per cent of the law. My ex-husband was in possession of 95 per cent of our assets at the time of separation in 1981. He threatened, "You will never get one penny, I will drag you through every court in the country, and your money will run out long before mine." He did just that.

My legal debt has climbed at a terrifying rate over this seven-year struggle for "equity." When my last lawyer asked for a chattel mortgage on my home, with an agreement not to dispute any of his billings, I realized that bankruptcy could be around the corner if I did not stop immediately. Last year Revenue Canada garnisheed my wages, due to a reversal of an earlier decision to allow deduction of some of my legal expenses.

Historically this issue has mostly affected women, but today with the advent of the house-husband, and the economic ascent of women, more men will experience this injustice.

The present legal system places the enforcement of judgements involving division of property solely on the shoulders of the "owner" of the judgement. Thus collection becomes a game of "catch me if you can."

Recently I was advised by Gail Taylor, Ontario Government Director of the Office of Support, Custody and Enforcement, that 1986 studies had proved that 75 to 84 per cent of all judgement orders filed with the Court were in some degree of default. Presently there are eight regional offices acting on enforcement and collection of support and custody orders only. I was advised that it is more advantageous to taxpayers to enforce collection of judgements than to pay welfare benefits.

As chairperson of my union local's Political Action Commit-

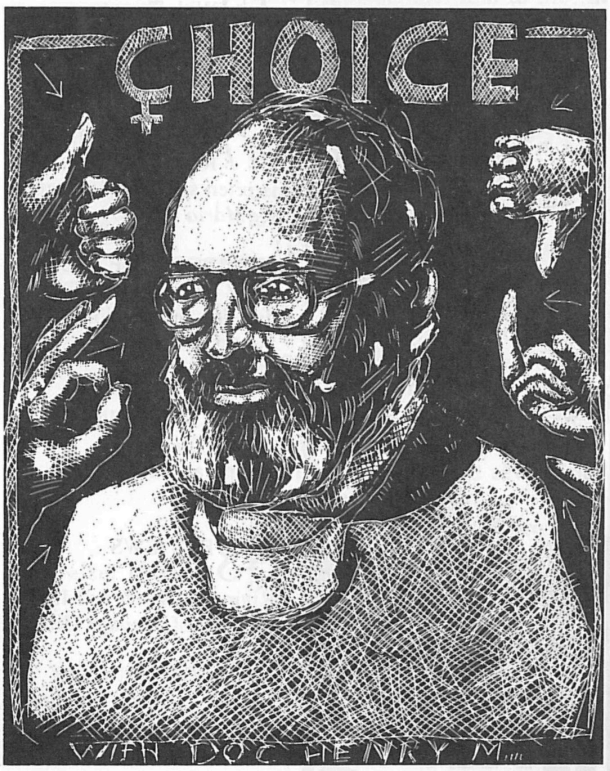


Illustration: Rick Sealock

tee, last year I began contacting politicians and advocate organizations regarding this vital issue. We need:

- Better laws to routinely prevent disposal of disputed assets.
- Enforcement of *all* Court Orders regarding property division using the existing Office of Enforcement.
- Standards for splitting pension credits and for fairly evaluating property so that expensive lawyers and accountants are not needed.
- More government-provided information for those families experiencing marital break-up to protect their interests and the interests of their children.

A steering committee, SALE (Spousal Action for Law Equity), has been formed to coordinate lobby action on this issue.

A resolution on Law Equity was passed on the convention floor by both the Ontario Public Service Employees Union and the Ontario Federation of Labour. This resolution will be addressed by the National Union of Public Government Employees in March and by the Canadian Labour Congress in May.

People are tired of hearing about our laws being broken and evaded by smart lawyers and irresponsible debtors. This mockery of the legal system must be addressed by our government! We need to make revisions in family law and strengthen the enforcement and related sections of the law.

You can help to remedy this injustice by supporting the Law Equity resolution at conventions, writing to your government representatives, and by contacting SALE (Spousal Action for Law Equity), P.O. Box 134, Oakville, Ontario, L6J 4Z5.

Bobbi Wagner
Co-ordinator, SALE

IN CONVERSATION

With Marjorie Cohen

Free Trade is a Trojan Horse

Interview by Mary Rowles

Marjorie Cohen is a Toronto economist and vice-president of the National Action Committee on the Status of Women. She's the author of Free Trade and the Future of Women's Work: Manufacturing and Service Industries, published last year by Garamond Books.

