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Overview of Labour Law in Canada

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Executive Summary

George Adams presented this paper at the 1994 US-Mexico-Canada Conference on Labour Law and Industrial Relations in Washington, DC. According to Adams, Canada's participation in the North American Agreement on Labour Cooperation is important because it encourages us to explore our country's labour laws at both the federal and provincial levels so that we are better equipped to confront the issues we jointly face in a global economic environment.

- In Canada, both levels of government have the power to create labour laws. While this 'fragmented constitutional responsibility' for labour relations is not always perceived as an attractive feature of Canadian society, it does have its merits in that it promotes experimentation and provides an opportunity for change. Moreover, it eliminates the chances of having one 'bad law' cover the entire country.
- Legislative developments in the private and public sectors have led to significant increases in trade union growth over the years. In 1944, the Wartime Labour Relations Regulation (Order in Council PC 1003) was introduced which contained a private sector framework for the recognition of trade unions. From this date, unionization in the private sector flourished until the mid 1980s.

In the public sector, union growth was much more dramatic. Between 1965 and 1975 all 10 provinces and the Federal government passed legislation allowing employees to bargain collectively. Two significant trends resulted from this: the unionization of white-collar workers and professional groups and an increase in national union membership.

- Collective bargaining in Canada is an important tool of 'industrial democracy' because it provides employees with greater bargaining power and a voice in determining the terms and conditions of employment. Furthermore, collective bargaining laws best accommodate market forces and employee interests since they focus on the welfare of individuals, the preservation of competitive markets, private property and freedom of contract.
- Employment standards in Canada have become more sophisticated over the years. There is the recognition now that not all employment issues can be resolved through collective bargaining. More pressure, therefore, has been placed on politicians to legislate general standards in areas such as occupational health and safety, pay and employment equity, workers' compensation and human rights legislation.
- Labour force adjustment policies have also changed significantly. In 1989, the federal government initiated a new 'labour force development strategy' in which savings from changes in the *Unemployment Insurance Act* were allocated to proactive training measures. This change came in response to a

growing consensus that Canada's bias towards passive income maintenance and the absence of employer training programs were inconsistent with the promotion of workplace flexibility and adaptability. Other provinces including Ontario have agreed to take similar action to create and sustain a highly trained and flexible workforce.

- Canada has experienced a decrease in productivity rates over the past decade. This has forced labour and management to acknowledge that productivity can only be increased through labour/management cooperation and innovation. The NAFTA Agreement on Labour Cooperation encourages dialogue with our neighbours on these issues. Hopefully, Canada's participation will encourage more communication between our own governments so that a greater consensus over labour market and industrial policies can be achieved.

Note: This is the text of an address by the author to the U.S.-Mexico-Canada Conference on Labor Law and Industrial Relations, held in Washington, DC on 19 and 20 September 1994.

Introduction

Labour laws do not fall from the sky. Like all legal institutions, labour and employment laws reflect the underlying political, social, and economic forces which chart government policy. A critique of any country's existing legal institutions is a democratically healthy exercise capable of producing real insight. But understanding the wider social, political, and economic contexts of that country, both historical and contemporary, often makes the difference between fashioning constructive proposals for change and producing ineffectual political rhetoric.

Canada, the United States, and Mexico have very different histories, and there are distinctive social, economic, and political forces at play within their borders. Article 2 Section 3 of the *North American Agreement on Labour Cooperation*, which is part of the North American Free Trade Agreement (NAFTA) (Canada 1992) between the three countries, is explicitly sensitive to this.

Article 2: Levels of Protection

Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

Labour laws reflect the allocation of power in a society: indeed, they actually allocate power. Changing them by objective design is therefore a delicate task. The three sovereign countries that are parties to NAFTA, all are vigilant about their independence. Again, Article 2 of the Agreement on Labour Cooperation acknowledges this fundamental fact, as does Article 42.

