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Comparative Study of Dispute Resolution Mechanisms

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Introduction

This paper will outline a comparative analysis of labour relations dispute resolution mechanisms in Canada, Britain and Japan. Specifically, the review will focus on the health sector. I have selected the health sector given that it is a public service highly recognizable by most people, regardless of nationality. Most of us have had some experience with the health setting, either by personally availing of health services or by having a close family member or friend utilize its services. The cost associated with maintaining a health care system necessitates an effective dispute resolution mechanism. Health systems generally involve large numbers of employees, with approximately 75 to 80 percent involved in labour intensive work (Swimmer and Thompson, 1995, 236). In Canada there are approximately one million workers employed in health care (Sutherland and Fulton, 1990, 69). Any withdrawal or curtailment of health services can mean the difference between life and death for someone seeking treatment. Given the significance of health care to most individuals, I have elected to conduct a comparative review of how collective bargaining disputes are resolved, with an aim to identifying the best approach to resolving them.

An historical review of the development of labour relations in the public sector in each of the countries will be conducted. In order to identify why a particular labour relations system or model is being utilized, it is imperative to review the political, economical and social background of a country (Briscoe, 1995). This paper will review the model(s) used by each country.

Canada

In order to discuss the dispute resolution mechanism in the health sector it is necessary to review the evolution of Canada's labour relations system. Modern day public sector labour relations is characterized by greater legal control than is found in the private sector, such as conciliation, restrictions on which employees can strike, and substitution of interest arbitration as a dispute resolution mechanism (Swimmer and Thompson, 1995, 53). One of the first strikes in Canada occurred in 1794 and involved voyageurs in the fur trade (Haiven and Haiven, 2002, 20). Prior to 1872 it was illegal to form trade unions, and employees engaged in strike action could be sued for breach of contract. The State was frequently called upon to support strike breaking with the use of soldiers. Despite the lack of supporting labour legislation and the State frequently siding with employers, strike activity continued despite overwhelming odds against success (Heron, 1996).

Legislative initiatives largely reflected the evolution of labour relations. The first being the *Trade Unions Act* of 1872. This Act decriminalized trade unions but fell far short of giving workers effective representation, as employers were not compelled to recognize trade unions. As well, employees engaging in strike activity were subject to immediate dismissal (Heron, 1996, 16). Subsequently, the *Industrial Disputes Investigations Act* (IDIA) was passed in 1907 (Haiven and Haiven, 2002, 20). Under this legislation, the State attempted to curtail and restrict strike activity using its power to declare a strike illegal and appoint tribunals to resolve disputes. This was not effective in reducing strike activity, as witnessed by the Winnipeg general strike of 1919, the Stratford general strike of 1933, and the significant degree of strike activity in the mid- to late 1930s and 1940s.

In an attempt to control unions and bring collective bargaining more to the forefront, *Order-in-Council 1003* (PC 1003) was introduced in 1944 (Haiven and Haiven, 2002, 21). This required employers to bargain in good faith with private sector unions and protected striking employees from dismissal. Unions then became more conservative and no longer had to engage in job action to obtain these basic benefits. This amendment was not intended to eliminate strikes as a mechanism to resolve collective bargaining disputes, rather to make striking more accessible for private sector employees and to control the process.

The *Public Sector Staff Relations Act* (PSSRA) was passed in 1967 and provided federal public sector employees the right to enter into collective bargaining (Swimmer and Thompson, 1995, 370). One of the key features of the PSSRA was designating the Treasury Board, rather than individual departments, as the employer (Levelling the Path, 2000, 17-22). This shaped federal public sector bargaining such that collective bargaining would thereafter be centralized. The PSSRA also provided for the designation of essential employees who were prohibited from striking. Each individual province had the responsibility of establishing labour legislation for its public sector employees, exclusive of the federal public sector. This meant public sector collective bargaining outside of the federal jurisdiction would be largely decentralized. Health sector labour relations falls within provincial jurisdiction.

