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The Adjudication of Labor Relations Disputes in Canada

*Donald J.M. Brown **

I. INTRODUCTION

Canada is a federal state consisting of ten provinces and two territories.

Canada's Constitution¹ divides the powers of government between the federal government and the provinces in a manner that is similar to the division of powers between the federal government and the states in the United States. However, legislative jurisdiction over labor relations in Canada is vested primarily in the provinces. The "labor relations" jurisdiction of the federal government is restricted to employees of the federal government, inter-provincial transportation, and other institutions regulated by the federal government.

Canadian industry is concentrated in Ontario, the largest Canadian province in terms of population, and Quebec. Seventy-five percent of Canada's industrial activity takes place in these two provinces.

Herein will be discussed the dispute settlement mechanisms in Ontario and some that pertain to federal law. In so doing, virtually all types of Canadian labor and employment dispute resolution will be covered as most other provinces have similar labor relations regulatory systems.²

II. THE REGULATION OF INDUSTRIAL RELATIONS

In Ontario, labor relations in the private sector are regulated by the Labour Relations Act.³ The public sector is governed by two basic pieces of legislation: the Crown Employees Collective Bargaining Act,⁴ which deals with public servants in Ontario, and the School Boards and Teachers' Collective Negotiations Act,⁵ which regulates labor relations between public school teachers and school boards within the province of Ontario. There also exists special legislation which provides for interest arbitration including arbitration of disputes involving hospital employees,⁶ police,⁷ and firefighters.⁸

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¹ The Constitution Acts, 1867 to 1891.

² See generally, Adams, CANADIAN LABOR LAW (1985).

³ Labour Relations Act, ONT. REV. STAT. ch. 228 (1980), as amended.

⁴ Crown Employees Collective Bargaining Act, ONT. REV. STAT. ch. 108 (1980) [hereinafter Crown Employees Act].

⁵ School Boards and Teachers' Collective Negotiations Act, ONT. REV. STAT. ch. 484 (1980) [hereinafter School Boards and Teachers' Act].

⁶ Hospital Labor Disputes Arbitration Act, ONT. REV. STAT. ch. 38, § 4 (1980).

*The Adjudication of Labor Disputes by the Ontario
Labor Relations Board*

The Labour Relations Act is Ontario's version of the National Labor Relations Act of the United States.⁹ The Canadian Act establishes the right of employees to bargain collectively and to select bargaining agents of their own choosing. A mechanism is set up under the Act for the certification of unions to act as exclusive bargaining agents of employees in bargaining units.¹⁰ The Act obligates employers to bargain in good faith with such bargaining agents.¹¹ The traditional task of ascertaining the appropriate bargaining unit is a function of the Ontario Labor Relations Board (OLRB),¹² as is the adjudication of allegations of unfair labor practices.¹³

In addition, the OLRB is vested with jurisdiction to adjudicate alleged breaches of the duty of fair representation owed by a union to its members.¹⁴ The OLRB also has special authority to resolve jurisdictional work disputes,¹⁵ which in the United States are, I believe, settled by a private American Federation of Labor and Congress of Industrial Organizations tribunal in Washington, D.C. The OLRB has the authority to determine the legality of strikes and lockouts which are prohibited during the currency of a collective agreement,¹⁶ and it has a cease and desist power¹⁷ which has virtually displaced the issuance of labor injunctions by Ontario courts. The OLRB has limited jurisdiction in connection with interest arbitration. Such jurisdiction arises because one of the remedies the OLRB may impose in the event one of the parties fails to bargain in good faith is a first contract.¹⁸

The Labour Relations Act also provides a system of rights arbitration as an alternative procedure to any provision for arbitration in a collective agreement. A number of years ago, the delay in arbitrating disputes caused by collective agreement procedures led the Ontario Legislature to augment each agreement's arbitration provision with an alternative procedure;¹⁹ thereby, upon request, the Minister of Labor appoints an arbitrator who "shall commence to hear the matter within

⁷ Police Act, ONT. REV. STAT. ch. 381, § 28 (1980).

⁸ Fire Departments Act, ONT. REV. STAT. ch. 104, § 5 (1980).

⁹ National Labor Relations Act, 29 U.S.C.

¹⁰ Labour Relations Act, *supra* note 3, § 5.

¹¹ *Id.* § 6.

¹² *Id.*

¹³ *Id.* § 64.

¹⁴ *Id.* §§ 68, 69.

¹⁵ *Id.* § 91.

¹⁶ *Id.* § 72.

