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

Historically, Alberta’s Conservative government has favoured employer interests in order to achieve electoral and economic goals. To achieve electoral success, the Conservatives privileged rural interests through public expenditures and limiting workplace rights. To achieve economic goals, the Conservatives 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 a safe workplace.

Alberta’s OHS regime exhibits classic symptoms of regulatory capture by employers. These include ineffectively regulating workplace 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 safety rather than safety itself, and promulgating a narrative that blames another stakeholder (i.e., workers) for workplace injuries.

In these ways, Alberta’s regulatory climate undermines workers’ freedom to associate and right to health, as well as the principle of the state acting in the public interest. These rights and principles are associated with democratic societies and constitute the main bulwark that 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 around the world for human rights, they remain conceptually contested. For example, Gary Teeple (2005, 21) suggests that there is nothing particularly human or universal about 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 needed to legitimize capitalist propertied relations—the very relationship that gives rise to many of the problems some human rights seek to mitigate.

Furthermore, Teeple argues that these rights are often in conflict with one another and are accorded different weight (31). 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. Given this conflict, social rights do not typically find expression in constitutional documents. Rather, they are voluntarily codified by the state in legislation or international agreements (53). 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 (42). Yet the
political choices available to citizens do not typically challenge the underlying civil (i.e., property) rights that structure relationships in society. Furthermore, 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, the last type of rights to be codified in Canada, 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 reproducing the structures and relationships of contemporary society. For these reasons, the state may intervene in the operation of the labour market or workplace or may provide necessary services or supports (58). This may bring social rights (typically codified in legislation) into conflict with civil or political rights and result in weak or no 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 a mechanism (albeit weak) for enforcement. By contrast, the International Covenant on Economic, Social, and Cultural Rights has no complaint or enforcement mechanisms, and countries agree only to work toward fulfilling their commitments as resources allow (Normand and Zaidi 2008, 201). 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
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, 7[b]). This builds upon a more general right articulated in the Universal Declaration of Human Rights: “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 “every 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, Legislative Assembly 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 (Gilks and Logan 2011). Each year, the Alberta government reports approximately 150 occupational fatalities and 50,000 serious injuries (Barnetson 2012a). While 50,000 serious injuries—injuries that prevent workers from doing 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 underreport the true level of injury in Alberta. Specifically, these “injuries” represent claims accepted by the Alberta Workers’ Compensation Board (WCB), not actual workplace injuries (Ison 1986, 727).

In fact, there are approximately 500,000 injuries in Alberta workplaces each year—ten times the level of injuries the government likes to talk about. In 2009, Alberta reported approximately 149,167 accepted injury claims of all kinds (Barnetson 2012a). Correcting for the 13 percent of the workforce not covered by workers’ compensation and the 40 percent 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 minor injuries where no treatment beyond first aid was required. These minor injuries include strains, contusions, lacerations, and burns of a degree that varies based upon a worker’s ability to tolerate...
the injury without seeking medical treatment. Discussion among health and safety practitioners suggests that accounting for disease and minor injuries would push the number close to 500,000 injuries per year.

Injuries are primarily caused by hazards that exist in the workplace because of employer choices. Employers who organize work unsafely do so because it is in their 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 (Cutler and James 1996; Health and Safety Executive 1993; Hopkins 1999; O’Dea and Flin 2003). 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, 81).

Research suggests that Alberta’s high level of workplace injury is indicative of widespread employer noncompliance 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 that government inspectors were coming, the majority of the 387 employers inspected had safety violations (Alberta, Human Services 2011). In ninety cases, these violations posed an imminent danger of injury or death. These results are broadly consistent with the results of other safety blitzes conducted by the government (Alberta, Employment and Immigration 2010, 2011a, 2011b).