The most recent legislative initiative which unions felt would further their interests was the passing of the *Canadian Charter of Rights and Freedoms*, which was proclaimed on

April 17, 1982 (Swimmer and Thompson, 1995, 54). To date, this has not furthered union interests with respect to the right to associate and freedom of expression.

One final aspect to consider in health sector labour relations is the multitude of parties involved. Government provides funding for the health system, yet practices differ among jurisdictions as to the role of government in collective bargaining. The only jurisdiction in which government negotiates directly with the unions in the health sector is New Brunswick. Otherwise, collective negotiations are conducted through health employer associations, or a third party (Swimmer and Thompson, 1995). Government participation varies. The greater government involvement, the more politicized negotiations generally become; and employers assume less accountability for the operation of the health system given their limited ability to influence outcomes (Swimmer and Thompson, 1995, 237). During service curtailment or labour disruption, government frequently finds itself in a position of having to defend reduced accessibility to health care services.

Health boards are another player in this system. They are the employers and operate within government budgetary and policy constraints with respect to service delivery. Closely related to this group are health associations, which represent health boards by advocating on behalf of individual members. Generally, health boards assume the role of negotiating with the unions and are often responsible for implementing the collective bargaining mandate.

The final party involved in health sector labour relations is the employees, who will often insist upon speaking with the ultimate decision makers (government) prior to resolving collective bargaining impasses.

The literature outlines there are primarily three dispute resolution models operating in the health sector. Adell, Grant, Ponak (2001, 270-278) described them as:

- (1) Unfettered, whereby there are no restrictions and the parties have the right to strike or lockout once a collective agreement has expired during a negotiation impasse, and there are no legislated essential services.
- (2) No Right to Strike, under this model strikes and lockouts are prohibited and compulsory interest arbitration is substituted as a dispute resolution mechanism.
- (3) Designation or Controlled, whereby this system allows the right to strike or lockout in a controlled fashion with the provision of essential services being legislatively required on behalf of the bargaining agent.

Three models were also described by Haiven and Haiven (2002, 23-27) which bear striking similarities to the above-noted models described by Adell, Grant, Ponak (2001) as:

- (1) Permanent Strike Ban (PSB), whereby the right to strike is replaced with binding interest arbitration, either conventional or final offer selection.
- (2) Unregulated (URS), whereby there is a right to strike or lockout after a collective agreement has expired with essential employees being a voluntary arrangement.

- (3) Regulated (RS), whereby strikes and lockouts are permitted but the bargaining agent must provide a level of emergency services.

On reviewing the two perspectives, it is apparent that the Unfettered and URS models overlap, along with the No Right to Strike and PSB models, while the Designation or Controlled and Regulated models are closely aligned. Nine Canadian jurisdictions are outlined in Table 1.

Table 1 Canadian Dispute Resolution Models.

Province	Model in Use	Essential Employees
British Columbia	Controlled (Final offer selection arbitration has been used in the past to resolve specific issues in dispute).	Designated by the labour relations board
Alberta	Facility sector has no right to strike – conventional arbitration as dispute resolution mechanism. Community-based sector, which represents 10 percent of employers, recently granted the right to strike under an Unfettered model.	Voluntary essential services
Manitoba	Designation or Controlled	Ninety days prior to expiry of collective agreement, provisions must be put in place. No legislated percentage of essential employees.
Saskatchewan	Unfettered	Any essential employees voluntarily provided by union.
Ontario	No Right to Strike Final offer selection interest arbitration dispute resolution mechanism.	No legislative requirement for essential employees
Nova Scotia	Unfettered	No legislative requirement for essential employees. (Health Association actively lobbying government to implement essential employee legislation).

Table 1 Cont.