¹⁷ *Id.* § 89.

¹⁸ *Id.* § 40(a). For a discussion of the effectiveness of this remedy see Weiler, GOVERNING THE WORKPLACE 249-50 (1990).

¹⁹ Labour Relations Act, *supra* note 3, § 45.

twenty-one days” of the request being made to the Minister.²⁰

The Board sits in panels of three individuals. It consists of a number of members who “represent” management and a number of members who “represent” labor. The OLRB is headed by a Chairman and several Vice-Chairmen, who are known as “neutrals.” Either the Chairman or one of the Vice-Chairmen must preside over the hearing of each matter.

The procedures followed by the Board are adjudicative in the traditional sense. Notice to interested parties is required, as well as the particulars of complaints and the matters to be adjudicated upon. The OLRB conducts all its hearings by way of *viva voce* evidence, and customarily both unions and management are represented by counsel. The OLRB does not make a transcript of the proceedings, but the parties are entitled to do so at their own expense.

OLRB hearings can be preceded by mediation. Whether the proceeding is the exercise of the Board’s jurisdiction or whether it is an arbitration pursuant to a request to the Minister of Labor, it is customary for a settlement officer to meet with the parties and, if not settle the matter entirely, at least settle some of the issues and sharpen the focus of the matters in dispute. It is generally accepted that these institutional settlement procedures have led to the resolution of a substantial number of disputes that otherwise would have probably required adjudication.

Judicial Review

There is no appeal from a decision of the OLRB. However, in Ontario, a dissatisfied party may apply to a court for judicial review of the OLRB decision. The grounds for judicial intervention are narrow. The Board’s decision will stand unless it has made a due process error in its proceedings, exceeded its jurisdiction, or made a decision that is “patently unreasonable.”²¹

The Crown Employees Collective Bargaining Act and the School Boards and Teachers’ Negotiations Act

For the past twenty years, government employees and public school teachers in Ontario have been regulated by special legislation. The essential difference between this legislation and the Labour Relations Act is that the bargaining units in these two areas have been defined either by regulation or by statute. It is possible that those units might be varied or changed, but as a practical matter, that has not happened.

In the Crown Employees Collective Bargaining Act there is a limitation on the subject matters that may be dealt with by collective bargain-

²⁰ *Id.*

²¹ See generally, Brown, *Privative Clauses in LSUC*, RECENT DEVELOPMENTS IN ADMINISTRATIVE LAW (1987).

ing. The Ontario Public Service Labor Relations Tribunal (OPSLRT), which was created for the purpose of administering the Act, is responsible for determining what constitutes "bargainable" subjects.²² OPSLRT also adjudicates disputes concerning unfair labor practices, when an employee's exemption from the bargaining unit was based on grounds of political or religious belief, and when it is alleged that a union has breached its duty of fair representation. The scope of judicial review of OPSLRT is the same as it is with OLRB.

III. INTEREST ARBITRATION IN ONTARIO

Public Servants and Teachers

Ontario government employees do not have the right to strike. Accordingly, the Crown Employees Collective Bargaining Act contains a provision providing for a form of final and binding arbitration.²³ In the case of the education labor relations system, while teachers and other employees have the right to strike as part of their collective bargaining strategy, there are three other dispute settlement procedures available which are administered by the Education Relations Commission²⁴ and, in the cases of colleges and universities, by the Colleges Relations Commission.²⁵

The three alternative procedures are factfinding,²⁶ voluntary interest arbitration,²⁷ and final offer selection.²⁸ The process of fact-finding, which can involve mediation, as does all collective bargaining in Ontario, flows from the appointment of a person to make a factual report to the Education Relations Commission or, in the case of a community college, to the Colleges Relations Commission. The parties make submissions either formally or informally to the nominated individual who then prepares a report. The intended effect of the report is to put public pressure on both sides to compromise their positions to appropriate ones as identified by the factfinder.

The arbitration procedure, which is voluntary, both for school boards and colleges, provides for the establishment of either a tripartite board or a single arbitrator. The award will incorporate all agreed upon provisions and settle the remainder. Final offer selection is a variation of traditional interest arbitration. In final offer selection the parties are only permitted to each submit one final offer. The arbitrator must then select

²² Crown Employees Act, *supra* note 4, § 18.

²³ *Id.* at 4, § 16.

²⁴ School Boards and Teachers' Act, *supra* note 5, ch. 464, § 59.

²⁵ Colleges Collective Bargaining Act, ONT. REV. STAT. ch. 74, § 55 (1980)

²⁶ School Boards and Teachers' Act, *supra* note 5, § 14; *Id.* § 8.