MR: *Tell me, what's a nice academic like you doing in a labour struggle like this? There aren't many parallels in which an academic is both a major spokesperson and the brains behind the barricades. How do you account for this?*

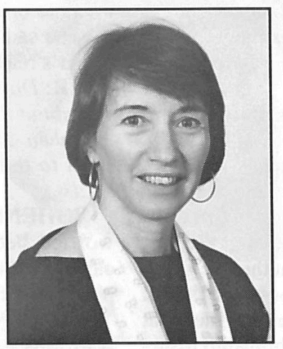
COHEN: Well, I'm not a typical academic, I got into academics because of my political feminism. I was active in the early 70s in the feminist movement, in NAC [National Action Committee on the Status of Women] because there was so much energy there for fighting what the state does to people. And because I was an economist, I became drawn into labour issues. Around that time I started working with immigrant women on training issues. My interest in economics is rooted in my childhood. I grew up really poor and so I always felt there was something to be understood about why some people were rich and some were poor. It never became clear, of course, by taking academic courses. In fact, it's horrible trying to become an economist if you're female, or poor. You just have no questions answered for you.

MR: *What was the link between immigrant women's issues and free trade?*

COHEN: Just before the last election, there was talk of free trade. I had written an article back in 1978 on free trade during the last round of GATT [General Agreement on Tariffs and Trade], but this time I got interested in what free trade would mean to immigrant women, the disadvantaged in the labour force. I looked at what would happen in the manufacturing sector and it just became very clear, out of the blue.

MR: *Your writings have made it clear the effects for a large proportion of women in society are going to be quite severe. Have women in Canada realized this?*

COHEN: Certainly from the beginning women have realized that this was not going to be a good deal for them. The first time polls started separating out by gender, the statistics on opposition were very different for women than for men. And women have organized opposition to the agreement. The Coalition Against Free Trade, which I co-chair with John Foster of the United Church, started about two-and-a-half years ago. It's the oldest coalition against free trade, and feminists were instrumental in founding it, and instrumental in its success. There are women's coalitions across the country, in Ottawa, in Sydney, Nova Scotia, in Vancouver. . .and there are probably others I don't even know about. I think it has a lot to do with the fact that so many women's jobs and the social services crucial to women will be affected by this.



MR: *The federal government insists that services like daycare and other social and health services aren't the least affected by this deal, aren't in the deal.*

COHEN: Well, it's true to say the word daycare is not used in the agreement. It's not in the chapter on services, but it is affected by the chapter on investment. According to this chapter, any service company — any company — has the right to establish here and the right of national treatment. This means for example that if the Ontario government was giving capital grants to daycare centres to set up, a private U.S. firm could claim equal access to that grant money under the right of establishment.

MR: *What about other services?*

COHEN: It's difficult for anyone reading the agreement to see what kinds of services are included, because they're only listed by their standard industrial classification code, so to start with there's just a number not a name, but here's the kind of services they list: First there's management of all hospitals — that's general, rehabilitation, extended care and mental hospitals. Management of all hospitals. Under management of other institutional health and social services they included homes for the mentally retarded, the handicapped or disabled and emotionally disturbed children, among others. The deal also covers management of non-institutional health care services, and here we're talking ambulances, home care, public health clinics, etc.

MR: *So how, in the face of this, can a federal minister like Pat Carney stand up and say daycare isn't in the deal, health and social services are not affected by this agreement?*

COHEN: God knows. I mean it's absolutely extraordinary. The best one can say is that their statements are very misleading.

MR: *What about outright lies?*

COHEN: Okay, I'll say it, they're lying.

MR: *But you don't seem to read any of this in the papers.*

COHEN: That's because journalists don't understand the deal. I keep telling them, look, social services are in the agreement. They keep saying, "Well; government says social services are not affected."

MR: *Of course, why should journalists believe you, a mere economist?*

COHEN: Precisely.

MR: *This seems to confirm the accusation made by Women Against Free Trade that the deal is a Trojan horse that will be hauled across the border bearing Reaganomics in its belly. Do you agree with that assessment?*

COHEN: Absolutely. The agreement

Trade policy should follow from a strong economic policy, a full employment and equality policy.

does make it much easier for privatization of government services and will make it almost impossible for what is now in the private sector to be brought into the public sector. There's one very important article in this agreement buried way in the back, called Discipline on Public Monopolies. The wording is tricky but it basically recognizes the right of any government to put something in the public realm, but we must notify the Americans that we're going to do this, then we must consult with them over the way we're going to do it. And any government measure which is tantamount to an expropriation of investment has to provide for prompt, adequate and effective compensation.

MR: *What exactly does that mean, in English?*

COHEN: What this means is that if government wants to provide a public service, but there are American firms operating in that sector, you've got to buy them out, not only for what they're going to lose right now, but for what they'll lose in the future. Can you imagine what this means to plans for public auto insurance, or dental insurance, with all the American firms active in that sector? Governments couldn't afford to contemplate such schemes.

MR: *Do you think the free trade agreement will be used to prevent employment equity legislation for example?*

COHEN: I don't think it will be prohibited. I think it's going to happen in more indirect ways. I think workers are going to be blackmailed not to push for any improvement, whether it's wages or working conditions. And the threat will be, we'll have to shift production. Firms are already saying, look, we can't compete, Canadian labour legislation is too stringent, and if we meet all these regulations, pay equity requirements, we're going to price ourselves out of the market. The sad thing is, that in a sense, the threat's real.