Article 42: Enforcement Principle

Nothing in this Agreement shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

Cooperation between the three countries has always accommodated concerns for sovereignty. Indeed, diplomats behave almost instinctively in dealing with such matters. Private citizens, however, may sometimes need reminding.

Nevertheless, it is not only differences and concerns for independence that define the relationships of the three countries. Rather, common interests have also motivated NAFTA and its Agreement on Labour Cooperation. The world is shrinking because of advances in technology, and economic forces and economic

opportunities are now global in scope. If someone sneezes in Munich, someone in Montreal catches a cold. The three countries that share North America need one another's help in combating external economic forces and in seizing new and important trade opportunities. Many Canadians opposed the NAFTA—and continue to oppose it. I do not wish to rehearse this debate or take sides. It does, however, seem to me that the labour agreement creates an important forum for dialogue, where no equivalent forum exists, and an opportunity for change. It represents the future.

Canada is a trading nation. Fully 30 percent of its gross domestic product is attributable to exports, and 75 percent of those exports go to the United States. Canada, in return, receives 25 percent of all U.S. exports; U.S. goods represent 69 percent of all Canadian imports. Canada and the United States have the largest bilateral trading relationship in the world; the two-way trade exceeds U.S. \$160 billion annually. Ontario-US trade alone is greater than U.S.-Japan trade. The United States is, therefore, Canada's largest trading partner and the reverse is also true. Our common cause is obvious.

Canada, however, is small; the Canadian economy is only the seventh largest in the OECD. Mexico and Canada therefore have a significant shared interest arising from their relationships with their giant mutual friend, the United States of America, with whom they share the same bed. Canada and Mexico are keenly interested in American sleeplessness, or a Gulliver-like roll to the left or right. All three countries are committed to world-wide General Agreement on Tariffs and Trade objectives, and yet consistent regional efforts, be they through NAFTA, Maastricht (Council of the European Communities 1992), or initiatives in the Far East, seem the inevitable by-products of contemporary world economic forces.

Regional multilateralism is becoming an important force throughout the world. Working together, identifying opportunities, and fashioning solutions to problems require communication and understanding, in that order. Everyone who is experienced in labour relations knows the importance of 'WV'; except in baseball labour negotiations, apparently, talk leads to enhanced understanding and thus to the tailoring of cooperation to maximize joint gains. This is the importance of the NAFTA labour agreement.

Labour Relations in a Federal System

As I have said, Canada comes to NAFTA with a system of labour law that is the product of a unique history and distinctive social and political forces.

The history of Canadian labour law and its current shape reveal a heavy emphasis on legislative developments. In a federal system, this raises the issue of which level of government has the power to make laws in relation to labour relations. If our constitution is examined, no explicit allocation of that

responsibility will be found. The federal government is allocated exclusive responsibility over, for example, trade and commerce, and the ten provinces are allocated responsibility for, among other things, property and civil rights.

One could perhaps make a case for federal jurisdiction over labour market regulation by emphasizing the importance of national economic management: business activity is at least national in scope; labour relations are an essential component of business activity; and federal responsibility would be administratively convenient. On the other hand, labour markets tend to be local and solutions to conflict are often best fashioned at that level. Provincial control of labour relations might also better accommodate the economic, social, and political diversity within Canada.

As it turned out, exclusive responsibility for labour relations was allocated to the provinces by judicial interpretation, save for the labour relations of undertakings explicitly allocated to the federal jurisdiction by our constitution: the post office, for example, and transportation, navigation, and communications. The result is that the employment relations of over 90 percent of all employees and their employers in Canada are regulated by ten provinces. However, one important exception to provincial labour market dominance is in the area of unemployment insurance where, by virtue of a constitutional amendment, the federal government has jurisdiction. This constitutional fragmentation is recognized in Annex 46 to the NAFTA Agreement on Labour Cooperation where provincial participation is anticipated and encouraged. I understand the provinces are actively considering their involvement in this agreement, which makes judicial caution even more important.