This lack of compliance may reflect an expectation by employers that there is almost no chance they will be caught violating safety rules. On average, workplaces are inspected less than once every fourteen years in Alberta (Alberta, Employment and Immigration 2011c), and it can take safety inspectors up to eighteen days to respond to reports of unsafe workplaces (Alberta, Auditor General 2010). 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 make changes so that they are in compliance with the OHS Code—something that took employers an average of eighty-six days to do in 2010 (Alberta, Auditor General 2010). While Alberta changed its Occupational Health and Safety Act in 2004 and 2012 to allow inspectors to issue tickets for violations, the Province only enacted the regulation required for various forms of ticketing to commence in late 2013 (Alberta, Job, Skills, Training, and Labour 2013). No data were available at the time of writing as to how many (or indeed, if any!) tickets were handed out.

Alberta does prosecute a handful of employers each year—typically when a worker has been seriously maimed or killed because of employer negligence.
In 2013, Alberta levied fines in seven cases, less than one third the number of prosecutions undertaken by Alberta in 1985 (Alberta, Jobs, Skills, Training, and Labour 2014; 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. Furthermore, some fines are paid to employer-controlled industry associations—in these cases, employers pay their taxpayer-subsidized fines to other employers.

The resulting health and safety dynamic is that ineffective enforcement encourages and facilitates noncompliance, which in turn compromises workers’ right to health (Weil 2012). The former Conservative government’s 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, Regulatory Reform Task Force 1995, 2). “Necessary” regulations included those that “contribute significantly and positively to the competitiveness of the private sector” (2). Consequently, occupational health and safety in Alberta shifted away from state enforcement to self-regulation by employers (Alberta, Labour 1995) in order to create “greater workplace self-reliance in occupational health and safety” (Alberta, Labour 1996, 2). Employers have become increasingly involved in determining and monitoring workplace health and safety while state enforcement and monitoring activity has diminished. Workers are cast simply as recipients of employer safety programs, and, as Jason Foster (2011, 303) asserts, the role of organized labour has been reduced to tokenism.

Labour groups have complained about ineffective enforcement for decades, suggesting that it is a policy choice rather than an oversight. Supporting this notion of choice is the fact that Alberta also ineffectively enforces other employment laws, such as child labour laws (Barnetson 2009a, 2010a). An important consequence of widespread noncompliance 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. A number of factors contribute to this situation. First, only 22.8 percent of Alberta workers (mostly in the public sector) were unionized in 2013, the lowest rate of unionization in Canada (Alberta, Innovation and Advanced Education 2015; Canada, HRSDC 2012). Second, the largest sectors in Alberta’s economy (half of the GDP comes from energy, construction, and finance) are mostly non-unionized, while heavily unionized sectors are among the smallest contributors to GDP (health, public administration, and education contributed less than 13 percent of the GDP in 2011; Alberta, Innovation and Advanced Education, 2015; Alberta, Enterprise and Advanced Education 2012, 9). In this way, the dominant employment paradigm in Alberta is non-union. And third, the petroleum industry has 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, 282). While segments of Alberta workers periodically exhibit significant support for trade unionism, this has not translated into union members or political influence (Finkel 2012a, 144).

This may be partly explained as an impact of successive Alberta governments enacting employer-friendly labour laws. Labour laws enacted during the tenure of the Social Credit Party were designed to attract investment by (historically American) oil companies (Finkel 1989, 109). Laws enacted by subsequent Progressive Conservative governments have sought to retain investment via union suppression (Finkel 2012a, 144; Foster 2012, 224; Gereluk 2012, 182). 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 which demonstrates that 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 (Riddell 2004, 509; Slinn 2004, 299).