²⁷ School Boards and Teachers' Act, *supra* note 5, § 28; Colleges Collective Bargaining Act, *supra* note 29, § 23.

²⁸ School Boards and Teachers' Act, *supra* note 5, § 37; Colleges Collective Bargaining Act, *supra* note 29, § 32.

one of the offers. A familiar form of this type of arbitration is used by Major League Baseball owners and the Players' Association to settle contract disputes.

Essential Services

Hospital employees are denied the right to strike,²⁹ but special legislation provides for an arbitration system.³⁰ Likewise, both the police³¹ and firefighters³² have similar legislation establishing a permanent interest arbitration procedure.

In all three cases, the arbitration format is the familiar one whereby either a single arbitrator or a tripartite board listens to arguments, receives written briefs, and then determines the issues in dispute. As one might expect, where the interest arbitration board is tripartite, the post hearing discussion between the arbitrators often takes the form of negotiation, with the chairman of the board guiding the two representative members in the negotiation process.

IV. RIGHTS ARBITRATION

Scope of Rights Arbitration

There is no right to strike or lockout while a collective agreement is in place.³³ However, as a *quid pro quo*, the Ontario Labour Relations Act requires that every collective agreement make provision for final and binding arbitration of all disputes arising during its currency.³⁴ The Act provides:

44(1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

Requiring arbitration as a term of the collective agreement is augmented by a parallel arbitration procedure established pursuant to the Ontario Labour Relations Act.³⁵

In the public sector, the rights arbitration system is established by a permanent grievance settlement board.³⁶ In the case of the police, an arbitration system is established by the Police Act.³⁷

²⁹ Hospital Labour Disputes Arbitration Act, ONT. REV. STAT. ch. 205 (1980).

³⁰ *Id.* § 4.

³¹ Police Act, *supra*, note 7, § 32.

³² Fire Departments Act, *supra*, note 8, § 6.

³³ Labour Relations Act, *supra* note 3, ch. 228, § 72.

³⁴ *Id.* § 44.

³⁵ *Id.* § 45.

³⁶ Crown Employees Act, *supra* note 4.

³⁷ Police Act, *supra* note 7, §§ 33, 38.

Rights Arbitration Procedure

The procedure followed in rights arbitrations is similar to that which prevails in proceedings before either the OLRB or OPSLRT. Of course, it can only come into play upon exhaustion of the grievance procedure which in itself is a form of a pre-hearing settlement process. Although mediation of agreement based arbitrations is not the norm, the Grievance Settlement Board³⁸ and arbitrations pursuant to the Labour Relations Act³⁹ do have a formalized mediation process. This process is in addition to the requirement that the parties exhaust the grievance procedure leading up to arbitration.

Once a date for a hearing has been set, the parties present their evidence, usually under oath, *viva voce*, along with their arguments to the arbitrator or arbitration board. It is not customary to supplement these presentations with post-hearing briefs. Once the hearing is concluded, almost invariably the decision is reserved, and written reasons for the decision are given. Awards in Ontario must be filed with the Ministry of Labor. There is a Canadian reporting service called the Labour Arbitration Reports which publishes these awards. Although awards are not binding authority, arbitrators regard decisions on similar issues as having persuasive authority.⁴⁰ Awards are enforceable as judgments of the Ontario Court of Justice upon filing them with the Court Registrar.⁴¹

Judicial Review

Arbitrators' decisions in Ontario are subject to judicial review by the Ontario courts. Again, as in the case of the OLRB, a court will only intervene and quash the decision of an arbitrator where there has been a procedural error, the arbitrator has acted without jurisdiction, or the award itself was "patently unreasonable."⁴²

V. WORKERS' COMPENSATION

The province of Ontario has a workers' compensation system⁴³ similar in structure to those which exist in the United States. In Ontario, and all other provinces, this system is the only way in which an employee can be compensated for work injuries, as resort to private litigation is prohibited.⁴⁴ All employers are required to remit premiums based on industry sectors and experience, and disputes as to assessments are appealable from decisions of the Workers' Compensation Board to an independent administrative agency called the Workers' Compensation Appeal Tribu-

³⁸ Crown Employees Act, *supra* note 4.

³⁹ Labour Relations Act, *supra* note 3.

⁴⁰ See Palmer, COLLECTIVE AGREEMENT ARBITRATION IN CANADA, 120-22 (1978).

⁴¹ Labour Relations Act, *supra* note 3, § 44(11).