A fragmented constitutional responsibility for labour relations presents both difficulties and opportunities. The complexity of complying with so many different laws is clearly a problem. Having participated in Canada-wide mergers and acquisitions, I can say that investors do not see this as an attractive feature of Canada. But this problem is not confined to labour relations. It affects securities legislation, corporate legislation, environmental laws, and much else. Indeed, it has been said that there is more free trade between Canada and the United States than there is between Canada's provinces. The provinces are conscious of this perception, and much is being done to change it. However, there will, inevitably, be differences between federal and unitary states, as everyone will appreciate.

In spite of all this, there is a broad similarity in the various labour laws in Canada, as I shall point out. Moreover, the multiple jurisdictions do present opportunities, since they avoid the possibility that one bad law will cover the entire country, and they provide for considerable experimentation and innovation.

Canadian Labour Markets and Labour Unions

Canada is one of the richest countries in the world, with a labour force of 14 million and a gross domestic product of \$684 billion, in 1993 dollars. Canada has one of the highest per capita incomes in the industrialized world, but the United States economy is ten times larger, Japan's is five times larger, and Germany's economy is three times larger. The Canadian provinces obviously support different levels of economic activity. For example, Ontario's favoured geographical location has allowed it to create more than 50 percent of the manufacturing output of Canada with only 32.5 percent of the population. Sixteen percent of Ontario's population that is of working age is employed in the manufacturing sector.

In Canada, 37 percent of the work force is unionized, and 42 percent is covered by collective bargaining. These are impressive figures when compared with those for the United States. The Canadian figures vary from province to province: in Newfoundland, 53.3 percent of the work force was unionized in 1991; Quebec ranked second at 40.6 percent; and Alberta was the least unionized province at 26.4 percent. The figures also vary significantly by industry. However, union membership in the private sector has actually declined in Canada from 33 percent in 1968 to 28 percent in 1988. Meltz and Verma (1993) estimated the rate of unionization in the private sector to be as low as 20.7 percent in 1990. Trade union growth, therefore, has largely been in Canada's public sector, which is generally understood to include the federal civil service, the provincial civil services, municipalities, including police and fire fighting services, health care, education, and government enterprises such as Ontario Hydro, Hydro Quebec, and the Canadian Broadcasting Corporation.

Three major spurts in Canadian trade union membership growth can be identified (Smith 1989, 300). The first two coincided with the two world wars and involved the private sector. This is not surprising because national mobilization for these wars resulted in economic growth, labour shortages, and a need for a high level of cooperation between employers and employees. It was in the years during and immediately following the Second World War that contemporary private sector industrial relations took shape in Canada. The third period of growth came during the 1970s, when public sector trade unions, largely facilitated by new supportive legislation, brought civil servants, teachers, nurses, and other public employees into labour's fold.

Between 1946 and 1975, public employment rose at an annual rate of almost 7 percent, growing from slightly more than 400,000 employees to more than 2 million. The most rapid growth occurred between 1956 and 1965, while the slowest growth has been since 1971, and, in fact, the proportion of public employment to total Canadian employment has increased very little since the 1960s. Obviously, some segments of the public sector experienced more rapid expansion than others. Since the Second World War, employment has increased most quickly in health care and education and has grown the least in the federal civil service (Ponak and Thompson 1989, 374). In 1980 the public sector,

broadly defined, included more than 2.9 million employees, representing approximately 33.2 percent of the whole labour force employed in Canada (Bergeron 1993, 12). Although Canada had one of the lowest levels of union membership among seven major industrial nations (the G7), in 1961, it experienced the highest rate of union membership growth over the next twenty years, with the result that today, Canada's union density has surpassed that of the United States and Japan, although it still falls well below the high levels in Sweden, Australia, and the United Kingdom (Smith 1989, 302).