All Canadian jurisdictions identify as unfair labour practices (UFLPs) certain 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 boards the power to automatically certify unions when the employer has attempted to illegally thwart an organizing drive. This reduces the incentive for employers to engage in this behaviour (Godard 2004; Lebi and Mitchell 2003; Slinn 2008). The Alberta Labour Relations Board does not have such remedial powers, which means, effectively, that 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 a newly certified workplace via arbitration. Such provisions reduce the incentive for employers to use the first round of collective bargaining as an opportunity to refight the union’s successful certification application by stalling and otherwise pressurizing the new union. Six Canadian jurisdictions have first-contract arbitration provisions. While FCA is rarely used, its very presence has reduced first-contract work stoppages by up to 50 percent (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, although the arbitral preclusions may be unconstitutional. 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, the former Conservative government frequently intervened directly in the labour market to the benefit of employers. It 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 that have come about through union members seeking employment at a non-union firm to kick-start an organizing campaign (colloquially called “salting”). The amendment also prohibits unions from subsidizing contract bids by unionized contractors competing with non-union firms.
(colloquially called “merfing”). These changes were requested by the non-union Merit Contractors Association of Alberta, were rushed through the legislature in seventy-two hours, and were widely viewed as revenge for union-sponsored attack ads during the previous provincial election (AFL 2008; Gilbert 2008).

The government has expanded the labour force by increasing the use of international migrant workers in order to limit the labour market power of domestic workers and facilitate union avoidance tactics (Foster and Barnetson, this volume). And the government has intervened 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). 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 (Barnetson 2010b; Reshef 2007). 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; Foster 2012; Reshef and Rastin 2003; 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). Furthermore, the Alberta Federation of Labour has itself been the site of both interunion 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 difficulty protecting worker interests during the busts (Gereluk 2012; Taylor 1997). Furthermore, a significant portion of Alberta’s workforce comprises migrants from other provinces, who may exercise exit options rather than resist unfavourable working conditions (Hiller 2009).

The upshot is that Alberta’s labour movement, while not powerless, has not been a key player in provincial policy and is often unable to shape public policy.
Whether this situation will change under the recently elected New Democratic government is unclear. By contrast, there is significant anecdotal evidence that employers can shape public policy and that such favouritism has few political consequences for the government. For example, Lynette Shultz and Alison Taylor (2006, 436) 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, 21) as the result of either single-member plurality electoral systems (Bell 1992) or a unitarist political culture that masks conflicts on the basis of class or race (Pal 1992). As suggested by Harrison (this volume), an institutionalized preference for non-class-based electoral politics (or at least the appearance of this) 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 more recently, neoliberal—capitalist values (Laxer and Harrison 1997). Yet it is also useful to examine the electoral benefits that politicians can gain by maintaining a repressive and injurious labour relations system.

Historically, agriculture was economically and politically important in Alberta (Leadbeater 1984, 63). 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 (which, as set out above, triggered anti-union legislation beginning in the 1950s), rural Alberta has retained political importance through the development of a symbiotic electoral relationship with the former Conservative government.² Over the past thirty years, as argued in Barnetson (2012b, 150), rural Albertans have
sought to maintain their communities in the face of urbanization via significant government support programs (Tupper and Doern 1989, 134; Wilson 1995, 64). In return, rural communities almost always elect Progressive Conservative candidates to the legislature, and Conservative governments have ensured that electoral boundaries are drawn to ensure a disproportionately high number of rural ridings (Archer 1993, 185). In this way, rural Alberta was an important electoral base for the Conservatives, and rural-friendly public policy (funded by petroleum revenue) created a political reward for maintaining pro-employer labour laws. This arrangement has come into question following the 2015 election of a predominantly urban New Democratic government.

According to highly suggestive commentary, the former Conservative government used 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 (Kleiss 2012; Rusnell 2011; Rusnell and McKenna 2012). Furthermore, there is significant evidence that municipalities and public bodies, beholden to government for grants, have been using taxpayer money to contribute to the Conservative Party (CBC News 2012; Rusnell 2012a, 2012b; Rusnell and Russell 2012).