⁴² *Volvo Canada v. U.A.W. Local 720*, 99 D.L.R.3d 193 (S.C.C. 1979).

⁴³ Workers Compensation Act, ONT. REV. STAT. ch. 539 (1980) as amended.

⁴⁴ *Id.* § 8(9).

nal.⁴⁵ This tribunal also hears appeals brought by employees from decisions relating to compensation awards made by the staff adjudicators of the Workers' Compensation Board.⁴⁶

The structure of the Workers' Compensation Appeal Tribunal is similar to the OLRB's. It sits in panels of three, composed of a representative of workers, a representative of employers, and a neutral Vice-Chairman (or the Chairman himself).⁴⁷

The procedure followed is adjudicative, although counsel for the Workers' Compensation Board may also participate as a party to the proceedings. Interested worker and employer groups are also permitted to participate in the proceedings when the issue before the Workers' Compensation Appeal Tribunal has significance beyond the case of the individual worker being heard.

An appeal from a Workers' Compensation Appeal Tribunal decision on a question of general law and policy goes to the Board of Directors of the Workers' Compensation Board.⁴⁸ Otherwise, the decisions of the Workers' Compensation Appeal Tribunal are final and binding, subject only to judicial review by the Ontario courts based on the same standard of review as an OLRB decision.

VI. EMPLOYMENT STANDARDS AND HEALTH AND SAFETY

In Ontario, there is general employment standards legislation⁴⁹ as well as health and safety legislation.⁵⁰

Employment Standards

The Ontario Employment Standards Act establishes minimum standards for vacations and vacation pay,⁵¹ hours of work,⁵² overtime,⁵³ minimum wages,⁵⁴ severance pay,⁵⁵ and termination pay.⁵⁶ The Act is administered by employment standards officers who assess the defaults by employers in any of the foregoing circumstances. When a dispute arises as to an employment officer's assessment, a procedure exists which provides for an adjudicative hearing by a "referee."⁵⁷ In practice, the referees appointed to adjudicate disputes arising from the Employment

⁴⁵ *Id.* § 86(b).

⁴⁶ *Id.* § 86(g).

⁴⁷ *Id.* §§ 86(e), 86(1).

⁴⁸ *Id.* § 86(n).

⁴⁹ Employment Standards Act, ONT. REV. STAT. ch. 137 (1980) as amended.

⁵⁰ Occupational Health and Safety Act, ONT. REV. STAT. ch. 321 (1980).

⁵¹ Employment Standards Act, *supra* note 53, §§ 29-32.

⁵² *Id.* §§ 17-22.

⁵³ *Id.* § 25.

⁵⁴ *Id.* § 23.

⁵⁵ *Id.* § 40.

⁵⁶ *Id.* § 40(a).

⁵⁷ *Id.* §§ 42, 51.

Standards Act are the same persons who act as private arbitrators in adjudicating rights arbitrations.

The procedure followed is also similar to a rights arbitration, although one of the parties can be both the Director of Employment Standards as well as the worker and employer in question. As a practical matter, most of the referee cases involve a union representing the worker in his dispute with his employer.

Health and Safety

In Ontario, health and safety legislation has a different adjudicative process than the Employment Standards Act. Although inspectors have the primary enforcement responsibility, an appeal of an inspector's order may be brought to the Director of the Occupational Health and Safety Division of the Ministry of Labor.⁵⁸ The proceedings of the appeal are adjudicative in nature and a hearing is provided for under the Act.⁵⁹ The hearing may be instituted in a summary way by telephone.⁶⁰

The decision of the Director is subject to judicial review for procedural or jurisdictional error or, as in the case of an arbitration award or an OLRB decision, it may be quashed if it is "patently unreasonable." As a practical matter, proceedings before the Director are rare. The more usual practice is that the employer simply does not comply with the inspector's order, causing the Director to seek to enforce the order in court.⁶¹

VII. HUMAN RIGHTS LEGISLATION

In Ontario, there are two Acts dealing with human rights; the Ontario Human Rights Code,⁶² and the Pay Equity Act.⁶³ The basic and longstanding administrative agency of human rights is the Ontario Human Rights Commission.⁶⁴ More recently, pay equity has been the subject of legislation in Ontario, and that legislation is administered ultimately by an adjudicative process carried out by the Pay Equity Commission.⁶⁵

Human Rights

The Ontario Human Rights Code prohibits discrimination on the basis of gender, creed, nationality, age, etc.⁶⁶ It applies to a variety of

⁵⁸ Occupational Health and Safety Act, *supra*, note 54, § 32.