This dramatic growth, which is centred on Canadian trade unions active in the public sector, as opposed to international trade unions, is a significant development. The recent unionization of nonmanual workers in the public sector has given a new complexion to the trade union movement. The traditional, more manual union strongholds in craft jobs, processing, fabricating, transportation, material handling, and construction, now have union densities ranging from 43 percent to just over 55 percent. Trade unions in the 1980s were increasingly made up of non-manual workers employed in the public service sector, and a large proportion of these workers were women. But in manufacturing, for example, union membership stagnated between 1971 and 1983. During the 1981-82 recession, the two major unions in this sector, the United Steelworkers and the Canadian Auto Workers, actually suffered the greatest membership losses of any Canadian unions. In contrast, membership in industries providing personal and business services expanded by 144 percent between 1971 and 1983.

Let us look now more closely at the two sectors of the Canadian economy.

The Private Sector

During World War II, when the federal government assumed nation-wide jurisdiction over labour relations, the federal government of Prime Minister Mackenzie King introduced the Wartime Labour Relations Regulation (Order in Council PC 1003). This cabinet order, issued in 1944, contained a comprehensive private sector framework for the recognition of trade unions which informs our laws to this day. Influenced by earlier Canadian experiments with mandatory conciliation, by the U.S. National Labor Relations Act of 1935 (the Wagner Act) (29 U.S.C. 1935), and by various earlier provincial initiatives, the central features of this framework were the following:

- Non-managerial employees (other than excluded categories) were given the right to form and join unions;
- Actions by employers against employees exercising the right to unionize were prohibited;
- Labour boards, not courts, were authorized to certify unions, on proof of majority support, as bargaining representatives for appropriate (employer-specific and often plant centred) bargaining units;

- Once certified, a trade union became the exclusive bargaining representative of all employees in the bargaining unit, whether or not they were union members;
- Employers had to bargain in good faith;
- Before resorting to economic sanctions, the parties were required to participate in government-sponsored conciliation; and
- During the term of a collective agreement the parties could not engage in strikes or lockouts, but instead were required to submit differences arising under the collective agreement to grievance arbitration by a neutral third party.

Soon after the passage of PC 1003, the pace of union organization in the private sector accelerated. From 1945 to 1983 union membership in Canada increased from 25 to 40 percent of all nonagricultural workers (Langille 1991, 589). As of 1987, membership in Canadian unions was 3,782,000 or 37.6 percent of all nonagricultural workers (Bureau of Labour Information 1992-93, xii). However, of the 2.5 million increase in union membership between 1961 and 1989, more than 50 percent occurred in the public sector, and yet the public sector accounts for less than a third of total employment (Bergeron 1993, 12).

The Public Sector

The pattern of evolution of labour relations in the private sector was subsequently repeated in the public sector, but at an accelerated pace and in a compressed time period. Although the first legislation providing for public sector bargaining in Canada was introduced in Saskatchewan in 1944, it remained an anomaly for twenty years. Then, between 1965 and 1975, all ten Canadian provinces and the federal government passed legislation allowing their employees to bargain collectively.

- The massive unionization of the civil service that swiftly ensued after the passage of public sector labour relations legislation resulted in two significant trends:
- The unionization of white-collar occupations that had previously been unorganized, and
- An increase in national union membership in Canada relative to international union membership, as a percentage of total union membership.

Since 1967, there has been a steady and significant increase in public sector collective agreements as a percentage of major collective agreements. Similarly, there has been a corresponding increase in the number of employees covered by collective agreements in the public sector as a percentage of total employees covered by major collective agreements. In the federal jurisdiction, employee organizations are now bargaining on behalf of well over 95 percent of eligible public servants. The same is probably true in most of the provinces and territories. Bergeron (1993, 12) has estimated union density in the public sector at 58.6 percent in 1989.