MR: *Doesn't it become difficult to argue about the disastrous effect on industry when so many of the industrialists seem to think they will benefit from the deal?*

COHEN: Of course, and they're not worried because they can adapt. They can shift production. Many of the small producers can't, but the big ones can. You know government keeps putting forward this notion that somehow industry and labour and people have the same kind of interest. Well, we don't. They're different and I think that's the one thing that women recognize. We've never seen the interests of government or big business as being identical to ours, or even. . .

MR: *Or even anything similar.*

COHEN: That's right. Our fight has always been against government and big business, and I think that's why women line up behind this issue so readily.

MR: *One of your early concerns was that government was not going to provide the promised retraining programs for workers who, shall we say, get "caught" in the adjustment. Do you still have concerns in this area?*

COHEN: Oh yes, governments have always been miserable to women with regard to any kind of training programs, and most miserable to minority and immigrant women who are most vulnerable in the labour market. They're not coming up with any kind of adjustment program, and they're in a bind because if they come up with an adjustment program, they have to admit that jobs are going to be lost, which they're loath to do. But I don't want to start calling for adjustment programs. I don't see the point of having training programs when you won't have any jobs to be trained for. I want us to get rid of the deal.

MR: *And after we get rid of the deal? What will the feminist economic solution look like?*

COHEN: Well, our trade policy cannot direct social and economic policy. A trade policy should follow from a strong economic policy, which I think has to be a full employment and equality policy. If you have these as major objectives in your economy, then you can design a trade policy that might fit into it.

Mary Rowles is the Equal Opportunities Officer with the Ontario Public Service Employees Union.

POINT OF VIEW

Systemic Racism Exposed

Visible minorities provide leadership

By Maria Wallis

For the last couple of years, women organizing for International Women's Day (March 8) in Toronto have tried to integrate an anti-racist perspective into their work. When we are planning the day's events, which include a major rally, demonstration, craft fair, and dance, we try to incorporate the knowledge that people suffer discriminatory treatment not just because of being women, or being working class, but also because of colour and nationality.

Immigrant and visible minority women are playing a leading role in interpreting this discrimination and in making anti-racist education and action a major part of the women's movement. Feminists are now learning that we can't simply add anti-discrimination slogans onto our already long list of demands. An anti-racist perspective must be integrated into all aspects of feminist organizing.

Racism is not just another problem, like the lack of affordable housing. For immigrant and visible minority women, it's an oppression that touches all aspects of our lives, from education, to employment, from housing, to relationships.

Even though it is as widespread, it's often difficult to identify. Of course, calling someone names like Paki or Nigger is straightforward racism and easy to stop, but there are serious and subtle forms of discrimination that we must deal with as well.

Here's an example. Canada Employment and Immigration Centre counselors routinely decide which unemployed people are eligible for language training programs, as a way to help people get jobs. The counselors often assume that immigrant and visibly minority women are best-suited for sewing garments, or packaging material. The counsellor then decides that language training is not necessary because you don't need to speak or write English or French to do them. As a result, immigrant women get jobs, but they remain isolated and oppressed.

For another example, look at job qualifications or credentials. The government and employers always assume that foreign experience and education is somehow below Canadian standards — unless the foreign students come from another mainly white, western country. Pharmacy students, for example, have to pass an exam here before they are permitted to work as pharmacists. But students from the United States and the United Kingdom can reduce their in-service training period and be working in six month's less time than everyone else.

These kinds of discrimination are called systemic racism and they are difficult to detect because they are usually disguised as neutral or objective procedures. Immigrant and visible minority women can't forget, however, that it was *someone* in an institutional role or position who decided that they would or would not get language training. It is not simply an administrative decision, but a social, political, and economic one.

Why should we automatically assume that Canadian standards of training are better than any other country, that English is superior, or western clothes are better? Studies have shown that many employers think that a marked accent, or a "different" way of conveying ideas are not considered acceptable to employees in their organizations.

This kind of discrimination can only be detected when we look at the group level. Individual by individual we can't "see" it, but it does mean exclusion or degradation for visible minorities as a group.

We cannot overcome the problems of discrimination individually and by ourselves. We need affirmative action programs and a class action approach. Those who are in power should be made accountable for the results of their decisions and policies.

We are not asking for special treatment. We are able to participate and contribute to Canadian society. We want procedures that are democratic and developed with an awareness of historical injustice and that will involve visible minorities and immigrants. We want to be involved, with all people, in planning the future and benefitting from it. We will empower ourselves by interpreting our own experiences. We will work for tolerance and appreciation of differences. This society has as much to learn from us as we from it. We want to work together with all people in fighting against our oppression, as women, as visible minorities, as workers.

Maria Wallis is a member of the Coalition of Visible Minority Women and lives in Toronto.