Province	Model in Use	Essential Employees
New Brunswick	Controlled	Six months prior to expiry of collective agreement, parties must determine essential employee requirements. No legislative percentage for essential services, however with the most recent nursing strike, 80 percent of nurses were designated essential.
Prince Edward Island	No Right to Strike Conventional interest arbitration to resolve outstanding issues only.	No legislative requirement for essential employees.
Newfoundland and Labrador	Controlled Conventional interest arbitration to be used if a state of emergency declared by House of Assembly.	Public service legislation provides for a maximum of 50 percent of a bargaining unit being deemed essential.

Source: Newfoundland and Labrador Health Boards Association Provincial Survey, 2002

As can be seen, the majority of provinces have the right to strike. For those jurisdictions with a provision for essential employees in the health sector, there are no cases where there are prescribed percentages. Under Newfoundland and Labrador legislation the maximum number of employees who can be designated essential is 50 percent. Under the Manitoba system, the government can unilaterally decide on the number of designated essential employees.

Britain

The relationship between government and the labour movement in Britain was markedly different than that previously described in the Canadian setting. Labour legislation developed from a piecemeal approach rather than from a strategic perspective (Ewing, 1989). Common law was the foundation of early labour relations between government and labour unions. The general principle held that if an employee withdrew or curtailed

his/her services, he/she could be prosecuted for breach of contract. In large part, this situation has not changed during the past one hundred years. Ewing (1989) argued that employees were just as vulnerable to the economic power of employers in 1989 as they were in 1889.

Individual workers, and later trade unions, were protected from prosecution for engaging in strikes by the granting of “immunity” (Morris, 1986, 28). As a matter of policy during the 1970s, government granted immunity to trade unions so they, as well as organizers, would not be held liable. In the early 1980s, government reviewed this concept of immunity and adopted the position that it was a privilege which government had created and could just as easily remove (Barlow, 1997, 71). As will be noted during a review of the relevant legislation, government sought to limit the power of trade unions through the restriction of immunity, depending on the union’s action.

The labour movement was continuously undermined by successive governments, as noted through the various pieces of labour legislation. The *Conspiracy and Protection of Property Act* of 1875 made it an offence to take any industrial action which could possibly put life, health or property at risk (Morris, 1986, 13). While there was no definition of “risk” provided within this piece of legislation, it was inherently clear that the State used sufficiently broad language to cover quite an array of activities. This legislation provided government with the ability to use the Armed Services to replace striking workers if a state of emergency was declared. Two criteria, however, were required in order to enact this piece of legislation: namely, the events precipitating the emergency must have interfered with the “supply and distribution of food, water, fuel or

light, or the means of locomotion.” Doctors, nurses and other health professionals or health services workers were clearly excluded from this criterion. As well, the event leading to the state of emergency must “deprive the community, or any substantial portion, of the essentials of life.” The concept of essentials of life is not defined in the legislation (Morris, 1986, 52). This piece of legislation increased the power of the State with respect to certain sectors. In reality, this power was effective during short-term disputes when there was a relatively unskilled workforce which could be replaced.

The *Employment Protections Act* of 1975 essentially encouraged legal and individual action against employers while weakening the concept of the strength of a collective within a union (Carter and Cooper, 2002, 715). This was followed by an *Executive Order*, issued in 1979, which increased the qualifying period of employment prior to an employee being eligible to claim unfair dismissal. The period was increased from 26 to 52 weeks (Barlow, 1997, 69). It was argued that this particular amendment immediately subjected one million workers to dismissal without recourse. The *Employment Act* of 1980 was presented as a balance between organizing agent and those whose jobs and businesses could be threatened by such action. This Act made secondary picketing illegal, with the unions being liable for damages. As well, the concept of closed shop was deemed to be applicable only in cases where the union could demonstrate support of 80 percent of workers affected (Barlow, 1997, 69). Sweeping powers were also provided to the Secretary of State for Employment whereby he/she was given the right to draft codes of “fair industrial relations practices,” such as identifying the appropriate number of picketers in a given dispute (Barlow, 1997, 70). While these guidelines were not

legally enforceable, they did provide guidance to the courts which ultimately increased the prominence of common law in labour relations.

