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QUESTION, *Mr. Stayin*: We have heard about the differences between the Canadian and U.S. legal systems. The Canadians do not have a contingent fee system, they do not have juries and they do not have punitive damages. Can you assess the implications, from a Canadian perspective, of such differences in the legal system?

ANSWER, *Mr. Roman*: Because Canadians are not subjected to spectacular damage awards and contingent fees, one of the consequences is that the average income of Canadian lawyers is probably a lot lower than lawyers in the United States. Such things as insurance premiums for doctors are also a lot lower. As it works its way through the economy, a number of ripple effects are felt. Similarly, since Canadians are not accustomed to punitive damages, they do not expect them. As for protection from product defects, it must be recognized that the same products are sold on both sides of the border; maybe the Canadians are getting a free ride. The United States brings all the cases and the two countries have essentially uniform standards.

Canadians are perhaps less likely to aggressively pursue individual damages. The U.S. system is much more judicialized which may account for that difference. In Canada, consumer groups are co-opted to work with bureaucrats and industries and various task forces in setting standards. Admittedly, there is a large element of government paternalism in all of this, which may be explained by an economies of scale analysis. In the long run, drafting regulations is a cheaper solution than litigating to get the law changed.

The United States has Congressmen or Senators who are individual legislators. This contrasts with the members of the Canadian Parliament who are essentially constituency ombudsman. The Canadian government is essentially run out of the Prime Minister's office. As a result, if somebody in a Cabinet Minister's office or in the Prime Minister's office can be persuaded, the law can be changed without having to persuade fifty-one Senators to vote for it. In that sense, the Canadian political system is much more centralized.

COMMENT, *Mr. Robinson*: There are things in Canada which the United States would not tolerate. Canada has socialized medicine, where the doctors work for the government and where the government determines what doctors will be paid. Likewise, the CRTC decides what the rates will be for the phone company. The National Energy Board in effect decides what customers will pay for gas. Canada is much more socialized, organized, run by our governments and government agencies,

and we allow that to happen. That is one of the reasons why, perhaps, the Canadian consumer does not feel the need to pursue aggressive civil litigation.

QUESTION, *Mr. Castel*: Have either of the speakers ever experienced a situation in which consumers intervened in anti-dumping or countervailing duty cases to lower the duties?

ANSWER, *Mr. Morrison*: Unlike Canada, in the United States, such cases are not readily funded. They are extraordinarily complicated and we do not enter them at the administrative level or at the court level. This is partially because we have surrogates, in the sense that the importers and the domestic companies are large entities fighting it out between themselves. They have more resources than we do to achieve the same ends.

The other reason is we simply do not receive intervening funding. It is an area that we cannot hope to do anything in without expert witnesses. Another problem is access to the data. That is to say, there is a tremendous problem with secrecy of data in these kind of proceedings, and the last people they will give data to is us.

COMMENT, *Mr. Roman*: My experience is quite different. I intervened in a hearing before the Anti-Dumping Tribunal. The issue involved blood. We were very concerned that if somebody was artificially keeping the price of blood up by creating an unnecessary anti-dumping case, this would work to the disadvantage of consumers. The procedures before the Anti-Dumping Tribunal take virtually everything in camera. The tribunal admits attorneys as long as they put a drop of blood in oath signature, and if they disclose anything they learned, even in their sleep, they will roast in hell forever or be disbarred, whichever comes first.

COMMENT, *Mr. Barutciski*: I am from the Bureau of Competition Policy in Ottawa. But I do have a background in trade remedies in Canada. The second stage of any anti-dumping inquiry, being the material injury inquiry, has not allowed public interest issues to come to the floor. In Canada at least, with the passing of the Special Import Measures Act, there is a possibility of public interest inquiry after the material injury finding. So there will be opportunities in the future scope of public interest groups, as well as other downstream users of the effected product, to request a public interest hearing.