Accordingly, the growth of union membership in Canada from 30.6 percent of nonagricultural paid workers in 1961 to 35.8 percent at the beginning of 1980 may be attributed, in very large measure, to the adoption of collective bargaining by government employees at the federal and provincial levels, as well as to the considerable increase in collective bargaining in the health and education sectors, particularly by nurses and teachers (Bergeron 1993, 12). As I mentioned, these developments have resulted in significant changes in the composition of the labour movement. They have brought into the ranks of organized labour large numbers of white-collar and professional groups that have not traditionally been unionized in the private sector. They have also been a major factor in reducing the numerical dominance of unions based in the United States, since the vast majority of workers in the public sector areas of collective bargaining are organized in exclusively Canadian unions. Thus, membership in international unions in Canada dropped from 72.2 percent of total membership in 1960 to 44.7 percent of total membership by 1981 (Chaykowski and Verma 1994, 379). In 1992, in excess of 37 percent of the 2,369,779 members of the Canadian Labour Congress were in unions representing public employees, and three of the largest affiliates were public service unions: the Canadian Union of Public Employees, the Public Service Alliance of Canada, and the National Union of Public and General Employees (Bureau of Labour Information 1992-93, xiii and xv).

Public sector unionism also reveals a general acceptance by governments across Canada of the right of public sector workers to bargain collectively. This is not to say, however, that all public sector workers have the right to strike. At the present time, over half the provinces grant the right to strike, in some form, to government employees. However, a significant number (Nova Scotia, Prince Edward Island, Manitoba, and Alberta) do not and, instead, require that impasses in bargaining are to be resolved by 'interest' arbitration. Only the federal government allows its employees to choose between the interest arbitration process and the conciliation/strike route at the outset of each round of bargaining. In those jurisdictions which permit public sector workers to strike, the right is not accorded to employees who provide essential services; however, there is no uniformity in the designation of essential employees.

Other major differences between public and private sector environments which have dictated different legal regimes include the absolute size of public sector workplaces and the long-standing administration of merit systems by civil service commissions. These features of the public sector have affected the configuration of bargaining units, and the scope of bargaining, as well as the ground rules for dispute resolution. I should also point out that attempts to analyze the legal framework for the public sector in Canada are complicated by the considerable diversity exhibited in federal and provincial legislation on this topic. For example, municipal employees have tended to enjoy full bargaining rights since the emergence of collective bargaining in Canada in the 1940s.

Politics and the Trade Unions

On the other hand, most other areas of the public sector across Canada illustrate a more qualified application of general collective bargaining principles, in the sense that there are usually restrictions on the scope of bargaining and often on the right to strike and on the configuration of bargaining units. Interestingly, in British Columbia and Ontario, one labour board administers both the private and public sectors. But there are many differences in the content of these regimes across Canada.

It is very difficult to say whether these laws have created the environment in which trade unions thrive in Canadian society or whether it is the other way round. But the New Democratic Party, organized labour's preferred political party, is prevalent throughout Canada and forms the government in British Columbia, Saskatchewan, and Ontario. This party has also governed other provinces, Manitoba for example, and has, on one occasion, controlled the balance of power in the federal government. The Parti Quebecois, recently elected in Quebec, has strong ties to the labour movement in that province and it has been in power before.

This political reality helps to explain the distinctiveness of Canada's collective bargaining laws, as indeed it does the distinctiveness of other Canadian laws, such as medicare. While they are broadly patterned on the Wagner Act in the United States and while they thus have a familiar ring to American ears, an examination of the nuances of Canadian labour laws reveals significant differences. Collective bargaining in Canada is seen as the preferred instrument of labour market regulation for distributive issues. It is deemed superior to government-imposed and administered standards, because it can better adapt to individual workplaces and to the conflicting interests of employers and employees. In short, it best accommodates market forces and employee interests. It does this by providing employees with greater bargaining power and, thus, with a greater voice in fashioning terms and conditions of employment. In this sense, it is seen as an important mechanism of 'industrial democracy'. But first and foremost it best captures Canadian society's concern for the welfare of individuals and the preservation of competitive markets, private property, and freedom of contract. Accordingly, since its inception, our federal and provincial governments have improved, extended, and preserved this important accommodative process.