The *Employment Act* of 1982 was subsequently passed and made trade unions liable for any unlawful industrial action. The concept of “trade dispute” was limited to a dispute between workers and their immediate employer which was “wholly or mainly” related to terms and conditions of employment (Barlow, 1997, 73). This change narrowed the definition of trade dispute. Given that only trade disputes were protected by immunity, the legislation meant fewer actions were protected from prosecutors. Another aspect of the Act was tightening the criteria for the concept of closed shop, whereby a greater number of workers were required to vote in favor prior to it being implemented.

The *Trade Union Act* of 1984 required a secret ballot for any strike action which had to be endorsed by a majority of employees, otherwise the union would not receive immunity from liability and damages. Greater latitude was provided to employers seeking interlocutory injunctions thereby further enhancing the role of judiciary and common law (Barlow, 1997, 76-78). The *Employment Act* of 1988 enhanced the rights of individual workers in relation to the power of unions. Under this legislation individuals could not be disciplined by the union for refusing membership or working during strikes. As well, individuals were provided the right to inspect the union’s accounting records. In order to ensure that workers were given sufficient support to initiate claims against unions, a Commissioner for the Rights of Trade Union Members (CROTUM) was established. The main purpose of the commissioner’s office was to provide individuals with advice and assistance in initiating court proceedings. The final significant piece of legislation

impacting on labour relations was the *Employment Act* of 1990, which abolished the concept of closed shop and removed immunity from unions in cases of unofficial or “wildcat” strikes (Barlow, 1997, 83-85).

The previous legislation review highlights the piecemeal approach to labour relations. It appears that government action was aimed at continually reducing the influence and power of trade unions, while at the same time increasing individual worker rights to the detriment of union expansion. Overall union membership declined from 1984 to 1996 (Carter and Cooper, 2002, 715).

Collective bargaining in the health sector became highly centralized in the late 1940s. The National Health Service (NHS), founded in 1948, employed the vast majority of employees working in the health sector and represented individual health authorities. During collective bargaining, the employer’s side was comprised of NHS representatives, health authorities and the Department of Health and Social Services. Workers were represented by councils which negotiated nationwide wage and working conditions for particular employee classifications. The final say with respect to setting the terms and conditions of employment rested with the Secretary of State for Social Services (Morris, 1986, 150-155). The centralized labour relations model began to change throughout the entire public sector in the early 1990s, when there was a public call for greater efficiency and effectiveness within all public services. In 1990, the *National Health Service and Community Care Act* was passed, which established self-governing hospitals and hospital community care and ambulance trusts (Arrowsmith and Sisson, 2002, 356). This effectively moved labour relations policies and procedures to the local hospital

authorities with an aim to creating more productive and cheaper health services. Cost savings were implemented, but it was determined they were short-term savings rather than long-term, which had been initially envisioned (Arrowsmith and Sisson, 2002, 357-358).

The concept of essential services has been used to prohibit striking among several occupations within Britain. Essential services has not been defined in legislation or policy; however, governments have defined it in terms of prohibitions on strikes, e.g., the police, armed forces, merchant seamen, postal workers, and telecommunications workers are prohibited from striking (Morris, 1986, 12-16). The economic well-being of the State is in large part responsible for these exclusions. Police are prohibited from joining trade unions, given this group is charged with maintaining order and rule of law. Violation of this prohibition could result in a penalty of up to two years in prison with an unlimited fine. Likewise, for similar reasons, armed forces are not permitted to strike or join trade unions with a penalty of up to life imprisonment for violation. Merchant seamen are not permitted to strike on the basis that they are needed to keep ships moving, sustaining the economy. Likewise, anyone violating the legislation is liable for up to two years in prison with an unlimited fine. Postal workers are prohibited from striking because of the negative impact on the economy. Any violation could net an employee up to two years in prison with an unlimited fine. Similarly, telecommunications workers are prohibited from striking on the grounds that a strike of this group would be disruptive to the overall well being of the economy and the State, with a similar penalty of up to two years in prison with an unlimited fine. It is worthy to note that civil servants are not legislatively prohibited from striking, however, successive governments have sent clear messages that

strikes within the civil service will be harshly dealt with from a disciplinary perspective. Binding arbitration has generally been used to resolve any outstanding items which the parties cannot resolve through collective bargaining.