⁵⁹ *Id.* § 32(1).

⁶⁰ *Id.* § 32(2).

⁶¹ *Id.* §§ 37-40.

⁶² Ontario Human Rights Code, Ont. Stat. ch. 53 (1981).

⁶³ Pay Equity Act, Ont. Stat. ch. 34 (1987).

⁶⁴ Ontario Human Rights Code, *supra* note 66, § 26.

⁶⁵ Pay Equity Act, *supra* note 67, § 27.

⁶⁶ Ontario Human Rights Code, *supra*, note 66 § 1.

contexts, including employment. As a result, an employment dispute alleging discrimination prohibited by the Code can be referred to the Commission, which will decide whether or not to appoint a tribunal to adjudicate the dispute.⁶⁷ If the Commission chooses to accept the dispute, the Commission's own counsel prosecutes the dispute before an ad hoc adjudicator who, again, functions in much the same way as does a private rights arbitrator. Evidence is presented *viva voce* and written reasons for a decision are handed down by the adjudicator. A right of appeal to the Ontario Divisional Court is provided for,⁶⁸ and accordingly, the decision of the adjudicator can proceed through the judicial appellate process up to the Supreme Court of Canada.

Pay Equity

The Pay Equity Commission⁶⁹ is an independent agency responsible for enforcing the pay equity legislation.⁷⁰ Disputes concerning the correctness of an employer's wage structure, as determined by pay equity legislation standards, are brought before the Pay Equity Commission for adjudication.⁷¹

The legislation is new and by its terms its implementation has been staggered over time. Initially, it was applicable to public servants and institutions with five hundred or more employees.⁷² The threshold has subsequently been reduced to places of employment where there are at least fifty employees. Consequently, the volume of work of the Pay Equity Commission has increased substantially.

VIII. PENSION DISPUTE RESOLUTION

In Ontario, legislation exists that regulates pension plans between employers and their employees.⁷³ The Superintendent of Pensions is the primary administrative officer under the Pension Benefits Act.⁷⁴ However, disputes between employees (or their representatives) and employers regarding compliance with the Act or concerning the withdrawal and use of surplus funds are subject to adjudication by the Ontario Pension Commission.⁷⁵ The Commission is a body composed of representatives of employers and workers. It sits in panels of three, each panel is chaired by a "neutral" chairman or a vice-chairman.⁷⁶ Decisions of the Commis-

⁶⁷ *Id.* §§ 36, 37.

⁶⁸ *Id.* § 41.

⁶⁹ Pay Equity Act, *supra* note 67, § 27.

⁷⁰ *Id.*

⁷¹ *Id.* § 28.

⁷² *Id.* § 10 which provides for a phase-in period of five years.

⁷³ Pension Benefits Act, 1987, Ont. Stat. ch. 35 (1987).

⁷⁴ *Id.* § 95.

⁷⁵ *Id.* §§ 90-91.

⁷⁶ *Id.* § 94.

sion are subject to an appeal to the Ontario courts.⁷⁷

Unlike proceedings before the Commission, the Superintendent is not required to hold an oral hearing before making certain decisions. In those instances, customarily, the form of participation afforded interested persons is by way of written submission.

The procedure for adjudication before the Ontario Pensions Commission is very similar to that followed before the OLRB or before a rights arbitrator. However, in addition to the parties, the Commission and the Superintendent also may be represented by counsel. Evidence is adduced *viva voce* unless the parties otherwise agree to the facts. Following both written submissions and oral argument, the Commission makes its decision.

IX. FEDERAL LABOR LEGISLATION

As mentioned, the federal government has jurisdiction over labor relations of its own employees; the employees of private employers involved in banking; and inter-provincial works; communications, and transportation systems.⁷⁸ As a result, federal legislation applies to relatively few employees. However, such legislation has been looked to by many agencies involved in adjudicating labor, management disputes as a "test market" for labor relation ideas.

Unjust Dismissal of Employees

Federal legislation has led the way in providing, for non-union employees, the right to private arbitration in the event of a dismissal without just cause by a federally regulated employer.⁷⁹ In those circumstances, an employee who has a complaint of unjust dismissal simply writes to the Minister of Labor. The complaint will then be referred to a government official who will investigate and attempt to settle the dispute. If the government official is not successful, the Minister may refer the matter to an adjudicator. If that is done, the dismissed employee and the employer are entitled to representation by counsel, and the procedure followed by the adjudicator is essentially the same as that followed in a rights arbitration. The Code specifically gives the adjudicator the power to substitute his own opinion for that of the employer, including the power to reinstate the employee with or without back pay if it seems appropriate.⁸⁰

⁷⁷ *Id.* § 92.