The problem with this provision is that the International Trade Tribunal, which is the equivalent to the United States ITC, has the power only to recommend to the Minister of Finance that the anti-dumping or countervailing duty be reduced. The Minister may or may not do so as he sees fit.

QUESTION, *Mr. O'Grady*: I want to add to Mr. Roman's discussion regarding the regulated industry sector in Canada. We thought for an effective regulatory policy could not be run unless practical steps were

taken to have consumer groups present their evidence. Some sort of list before the tribunal is needed in order to get an effective review of the evidence and an appropriate result.

That theory seems to be sound. Although to some extent, as the last speaker indicated, the parties who have a more specific interest are present and they therefore sometimes preempt a lot of the subject area. For example, in an oil rate hearing, the rates of Trans-Canada pipeline may be at issue. But opposition may also be mounted by distributer companies who have their own axes to grind and are also present.

In any event, Mr. Morrison appears to indicate that in Washington, before the Federal Regulatory Tribunal, there is almost no funding for that kind of intervention. I wonder whether you think it is possible to make those regulatory agencies work properly without the funding.

ANSWER, *Mr. Morrison*: In the last twelve to fifteen years the United States has substantially deregulated the economy. As a result, there are fewer decisions regarding the economy compared to the health and safety sectors by Federal Regulatory agencies, particularly those who deal directly with the consumer.

Also, some of the regulatory decisions that are made create tension. Before the Federal Energy Regulatory Commission, there are natural antagonisms between the transportation industry and the users and between the end users and the shippers that create the kind of internal tension seem in the anti-dumping and countervailing duty areas that provided substitutes for consumer intervention.

Third, some of the regulatory agencies are better than others in representing the consumer. The big problem with the regulatory agencies used to be their adversarial relationships with industry. This changed in the late 1960s. Now regulatory capture by industry is a far worse problem than regulatory overzealousness.

Consumer groups made two efforts to find ways for consumers to be represented. Two proposals did not succeed in the Congress. The first proposal provided a Federal Consumer Protection Advocacy Organization within the federal government funded by federal taxpayer dollars. The actual job of this agency would be to send lawyers, economists, experts into consumer-effected administrative proceedings to bring about a consumer influence. The last time it was seriously considered by Congress was in 1978.

The second proposal was to try to provide intervenor funding, money taken out of the regulatory budget to go out on a competitive bid basis to get consumer groups to replace some internal staff functions. The groups would be funded and able to have their expert witnesses paid, and they would know in advance that they would get the money. There were two problems. First, some agencies tried to use money out of their own budgets. This conduct was ruled in one case to be unlawful in that the agencies did not have the authority to spend that money. That prob-

lem became moot in 1980 when the Reagan administration decided not to spend money for that purpose, whether they were allowed to under the appropriations or not. Second, the attempt to pass generic legislation appropriating money for those purposes was also defeated. Only small amounts of money were appropriated in a few statutes. Those, by and large, have all been used up. While there is a very small amount of money in certain adjudicator procedures, it is rear-end money as opposed to front-end money.

As far as state consumer protection officers are concerned, several states employ them principally in utilities, such as telephone, electrical, and gas. Participating states have a people's counsel, who represents the states in utilities matters. However, there counsels are relatively narrow in their function.

Finally, the United States attempted to organize Citizen Utility Boards (CUBs), although this effort has proven largely unsuccessful. Under CUBs individuals would, upon receiving their bill from the telephone company, be given the option to pay an additional five or two dollars to fund consumer advocacy organizations. Although the money would not come out of the telephone company's budget, the telephone companies rejected the idea of sending contribution messages to consumers. In one case, the Supreme Court held that one of the messages drafted in California violated the First Amendment rights of the utility. It did not seem that the First Amendment referred to rights of utilities not to send messages in their bills.

Continued efforts are being made in this area to deal with the "free ride" problem. Any resolution must be economically efficient to enable the organization to have a viable impact on the problem. However, everybody is prepared to have somebody else fund this consumer organization. Until such responsibility and aggressive action is taken, a solution seems unlikely.