Photo: Janet Snell

Childcare Challenge

Flaws in the Federal Plan

By Sue Colley

Last December, the federal government delivered its Christmas gift to parents and child care workers across the country. The present was wrapped in glittering paper, tied with colourful bows, and its message was promising. When the wrapping had been ripped off, however, the gift was revealed — a lump of coal. Child care advocates across Canada realized that there was only one thing to do with this present. Burn it.

The federal government's child care strategy is a disaster. The big winners in this game are commercial child care operators, affluent taxpayers, and finance department bureaucrats who wanted to put a lid on federal government spending for child care. The losers are Canada's children and families, especially working mothers looking for accessible and dependable child care.

What's wrong with the plan? Well, the government has not put forward a plan to build an affordable, high-quality, non-profit and accessible child care system. Instead, they have offered a proposal which is even less generous than the recommendations of the government's Special Committee on Child Care and worse than the current cost-sharing arrangements under the Canada Assistance Plan (CAP).

Money is directed to tax credits and deductions and not to services. Of the more than $5 billion the government is planning to "spend" over the next seven years, nearly half of that will go out in tax credits to families — instead of helping to actually create and open new high-quality affordable child care spaces. It seems as if they want to buy off parents rather than find solutions to child care problems. But most families will receive a tax credit of only $200 a year or less for each child under seven years of age. This money will accomplish little, or nothing.

In fact, even more money goes toward tax relief than the Health Minister Jake Epp has admitted. Under the new plan, the government did not include the present cost of the child care income tax deductions. In 1986, over $175 million was already being claimed in the child care expense deduction. Over seven years this would total more than $1.2 billion.

Deductions are totally unfair, because the more taxable income you earn, the more you benefit from the deduction. For example, the richest parents will be able to deduct $1,740 per year per child, but for lower income families it's only $1,020. Families not paying income tax will get *no* benefit at all.

For the first time, the new Child Care

Act will provide operating grants to commercial child care and will act as an incentive for a massive increase in low-quality child care. For the government to provide sustaining funds to business operators sets the conditions for the rapid expansion of American and Canadian corporate child care.

The new program is even less generous than the present funding arrangements. The new act will provide up to $3 billion ($428 million per year over seven years) for low income subsidies, operating grants, capital grants — whatever the provinces want. Sounds like a lot of money, eh? Wrong! The new act will replace the open-ended provisions of CAP, where for every dollar a provincial government spends, the federal government also spends one, with a ceiling.

The price of child care in Canada is rising rapidly and because of this, and the new spending limits, critics estimate that the number of subsidized spaces will not even double in seven years. The bureaucrats are laughing all the way to the bank. CAP is certainly not a good way to fund child care, but it would have funded a much larger expansion than the new plan. We'd be better sticking with whatever we have than switching to the new act.

Let me explain. In 1985, a study prepared for the federal Department of Health and Welfare estimated that if the CAP cost-sharing provisions were fully used by the provinces, spending on child care for pre-school children could rise to $3.6 billion per year. The proposed new strategy will limit this to $1 billion per year after seven years. A real bargain for the government — a bad bargain for child care.

The federal government was fully aware of the open-ended potential of CAP. The new program is aimed at curtailing these expenses. Provinces with ambitious plans to deal with the demand for child care over the next decade will encounter real money problems within a couple of years.

There is some bait on this hook. Provinces who now lag behind the national average in the supply of day care services will be eligible to receive a high contribution of federal money. Instead of CAP's 50-50 split, in one formula the federal government is offering to pay 80 per cent of the costs. Here's the barb to the hook — when those provinces catch up to average development, they will lose the additional federal funding and will have to find the balance of the funds themselves. This is hardly a sound plan for caring for the country's children.

Opposition to the plan is growing. The National Action Committee on the Status of Women (NAC) and the Canadian Daycare Advocacy Association (CDAA) are now coordinating a country-wide campaign to highlight opposition to the federal government's proposals. The Child Care Picture Campaign aims to wrap up the opposition by late April. The idea is that feminists and child care advocates will pass a giant photo album across the country. In each locality we will add photos of the children affected by these dreadful proposals together with notes and messages to the Prime Minister and then the album will be passed on to the next community.

In each region, actions will be organized to highlight our concerns with the government proposals. Some communities are organizing meetings, some are burning the briefs they presented to the Special Committee, others are organizing open houses and inviting reporters to their day care centres. The album is scheduled to arrive back in Ottawa to coincide with the opening of the CDAA National Conference on April 22, when Prime Minister Brian Mulroney will be asked to visit the exhibition and to account for his government's tunnel vision on child care in Canada.

Those communities who will not be hosting the album will add to the exhibition in Ottawa.

Opponents of the national strategy for child care are also asked to let their Members of Parliament know of their position. Provincial legislators should also be contacted, and send copies of your correspondence to NAC and the CDAA. We want to move critical discussions on the future of child care in Canada from behind bureaucratic closed doors out into the public arena. We want to stall the planned legislation so that it's not put into effect before a federal election. Child care advocates will then direct themselves to making this an election issue and ensuring that a government is elected which will put in place a progressive and comprehensive plan for child care in Canada.