Revenue from oil-and-gas royalties also allowed the former government to fund significant (and often rural) public infrastructure and programming while maintaining low personal and corporate tax-rates (Harrison, this volume). In addition to the oil industry’s direct contribution to the economy, the industry drives activity in a large number of other areas (e.g., construction, manufacturing, automotive sales and servicing, and the service and hospitality industries). When oil-industry production, exploration, and construction decline, the effects ripple through Alberta’s economy (e.g., in 1986 and 2008), causing widespread job losses and a large reduction in tax revenue. One outcome of this dynamic is that the former government faced few political threats when it continued the province’s long tradition of privileging employer interests in the oil and gas industry (Harrison, this volume). 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, 2012a). Warren Caragata (1979, 133) argues that workers in the oil industry are disinclined toward unionism. By contrast, Wayne Roberts (1990) indicates significant interest among oil-and-gas industry workers in unionization. The
truth probably lies somewhere in the middle, with demand for unionization influenced by employer and state policies designed to 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, 181), public sector wage rollbacks and job losses in the early 1990s (Foster 2012, 211) and 2010s (Alberta, Finance 2013c; Alberta, Legislative Assembly 2013b), and further changes to labour laws (Alberta, Legislative Assembly 2013a), as well as the expansion of child labour (Barnetson 2010a) and migrant worker populations (Foster and Barnetson, this volume) to loosen the labour market in the 2000s. There is voluminous evidence of favourable treatment for the oil industry in other areas, such as environmental regulation (Buzcu-Guven and Harriss 2012; Gosselin et al. 2010; Griffiths and Woynillowicz 2003; Kelly et al. 2010; Tenenbaum 2009) and resource taxation (Boychuk 2010, 7). The upshot of these circumstances is that the oil industry created pressures, opportunities, and inducements for Conservative politicians to continue, and to exacerbate, Alberta’s tradition (found originally in agriculture) of privileging the interests of employers over workers. There is evidence that employers had effectively captured the regulatory system governing workplace health and safety issues 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 occurs when 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 cap-
ture. The ineffective enforcement of the province’s OHS laws (thus negating
the purpose of the regulation) is detailed above. The 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, or WCB (Alberta,
Auditor General 2010). Following a scathing series of newspaper articles about
injury and death in Alberta during the summer of 2010, the government
increased spending to $27.7 million in 2011–12 and has budgeted $43 million for
2015–16. This amount appears to be entirely offset by transfers from the WCB
(Alberta, Finance 2015, 21). In this way, OHS is (indirectly) funded by employ-
ers. 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 that this risk exists.

Since the 1990s, industry-funded safety associations have increasingly
entered into “partnerships” with the government. These partnerships allow
employers to play a formal role in determining policy and standards and to
sponsor various safety-awareness campaigns and perform safety-auditing
functions. A 1997 strategic plan for Alberta’s Partnerships in Health and Safety
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 dupli-
cating 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, Labour 1997, 3)

This model prioritizes employer autonomy over safety and views government as
a facilitator of employer-driven initiatives. Foster (2011, 294) notes that organ-
ized labour is offered the opportunity to collaborate with employers by encour-
gaging workers to “take ownership” of their own safety. Workers have no role in
the framework, other than that of passive recipients of new initiatives (Alberta,
Labour 1997). In Alberta, the partnerships model divided the labour movement:
the building trades unions opted to participate in the safety associations, while

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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, 303).

In 2002, with employers facing rising workers’ compensation premiums, the Government of Alberta challenged employers to reduce workplace injuries by 40 percent 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 a certified auditor, generally from a safety association) received a COR (Alberta, Employment, Immigration, and Industry 2007). First-time COR recipients receive a 10 percent reduction in their WCB industry rate during their first year. Furthermore, by reducing WCB claim costs or maintaining claim costs at least 50 percent lower than the industry average for two consecutive years, employers can receive further discounts to an overall total of a 20 percent discount (WCB 2007). These incentives are in addition to incentives that exist under the WCB’s own experience-rating system, which provided 9,264 employers approximately $77 million in WCB premium savings in 2010 (WCB 2011a, 2011c), up from $15.2 million saved by 2,233 employers in 2000. Additionally, the WCB issued $230 million in special employer premium rebates in 2011 (WCB 2011b). A 2010 audit questioned whether PIR has made workplaces safer, given that the employers with poor safety records continued to receive PIR rebates (Alberta, Auditor General 2010).