Theoretically, the *Conspiracy and Protection of Property Act, 1875*, outlines that workers cannot engage in industrial action if this will place the life, health and property of the public at risk; however, there have been no prosecutions under this Act in over a hundred years. From a review of the piecemeal labour relations legislation, it is clear that governments have continuously weakened the power of the unions, while at the same time increasing individual worker rights with respect to challenging union decisions and ultimately the strength of unions.

Within the health sector there have been strikes, however these have generally been short in duration, with the unions choosing to engage in work-to-rule campaigns, reducing overtime, and service curtailments (Morris, 1986, 152-155). Auxiliary workers, ambulance attendants and nurses are the three prominent groups within the health sector. On reviewing the history of strikes by auxiliary workers, the respective unions have provided essential services. During a 1979 strike, the union adopted its own definition of essential services which was distributed to employees and outlined the following, “workers should not impede the delivery of drugs, oxygen and fuel and should fully maintain, at all times, services relating to cardiac, dialysis, cancer, intensive care and accident and emergency patients, and to children. Emergency services are those which directly involve the life or death of a patient, or those, if when withdrawn, would cause serious hardship to high dependency patients.” High dependency patients were further

defined by the union as “those whose life, limb or ultimate safety might be at serious risk without the maintenance of services” (Morris, 1986, 155-158). The code adopted by the union in this particular strike, which was similar to other strikes, arguably provided greater levels of service than that which is outlined in several of the Canadian jurisdictions, where essential services are legislated as a pre-condition to strike activity. In cases where unions have provided essential services the government has directed the NHS and health authorities to not use volunteers or strike breakers. In these cases, the government has adopted a cooperative approach in resolving the disputes. In large part this has proved successful.

Ambulance attendants, however, have adopted a different approach during labour disputes. This group has traditionally refused to provide emergency coverage. During 1969 and 1973 strikes, in fact, volunteers from other unions provided emergency coverage which the ambulance attendants refused to provide (Morris, 1986, 160-163). During more recent strikes, in 1979 and 1982, government invoked the *Emergency Powers Act*, 1920, and used Armed Forces as replacement ambulance attendants. The longstanding Royal College of Nursing (RCN) represents the majority of nurses with membership of approximately 300,000 in 2001 (Kessler and Heron, 2001). The RCN has traditionally opposed nursing job action and perceive themselves as promoting the professional interest of nurses. In 1974, the RCN threatened mass resignations unless a process to establish nursing wage rates was put in place. Subsequently, in 1982, government agreed and established the Review Body of Nurses, Midwives and Professions Allied to Medicine, which was charged with recommending wage rates and terms of employment to government with respect to nurses (Morris, 1986, 166-168).

While government is not obligated to accept and implement the recommendations, there have been no cases reported where government has not. This particular initiative was felt to be another affront to trade unionism, whereby the message being delivered was that unions that did not engage in disruptive behaviour would be rewarded accordingly.

Physicians are either employed within NHS hospital authorities or as general practitioners. There have been no full-scale strikes, however, services were withdrawn in 1975 with emergency services being maintained. A review body for doctors and dentists was established in 1962 and, with the exception of 1975, its recommendations with respect to wages and terms and conditions of employment have been accepted by government. In 1975, the labour government indicated that it would not accept the recommendations, however after a short service withdrawal the recommendations were accepted and have been thereafter (Morris, 1986, 168-171).