⁷⁸ *Canada Labour Code*, R.S.C. ch. L-1 (1985).

⁷⁹ *Id.* § 240.

⁸⁰ *Id.* § 240(9).

X. UNEMPLOYMENT INSURANCE

Unemployment insurance in Canada⁸¹ is a federal matter. All employees and employers must contribute, and, where a contributing employee is out of work, that employee is entitled to Unemployment Insurance Commission (UIC) benefits.

In the event of a dispute with the Unemployment Insurance Commission's decision over premiums or the payment of benefits, the claimant or employer may appeal to a board of referees. Boards of referees are tripartite and are selected from panels of representatives of employers, employees and neutrals. The proceedings before the referees are adjudicative and will result in a written decision. An appeal of the Board's decision may be brought before an umpire.⁸² UIC umpires are all judges of the Federal Court of Canada; therefore, the appeal proceeds in the same manner as it would in any other Federal Court proceeding.

XI. ADJUDICATION BY THE COURTS: JUDICIAL REVIEW AND WRONGFUL DISMISSAL

Judicial Review

The Ontario courts play a relatively small role in industrial relations disputes. Indeed, the Rights of Labour Act⁸³ ousts the jurisdiction of the courts if there is a collective agreement in operation that applies to the dispute. As a result, the court's role in labor relations disputes has been reduced to reviewing the decisions of various tribunals and arbitrators. As has been mentioned, if an employer or a union is dissatisfied with the result of a decision by a board such as the OLRB, judicial review of the decision by an Ontario court may be sought. However, the standard of review is one of deference to the expertise of the Board or arbitrator. As a result, it is the exceptional case in which a court will interfere with the decision of a labor board or arbitrator.

Wrongful Dismissal

The only other adjudicative role played by courts in connection with employment matters relates to wrongful dismissal claims by individual employees seeking damages for termination without justification. In Ontario, as in most other Canadian provinces, the only remedy for an employee who is not governed by a collective agreement and who is disputing his employment termination, is to bring a law suit in the courts for damages. For federal employees, this right to go to court exists as well as the ability to have the dismissal dealt with by an adjudicator of the type referred to above.

The principle applied in measuring damages where an employee has

⁸¹ Unemployment Insurance Act, 1971, R.S.C. ch. U-1 (1985).

⁸² *Id.*

⁸³ Rights of Labour Act, ONT. REV. STAT. ch. 456 (1980).

been terminated without notice and without cause is to give the employee the money equivalent to wages in lieu of reasonable notice. Reasonable notice can range anywhere from the minimums provided in the Employment Standards Act⁸⁴ up to as many as two years or more in the case of a senior longstanding management employee.

XII. SUMMARY AND CONCLUSION

Generally

The other provinces of Canada provide structures and formal adjudicative systems similar to those found in Ontario. The variety of agencies and the invariable application of the adjudicative process has led to some complaints, primarily by unions, that the system of regulating labor relations has become overly legalistic. There have also been complaints as to the expense and the need for extensive legal help in the administration of labor relations. These complaints have not reached the point where the present government in Ontario has felt the need to place the reform of the labor relations system as an item on its current agenda. Unions, on the other hand, particularly those representing employees who have no right to strike, have readily adapted to both the interest and rights arbitration process. Most people say that they have used the systems effectively.

In terms of comparison, it is my opinion that the labor relations regulatory system in Ontario does not significantly vary from those systems in the northern and western states. I understand that virtual universal use of arbitration during the currency of a collective agreement also pertains in the United States. The laws dealing with health, safety and discrimination are not dissimilar and, in some states, the organization of the public sector is as advanced as it is in Ontario. Compulsory interest arbitration also exists in many essential industries in the United States. Indeed, if there is a significant difference between the Canadian and United States' systems, it might only be the greater extent to which the public sector has become organized in Canada.

The Implications of the Free Trade Agreement

The creation of a North American trading block will likely have a levelling effect on the labor relations legislation in Ontario and the other Canadian provinces. To compete effectively with other regions in North America in manufacturing and other productive enterprises, Canadian provinces will be constrained from placing themselves in a disadvantageous position in any respect vis-a-vis neighboring states. If anything, one may expect labor legislation in Canada to become even more comparable with that in the northern states.

⁸⁴ Employment Standards Act, *supra* note 53.