Alberta has promulgated the “careless worker” myth in its injury-prevention efforts. The careless worker 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, 139; Messing 1998, 24) to shift blame for injuries away from employers (Bale 1989, 35; Witt 2004, 119). 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 choose 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 labourers.

Blaming workers for their injuries is part of a broader employer strategy to evade liability and risk for workplace injuries. This strategy includes not only withholding evidence of harm but also 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, and hiring a more compliant researcher to create evidence that there was no risk. It also includes blaming workers and consumers for their injuries and then arguing that the harm is simply an unavoidable (or otherwise acceptable) cost of doing business (Bohme, Zorabedian, and Egilman 2005; Michaels 2008). This is all consistent with a pervasive and negative view of workers. Consider the stigmatization of workers’ compensation recipients as malingerers who exaggerate the extent of their injuries to maximize benefits from WCB and time away from work (Kirsh, Slack, and King 2012, 144). 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 et al. 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 that make up the campaign, as well as the text associated with each video, clearly and inaccurately portray workers as the cause of their own injuries. Bloody Lucky is the culmination of a trend in Alberta safety campaigns of blaming workers for their injuries—a trend that intensified after 1995 (Barnetson and Foster 2012). An analysis of this campaign demonstrates that the bureaucrats involved with the campaign had difficulty identifying blaming behaviour and viewed such a messaging as important in securing political support for the campaign. Through this campaign, the state misinformed young workers about the nature of workplace hazards and appropriate mitigation strategies by publicly shifting blame for injuries away from employers.
Workplace Injury as a Bellwether for Democracy

There is substantial evidence that employers have had disproportionate access to and say in Alberta’s OHS 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 former Conservative government is also evident in Alberta’s employment standards and labour relations regimes, as well as in the province’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 2005 analysis of the hierarchy of human rights, which predicts that social rights are subject to weak or nonenforcement 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. Over the past thirty years, the revenue generated from the oil industry has allowed the government to ensure electoral success via public expenditures in rural Alberta. Employers have 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 that is at least partly related to the petroleum industry. Whether this arrangement will change substantially under the New Democrat government elected in 2015 is unclear.

The right to health and freedom to associate represent potentially potent legal counterweights to employers’ common law right to organize work as they see fit, including organizing work 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 both the historical creation and contemporary maintenance of this system. As noted by Trevor Harrison (this volume), oil revenue played an important role in allowing the Progressive Conservative party to maintain political power. In the case of workers, groups and rights that threaten either the economic or electoral basis of this power are constrained through a combination of state and employer action.

Notes

1 To elaborate, unions tend to be weakest immediately after they have successfully achieved the status of official bargaining agent for a unit of employees at their provincial labour board. The next step for a union is to enter into negotiations with the employer for a collective agreement. First collective agreements are often the most difficult to conclude, because virtually all of the provisions must be negotiated. Employers who continue to resist their employees’ decision to unionize can stall such negotiations. This denies the union the opportunity to make good on the core expectations of its new members (i.e., that a collective agreement will be negotiated) and undermines their support. If no agreement is concluded, the workers then have an opportunity to revisit the unionization decision (often with covert encouragement and assistance by the employer) and may vote to decertify the union.

2 While outside the scope of this chapter, it is interesting to note that when the Conservatives came to power in 1971, they did so based upon urban support. By 1975, rural support had shifted to the Conservatives. This shift was lubricated by oil money, and rural support remained essentially “parked” with Conservatives until the 2012 Wildrose victories in southern Alberta.


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Bob Barnetson


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