Sue Colley is the executive coordinator of the Ontario Coalition for Better Child Care and can be reached at (416) 532-4031. The Canadian Daycare Advocacy Association can be contacted at 323 Chapel Street, Ottawa K1N 7Z2 (613) 594-3196. The National Action Committee on the Status of Women can be reached at 344 Bloor Street West, Toronto M5S 1W9 (416) 922-3246.

The new federal strategy puts emphasis on tax credits to parents — not on actually creating more child care spaces.

POINT OF VIEW

The Morgentaler Decision

Tremendous victory for women

By Lynn Lathrop

The recent Supreme Court decision that the abortion law is unconstitutional is a tremendous victory for the women of Canada. The court ruled that the law fundamentally interfered with women's rights to control our own bodies and our lives. What Chief Justice Brian Dickson referred to as "state interference with bodily integrity" will no longer be tolerated. In the long struggle for women's equality, the court's recognition that women have the right to control over our bodies may be the most important legal step we since we won the right to vote.

This victory is the result of long years of struggle by pro-choice activists, the women's movement and our strong supporters in unions, lesbian and gay groups, churches, immigrant organizations and many other community groups. Throughout this struggle, the Morgentaler Clinic in Toronto has been a symbol of women's resistance to an oppressive law. The January 28 victory shows we have the capacity to stand up to the Government and win.

The campaign for abortion rights in Canada is decades old. But the decisive phase for women outside Quebec began five years ago, when activists in the women's movement got together in Toronto to discuss their grave concerns about deteriorating access. By then, Dr. Henry Morgentaler had successfully challenged the federal abortion law in Quebec. After three jury acquittals, Quebec decided section 251 of the Criminal Code could not be enforced, and called off further prosecutions. However, in the rest of the country, access was bad and getting worse.

The feminists who met in Toronto were fed up. They had met with politicians, written letters and amassed overwhelming evidence that the abortion law was inequitable, that it threatened women's health and, most important, robbed us of control over our own bodies. It was to no avail. Governments would not budge.

The group decided the only way to win repeal of section 251 was to directly challenge it by setting up a free-standing clinic. The clinic would serve several purposes. It would openly confront the law, highlight the crisis in access, provide a service to women seeking abortions and act as a focal point to help spark a political movement.

The group set about looking for a doctor to run such a clinic and finally persuaded Dr. Morgentaler to establish one in Toronto.

The strategy led to creation of a strong political movement and, finally, to the Supreme Court decision.

The struggle for choice has not simply been about ensuring that all women have full and free access to needed medical care. It has also been about women's autonomy, dignity and equality.

The abortion law was a constant insult to women. Under it, access was unequal. The least-privileged — working class women, women of colour, rural women — suffered most. Women in many parts of the country, including all of Prince Edward Island, were unable to obtain abortions.

All women suffered the indignity of not being able to make such an important, at times difficult, decision for themselves. This must never be allowed to happen again.

What we have won is the legal right to abortion. But to make this ruling real — to ensure every woman has equal access — both lévels of government must act decisively and quickly.

The federal government must not try to bring back a restrictive abortion law. Let it heed the clear message of the court: unfair and arbitrary restrictions on women's reproductive freedom are intolerable.

Ottawa must work to guarantee that abortion — like all other health care — is equally available across the country. It must not allow the British Columbia Government, for example, to refuse medical coverage for women who don't get approval from a therapeutic abortion committee.

It should withhold a portion of health-care funding to provinces that attempt such blackmail, as it did successfully during the battle to end extra billing five years ago.

The provinces have primary responsibility for delivery of health care and these governments will now be held accountable by women across the country. The specific situation varies a great deal among the provinces, and local reproductive-rights groups will know what is best for their circumstances.

The over-all way toward providing high-quality and freely accessible abortion care is clear. The experience in Quebec has demonstrated the great value of providing abortion services in local community health centres. More generally, considerable research has shown that free-standing clinics provide safer, more supportive, accessible and cost-efficient abortion care.

Across the country, we need publicly funded clinics in every community, working in every language and providing all the reproductive care women need — from safe and effective contraception to abortion; from birthing and midwifery to well-woman and well-baby care; and from sexuality counselling to reproductive technology developed according to women's needs and priorities. Nothing less will do.

For women to have real choice in our lives, more is needed. The Ontario Coalition for Abortion Clinics will continue to work for universal child care, autonomous midwifery, parental work leave, employment equity, the right to define our sexuality and all those other changes without which women cannot control their lives.

The struggle for equality will be a long one, but the Supreme Court decision has at least taken us a significant step in the right direction.

Lynn Lathrop is spokeswoman for the Ontario Coalition for Abortion Clinics. A longer version of this article originally appeared in The Globe and Mail.