Key refinements illustrating the degree to which this policy view is held include rust contract arbitration in British Columbia, Manitoba, Ontario, and Quebec; the prohibition on the use of strike replacements in British Columbia, Ontario, and Quebec; and increasingly speedy, effective, and flexible certification and unfair labour practice procedures which have all but neutralized employer opposition. First-contract arbitration, which was invented in British Columbia, recognizes the fragile nature of a formative collective bargaining relationship and the temptation of an employer to act precipitously. It provides the opportunity for a trial marriage, while also providing representing a potent unfair labour practice remedy. The

prohibition on the use of strike replacements was first enacted in Quebec after several bitter and violent strikes. Ontario and British Columbia have adopted this reform in recent years, but primarily as a device to equalize bargaining power, as collective bargaining itself was intended to do: the prohibition takes this intention to a new level. Certification and unfair labour practice procedures are generally speedy in Canada, but there are potent and even speedier interim remedies in Ontario. Seventy-five percent of all certification cases and seventy percent of all unfair labour practice cases are disposed of in 90 days in Ontario. Effectively, there is little or no appeal to the courts in light of tightly worded privative clauses.

These refinements respond to the fact that in recent years, job growth in Canada has been almost exclusively in the service sector. The shift towards a service economy is not particular to Canada. Since World War II, most advanced industrial countries in the OECD have moved towards a so-called post-industrial economy, but at very different rates. In the 1940s, 60 percent of Canadian jobs were in the goods sector, but by 1990, 70 percent of Canadian jobs were in the services sector. The employers in this sector tend to be smaller and they have been difficult to organize. Indeed, this sector, as well as secondary and tertiary labour markets generally, had proven difficult to unionize under the previous ground rules.

The refinements to our labour laws have also been coupled with a policy to reduce industrial conflict by increasing the access to third-party mediation of differences, whenever they arise, and to 'no-wait' grievance arbitration at the election of either party. The policy has apparently succeeded, since time not worked as a result of major work stoppages amounted to 568,910 person-days or 0.02 percent of estimated total working time. This is the lowest figure in the past fifty years for time lost through strikes.

Employment Standards

I have said nothing about Canada's employment standards, occupational safety and health, workers' compensation, and human rights legislation. It has become increasingly sophisticated over the years. The more successful employers have been in avoiding collective bargaining, the more incentive they have given to the politicians to legislate general standards and to the courts to treat individual law suits very seriously.

Historically, there had been a reluctance to set employment standards at too high a level, in order not to undercut the attractiveness of collective bargaining. However, this posture has changed in recent years. Some aspects of the employment relationship have been deemed too important to leave to collective bargaining, either because bargaining has not performed well or because it has little prospect of reaching all the workers that governments want to protect. Thus, all provinces across Canada have quite vigorous health and safety laws which

feature joint governance of health and safety issues through mandatory local workplace committees, disclosure, and speedy administrative inspection systems. There is little appetite in Canada for leaving the resolution of such issues to the pressures of collective bargaining, and this distinctive regulation has unburdened collective bargaining of a very emotional issue. Similarly, pay and employment equity concerns have come to attract vigorous standards legislation, applicable to all employees. Male-dominated trade unions bargaining with male-dominated management did not produce acceptable outcomes in this area but equal pay for work of equal value is now a prevalent employment standard in Canada, and the more recent emphasis federally and in Ontario has been on requiring employers to ensure that their work force is more consistent with the demographics of the local labour force. Pay and employment equity laws entail extensive regulation of human resource practices.

Human rights legislation has also been affected by an increasing interest in regulating 'systemic discrimination' as opposed to intentional wrongdoing. The result has been a plethora of legislation and case law regulating mandatory retirement, bona fide occupational qualifications, and the human resource process generally. The underlying premise of these laws is not only fairness but also a belief that the Canadian workplace has excluded people who can make a significant contribution to society.