Japan

In large part, Japanese culture is responsible for shaping the current labour relations system. Cheng and Kalleberg (1997) highlighted the three industrial relations pillars embedded within Japan's culture: namely, permanent employment, seniority grading, and enterprise unions. Permanent employment is a practice of organizations hiring students once a year upon graduation after rigorous testing and examinations. These individuals are then employed for life. Seniority grading emphasizes the concept that younger workers are paid less than their productivity, whereas older workers are paid a disproportionately higher wage for their productivity. Younger employees will not be promoted within the organization until they have obtained a certain level of experience

and exposure to the numerous aspects of the firm; and it would be extremely uncommon to have a younger employee supervising older workers (Lincoln and Nakata, 1997).

Enterprise unions evolved, in conjunction with permanent employment, whereby employees were uncertain as to what positions they would occupy within the firm and/or pay rates. Unions, therefore, tend to represent all types of workers within an organization, combining managers and blue collar workers (Industrial Relations, n.d.).

The horizontal and vertical linkage between organizations and conglomerates (keirtsu) is unique to Japan (Lincoln and Nakata, 1997). Under this concept, numerous organizations are linked together; with independent ownership, they belong to the same keirtsu. The organizations within the keirtsu frequently move employees throughout different companies, and often times senior government officials will spend periods rotating through positions within the various organizations. Enterprise unions have essentially made a tradeoff in respect of permanent employment, while not contesting the employer's ability to move employees through the various organizations within the keirtsu. The social aspect of this network has historical roots. Given that age bestows respectability and honor, rather than moving older employees out of the organization, frequently these individuals are placed in middle management positions to provide guidance and instruction to junior employees (Lincoln and Nakata, 1997). As well, it is seen as an honor to receive a senior employee from another organization, and individual employees who have their status diminished by moving from a more prominent organization within a keirtsu to a less significant organization generally do not view this in a negative light, but rather as an opportunity (Cheng and Kalleberg, 1997).

The *Trade Union Law* of 1945 provided Japanese public sector workers with the unfettered right to strike (Cook, Lavine and Mitsufuji, 1971, 5). After World War II there were excessive levels of strike activity, and the State moved, in 1948, to prohibit strikes by public sector workers by passing *Ordinance 201*. Successive legislation; namely, the *National Public Service Law*, 1948; the *Local Public Service Law*, 1950; the *Public Cooperations and National Enterprise Labour Relations Law*, 1952; and the *Local Public Enterprise Labour Relations Law*, 1954, solidified the prohibition on strikes by employees at the local or national level (Cook, Lavine and Mitsufuji, 1971, 6-9). Along with prohibiting the right to strike, the successive legislation outlined legislative sanctions for those who participated in strikes, which included criminal sanctions for those who incited or initiated strikes, and disciplinary action for those who participated, up to and including discharge.

Public sector unions are organized on the enterprise or business level, therefore bargaining tends to be decentralized and uncoordinated. Since 1948, wages and terms and conditions of employment have been established by law; therefore, employees have been able to bargain for items which do not fall into either of those two categories (Treu, 1987, 171). At the national level, the National Personnel Authority (NPA) is responsible for recommending wages following consultation with union federations. These recommendations are not binding on government. Likewise, the Personnel Commission (PC) makes similar recommendations for public employees at the enterprise or business level (Treu, 1987, 172-174). The NPA considers private sector compensation levels along with the household expenditures survey.

There are very few subjects over which labour and management show outright opposition to each other during union/management consultations to conclude a collective agreement (Suwa, 1992, 6). Twenty-two percent of labour unions conclude agreements directly through labour management consultations without having to proceed to a collective bargaining process.

The Correct System

This paper has reviewed three dispute resolution systems ranging from unfettered right to strike in Britain to one which prohibits the right to strike, Japan. Which one is best? I do not think a claim can be made that either is the correct one; rather the system used has to be the best fit for the particular setting. Here the term “setting” is used to represent the culture of the country as well as the political and social history, whether they are individualistic or collective values, and the role of the State. In considering an appropriate system, this begs the question of how to measure success in either of the three systems reviewed in Canada. Success will be viewed differently among the three models. Where there is a permanent strike ban, both parties must see the process as being fair and equitable in order to operate effectively; otherwise illegal strikes will occur. Essentially, the parties are asking a tribunal to work out their disputes, thereby decreasing their accountability and responsibility for the outcomes.