UNMASKING THE LABOUR BOARD

Health and Safety Hazards

By Beatrice J. Miller

Worried because the boss ignores your pleas to fix that sputtering machine? Thinking about exercising your right to refuse to do unsafe work? Confident that the Ontario Labour Relations Board will back you up?

You don't have to know the Occupational Health and Safety Act (OSHA) inside-out, but if you don't follow certain procedures you may be in trouble. *You* should be clear about the difference between refusing because you have "reason to believe" the work is unsafe and refusing when you have "reasonable grounds to believe," even though the *board* hasn't always been clear about the difference.

You'd better be able to meet the "average employee" test; that is, you'd better not be too tall, or too short, or have an allergy, or suffer the lingering effects of a previous injury.

If you work in an institution such as a corrections centre or a nursing home, well, take care because your rights are quite limited.

If your employer disciplines you, you'll need lots of patience and time to pursue a case at the board. If you don't have a union to act for you, and you hire a lawyer, you should know the board doesn't award costs; the bill is yours to pay no matter what.

If you're fired because you complain about health and safety, you've got a good chance of recovering some lost wages — unless, that is, you're a construction worker.

If you're thinking about stopping work in support of co-workers who are refusing to operate unsafe machinery you'd better watch out. Sympathy refusals aren't legal.

Right to refuse

Last year health and safety inspectors for the ministry of labour issued 65,730 orders to employers for major and minor repairs amd changes. That hefty number shows that the government is making an effort to improve safety at the workplace. But it also suggests that workers in Ontario are at risk and don't yet have the security of safe and healthy work.

The most important protection workers have is the right to refuse to do unsafe work. Section 24 of OSHA prohibits employers from penalizing workers who use this right, following the procedures set out in the legislation.

If a union member is disciplined for a work refusal, then she can challenge her employer by way of the grievance and arbitration route, or, by filing a complaint with the labour relations board. (If she loses at arbitration, she cannot then take her complaint to the board.)

Workers without unions have to rely on the board. Linda Jolley, occupational health and safety director for the Ontario Federation of Labour, encourages people to file complaints with the labour board. The arbitration route is very expensive for unions and often takes even longer than getting a decision at the board. Getting a speedy decision is important, especially in dismissal cases.

Between 1980 and 1987 workers who tried to use their rights under OSHA filed 306 complaints with the board, claiming wrongful dismissal or discipline. Two-thirds of these complaints were settled after discussions with a labour relations officer, without a hearing. The board heard 60 cases, denied the complaint 38 times and ruled in favour of the employee 22 times.

Last year workers filed 85 complaints. The board granted eight, dismissed ten, and 56 were settled without a hearing. A union consultant explains that the majority of complaints never reach the hearing stage because the company is usually embarrassed. "Either their equipment's shoddy, their management's shoddy, or their procedures are shoddy. They don't want to chance being exposed in a hearing so they settle."

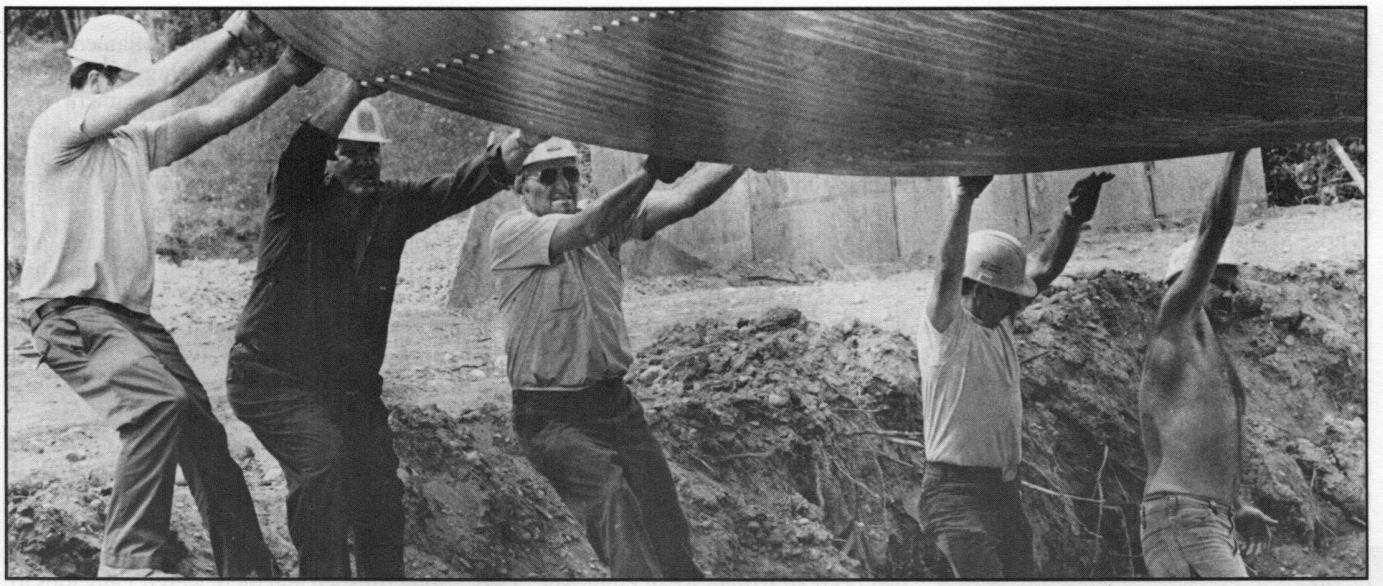
Many employees, especially those in unions, know more about their rights and responsibilities today than they did eight years ago. Inspectors from the ministry investigated 162 work refusals during the first year the act was in effect. Last year they investigated 445 refusals.