A final changing characteristic of Canadian labour law relates to our labour force adjustment policies. Collective bargaining and trade unions will remain antagonistic to change unless there is more active labour market assistance to employees by employers and government. Employers in Canada spend less than 0.3 percent of GDP on formal workplace training. This is estimated to be one-half the rate of investment in the United States and one-quarter that of Germany. Of equal concern is the federal government's unemployment policy which, until recently, has been overwhelmingly passive, geared to providing short-term income assistance to the unemployed. Canada is well behind several other important trading countries such as Germany, Sweden, and Switzerland, where government assistance to the unemployed is more heavily oriented to training. However, the overwhelming Canadian bias towards passive income maintenance and the general absence of employer training programs are now generally understood to be inconsistent with the promotion of workplace flexibility and adaptability. There is therefore a growing consensus throughout Canada that early, quality education preparing workers for a life of continued learning and easier access to effective mid-life education, training, and retraining is much more likely to produce cooperative labour-management relationships than any other single employment law reform.

In 1989 the federal government initiated a new 'labour force development strategy'. As part of that strategy, savings from changes in the eligibility rules of the Unemployment Insurance Act have been allocated to proactive training measures, on the advice of the Canadian Labour Market Productivity Centre. We are also awaiting the announcement of the current Liberal government's policy in this area.

Ontario, like several of the other provinces, has indicated a willingness to follow suit with increased financial assistance for labour-management adjustment committees to facilitate retraining and reemployment, and with the creation of a broadly mandated workplace and community adjustment service under the Ontario Training and Adjustment Board. Thus, there is a growing public and private commitment to create and sustain the highly trained and flexible work force required by high value-added industries producing for world-wide markets.

I should add, finally, that when comparing labour-management cooperation in Canada with that in Germany or Scandinavia, one must always be alive to the absence of centralized bargaining structures in Canada. Union-employer relationships are enterprise-based, and industry-wide bargaining exists and is supported only in the construction industry. In that industry, the structures in many provinces look very European and unionization rates outside of residential construction are high.

Conclusion

The labour laws that I have discussed presume there is no inconsistency between workplace fairness and rising levels of workplace productivity. Germany, Scandinavia, and Europe are highly successful economies with many more unionized workers than Canada. Indeed, some commentators believe that concerns for the quality of working life go hand in hand with the increases in workplace productivity that are necessary for a rising standard of living, and some also argue that collective bargaining has actually been a stimulus to efficiency by encouraging technological and organizational excellence in Canada.

Nevertheless, one must acknowledge that there is widespread concern in Canada about the country's competitiveness and the impact of Canadian labour market strategies on this fundamental goal. Increasing productivity, more than any other factor, is crucial to increasing a country's standard of living and has been responsible for a four-fold increase in real incomes per capita in Canada since the mid-1930s. Gains in productivity pay for such things as universal health care, education, and social programs. But from average annual increases in real income per capita of over 4 percent in the 1960s and early 1970s, Canada dropped below 2 percent in the 1980s. And while productivity rates have slowed in Canada over the past decade, they have risen in other countries. Canada's output per hour in manufacturing rose by only 2.3 percent from 1981 to 1988, the lowest increase among the G7 nations. The United States, on the other hand, averaged 4 percent, Italy 4.2 percent, and Japan 5.9 percent.

However, I believe labour and management are acutely aware of this challenge and that it can only be addressed with increased labour-management cooperation and innovation. The most recent recession has reinforced the shared awareness of the problem in both our private and public sector workplaces--if that was necessary. The NAFTA *Agreement on Labour Cooperation* provides a vehicle for dialogue with our neighbours on these issues. It should sharpen our

understanding of the problems and opportunities we jointly face in a global economic environment. The intention to seek the assistance of the International Labour Organization in order to fashion evaluation mechanisms is also promising. For Canada, participation in the agreement could encourage more of the necessary dialogue between our own governments, and this might forge a greater consensus over labour market and industrial policies. The agreement provides an open framework for the evolution of this important tripartite relationship between Canada, the United States, and Mexico and constitutes an important first step in fostering economic cooperation in North America, to the benefit of all three countries.

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