Within the controlled model, is success measured in terms of how many fatalities occur during a dispute? This model does preserve the economic weapon of unions, but undoubtedly creates a dispute as to what constitutes essential services. Is it essential for a resident's soiled garments to be changed three times a day as opposed to once?

Legislators have tended to distance themselves from outlining what constitutes essential

services, which is somewhat reflective of the ambiguity of the term. The unfettered model provides total freedom; however, the public is largely at the mercy of the parties involved to act rationally and devise appropriate coverage to maintain certain basic services.

In Britain, the State does not view health services as being essential. Success with the British model could be measured by its limited number of strikes and the degree of cooperation exhibited during ensuing strikes. The Japanese system reflects the culture of longstanding social and business networks which facilitate the concept of long-term employment. Once an employee is selected within the network in a permanent position, he/she is looked after, and it can be argued that the tradeoff is the decreased role of the trade unions. One downside of this system is that there is no official mechanism for workers to voice discontent.

Historically, Canadian workers have used the strike weapon to advance their cause. Decentralized bargaining systems, along with a division of jurisdiction between federal and provincial governments, shape our industrial relations system. As a result, I would argue that the Japanese system would not be applicable in a Canadian setting. The same business and social networks do not exist in Canada, and the sense of loyalty and commitment is not prevalent to the same degree as in the Japanese culture. The appropriate dispute resolution mechanism for the Canadian health system is the designation or controlled model, where unions maintain the right to strike while essential services are provided. This model fits the history and culture of Canada, while at the same time recognizing the demands of the public in maintaining access to quality health

care. Public interest can be addressed through the legislative requirement for essential services. Significant fines and penalties imposed upon individual workers and trade unions who do not abide by the provisions provide disincentives to violate the legislation. This system allows a balanced approach between the unions maintaining access to their ultimate means of providing pressure, a strike, while at the same time providing a mechanism for employers to provide access to health care. As well, this model places the responsibility and accountability on both parties to resolve their differences, whereas under a binding arbitration type of model a third party would resolve the matter for the parties. There are inherent difficulties with this model; namely, the designation of essential employees. The unions understandably view employer requests for essential employees guardedly, while employers have difficulty understanding the lack of flexibility on the part of unions in providing adequate coverage during strikes. This can be alleviated through a legislatively imposed timeframe for the parties to determine essential employees prior to the expiry of a collective agreement. Barring this, the matter should be referred to an independent third party with expertise in health matters to determine essential employees.

In order for such a system to be effective, government must distance itself from the collective bargaining process. Recognizing that government does have a significant role as the funding provider, it is imperative that the actual collective bargaining process be left to the health employers' association with government maintaining staff representation, as opposed to political representation, on the appropriate committees. When politicians get involved in the process, it politicizes the process and unions typically insist on meeting with politicians to resolve outstanding disputes. These

disputes are often resolved in closed sessions between politicians and union negotiators without any representation from health employers, and the politicians in question are not fully aware of the issues and tend to grant union demands without proper consultation with those accountable for running the system. Politicians have a self interest in resolving disputes; hence, if this can be favorably accomplished from the union perspective, this ultimately enhances the politician's public persona and his/her chances of being re-elected.

Summary

A review of three distinct dispute mechanisms indicates that there is no one "best" system applicable to all countries. In developing any system, it is imperative to look at the history of the labour relations system and understand why it developed as it did in that particular country. Once this has been done, an attempt can then be made to match aspects of various models to that particular setting taking into consideration these factors. It is worthy to note that a particular labour relations system would have evolved over a significant period of time with deep roots in the history of a country. Changing the system, therefore, will take a considerable period of time, and it would be unrealistic to expect such a change over the short term.

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