Complaints for reprisals have doubled since the first year. Jolley and other unionists say employers are getting rougher and tougher with employees who raise health and safety problems.

Initially an employee can refuse to work if she *believes* she is in danger. It doesn't matter if later no real danger is proved. She must only show that her belief is genuine. The board says that because of the importance of health and safety any doubt should be resolved in favour of the worker at the first stage of refusal. Where a worker has been penalized for an initial refusal the board's judgements are usually favourable, sometimes patronizing, and only occasionally clouded.

The squeamish and the intrepid

A work refusal, says the board, "triggers the carefully constructed mechanism" of section 23. Once the process is set in motion, there is an increasing burden on the worker to justify the refusal. The company must investigate the situation immediately, in the presence of the worker and a health and safety representative. After the investigation, the worker, to defend a refusal, must show that her belief has shifted over into "reasonable grounds." She needs pretty firm evidence on which to base a continuing refusal. A ministry inspector is called in to investigate and make what is supposed to be an objective judgment. The



board warns that the law doesn't provide "different standards of protection for the squeamish and the intrepid."

The ministry's directives to inspectors pose a problem for a worker who needs evidence to prove she's not squeamish. Inspectors are burdened with the task of encouraging employers and workers to settle difficulties between themselves, without an order. For a strong case at the board, though, the employee needs proof that something was wrong. An order supplies that evidence. If the inspector has used persuasion rather than paper, the worker's evidence is weaker.

Colin Lambert, the Canadian Union of Public Employees's national health and safety officer, says that the "internal responsibility system," where the boss and his employees are pressed to make their own accommodations, is a "government panacea that just doesn't work" because workplace health and safety committees don't have the power to make improvements.

Even when an inspector writes a report there may be a problem. When an inspector investigated a tire-builder's refusal to work, the employee interpreted the subsequent report as supporting his refusal, but the company said the report showed there was no danger. The board said that the "incomprehensible report of the safety inspector" contributed to the problem.

The board's view of inspectors is sometimes quirky. The inspector sent to investigate employees' refusal to work near an unsafe furnace didn't have any experience with furnaces, and relied on his conversation with the boss when he judged the area to be safe. The board said that "the inspector's opinion, albeit the opinion of a neutral party, was not the opinion of a neutral expert." A decidedly schizophrenic approach.

Too tall, too short

If you don't come within the board's idea of the "average" employee, you're not protected from reprisals if you continue to refuse work that you believe puts you at risk.

A metal products company fired a man who wouldn't operate a grinding machine that aggravated his allergies. The board sided with the company and said the law "was intended to provide a remedy for workers in danger not for those who were physically unsuited to a job which upon reasonable evaluation presented no problem to other workers . . . (the complainant) suffered discomfort and inconvenience but this did not constitute a 'danger'."

A laundry worker was fired because she followed her doctor's advice and refused to do a particularly heavy job which was normally rotated among several workers. The board ordered the company to reinstate her because her boss hadn't followed the proper procedures for dealing with a first stage refusal. But, if she refuses again and the company follows the right procedures, she may find herself out of a job because her back problems mean she can't meet the average employee test.

In the tire-builder's case mentioned above, the worker refused to throw heavy

Health hazards of sex discrimination

There's a hearing underway now that's a test of the powers of the act and of the board's commitment to promote health and safety.

Bonita Clark is a stationary engineer with Stelco, the huge steel company in Hamilton, Ontario. She has filed complaints against the company under three sections of OSHA, charging that Stelco has failed to provide a safe and healthy workplace; that her supervisors haven't done their duty; and, that Stelco has taken reprisals against her because she has tried to enforce the act both as an individual and as her union's health and safety representative.

Clark is the only woman working in steel production at Stelco. She has persistently identified health and safety problems that need attention. From the start she has felt the pressure of sexual harassment and discrimination because she's a woman, and she's suffered management reprisals for complaining about sexual harassment and safety issues.

Clark wants recognition that sexual harassment is an occupational hazard. She has the support of her union, the United Steelworkers. Her lawyer, Mary Cornish, says that both men and women will benefit if the board accepts her argument that the anxiety and stress women suffer as a result of sexual harassment is a health and safety concern. Workers would then, Cornish says, gain the protection of health and safety legislation for stress-related conditions.

— B.J.M.

tires from a machine for fear of injury. The board concluded that his refusal, initially, was covered by the act, but noted: "He is not saying he is too short or too weak to throw the tread, and if that were the basis of the complaint then of course his refusal would not be covered by the Act." Of course? Whose health is being protected here?

Suffering and sympathy

Can you join your co-workers in a refusal? It depends. If several workers are themselves in danger, they can act together: ". . .so long as employees work together in groups and may be confronted with situations that they *individually and collectively* (board's emphasis) may regard as unsafe, we cannot conclude that a refusal to work was unjustified simply because a number of employees were involved." Take care. In one situation a group of employees refused to work for health and safety reasons and the boss sent the entire workforce home. The board said those who refused hadn't suffered reprisals because the company had treated everyone the same — collective suffering!

The board warns that nothing ". . . permits employees who are not themselves involved in a perceived safety hazard the right to down their tools out of sympathy for another employee whom they think is confronted with unsafe work."

Good decision and a jolt

It's clear that the onus is on the employer to prove that he didn't discipline the employee for having exercised rights under OSHA. Most unionists say that the board has made good decisions upholding workers' rights to refuse unsafe work without penalty. I have to admit that when I started reading through cases for this article, I found myself feeling surprised, even grateful, when I found decisions upholding a worker's complaint. As I read, I became immersed in procedures and fine arguments. The board seemed tolerant of occasional eccentricities, and it was nice to find that they reinstated someone who had been an irritant to an employer. Two recent cases jolted me back into my own element and perspective.

One concerns a construction worker who, seen through the board's decision, was quite fierce about health and safety, pursuing problems at the construction site like a tiger on the move. He regularly raised health and safety problems at the company's weekly safety meetings. Frustrated by over 80 problems, he documented some with a camera and went to his Member of Provincial Parliament. The company fired him, saying he was insubordinate, that using the camera was contrary to company policy, and, besides, he wasn't even the official health and safety rep and shouldn't have been talking health and safety on company time. The board said his concern about health and safety was genuine, but the company had warned him to stop, and the termination was entirely for reasons that had nothing to do with health and safety! The board drew an arbitrary line between health and safety problems and labour relations issues.

The board did reinstate two of his coworkers who were fired for trying to deal with health and safety problems. But the decision came 16 months after they lost their jobs; the construction project was long finished and there weren't any jobs to go back to.

The construction health and safety branch of the ministry of labour received reports of 14,679 accidents last year. Inspectors investigated 1,416 accidents and 41 on-site fatalities. Ministry records show that during the same period there were only three refusals to work. It looks like the construction industry needs more workers like tigers, with the courage and persistence to set things right.

Dilemma in the public sector

Another disturbing decision rejects a complaint from Douglas Lloyd, a youth services officer with 20 years service, working in a detention centre. He, and thousands of people in similar public service jobs, is excluded from the "right to refuse" unsafe work section in the act. But all of these workers are, under section 17 of the act, required to maintain a safe workplace and not endanger others.

One night Lloyd's supervisor ordered him to leave his post and report to another area. Lloyd said he wasn't refusing to work but didn't want to leave because his co-workers would be jeopardized by his departure. He stayed on the job. The supervisor called in another worker for the other area. Lloyd refused to go home, and completed his shift, as originally assigned.

The Ministry of Community and Social Services, his employer, sent him a warning letter, a letter of reprimand, and wouldn't pay him for his full shift that night.

The board said he acted in good faith and for reasons of health and safety, but then ruled that his refusal to follow orders was insubordination. The board upheld the disciplinary action, and said that "the resolution of staffing issues which raises health and safety concerns must be resolved in ways which do not involve refusals to work under the OSHA." Employees whose job is to work with people know that short-staffing is a major health and safety issue, and management is rarely responsive to requests for more staff.

The dissenting opinion in this case says that employees who exercise their rights and duties under section 17 should have protection from reprisals, and that the law is being circumvented by "characterizing his actions as insubordinate."

The board's judgement catches workers like Lloyd in a vise. The law obliges them not to act in a manner that threatens the safety of their co-workers, but the board won't grant them protection from reprisals if they use their own judgement.

Winnie Ng, who co-ordinates the English at the Workplace Program with the Metro Labour Education and Skills Training Centre in Toronto, reminds me that it's all very well to analyze unfair decisions at the board, but the majority of workers — those who don't have the protection of a union — are too fearful to mention health and safety at work, let alone exercise their rights to refuse. Union members too have reason to be skeptical about just how safe it is to claim their right to a healthy workplace. The board's role is to administer and interpret the law. In at least two recent cases, where the law seems open to more than one interpretation, the board has been more comfortable with an interpretation that reflects the employer's interests. Workers beware.

Beatrice Miller works for a union in Toronto. This article is the last in a four-part series on the Ontario Labour Relations Board. Other articles discussed anti-union petitions, first contract arbitration, and organizing part-timers.