

The Adversary System in Canadian Industrial Relations: Blight or Blessing?

L'antagonisme dans les relations professionnelles au Canada : Fléau ou bénédiction

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Article abstract

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Blight or Blessing?

C.R. Brookbank

This article attempts to explore the “free system of collective bargaining” in Canada, with a view to gaining insight into the validity and the efficacy of the adversary concept in industrial relations.

As Canadians, we appear to relish a substantial amount of conflict in our national sport, the game of hockey. We feel that it reflects the ruggedness of our people and the vitality of our culture. In Parliament, likewise, we cherish the principle of a Loyal Opposition whose role is to challenge and criticize government activities. We consider that this “power to oppose” keeps governments honest in motive and sensitive to the common welfare. In short, we tend to believe, as Canadians that conflict controlled by the rules of the game - or the House - is of fundamental importance to integrity and progress, even though it may sometimes get out of hand in both environments.

How is it, then, that many of us find controlled conflict distasteful in labour - management relations, where it also tends to get out of hand on some occasions? Why is there a considerable body of opinion in Canada to the effect that the “adversary system” in labour-management relations is out of date? In a country whose citizens tend to resent controls of virtually any kind, how is it that a seemingly large number would be quite pleased to see compulsory arbitration introduced as a reasonable alternative to the strike or lockout in many collective bargaining endeavours?

Every society must have rules setting out the requirements for social behaviour by its citizens, and sanctions which can be applied when individuals or groups violate the rules or jeopardize the common welfare. If the control of deviants becomes such an obsession that enforcement

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measures may begin to jeopardize fundamental principles of the society itself, the cure could be worse than the disease in the last analysis. This article will attempt to explore our "free system of collective bargaining", with a view to gaining insight into the validity and the efficacy of the adversary concept in industrial relations.

A look at the present state of affairs regarding work stoppages¹ may help in assessing the extent of "extreme conflict", often cited as justification for abandoning the adversary relationship within the industrial relations system. Figure 1 illustrates the record of work stoppages due to strikes and lockouts from 1971 to 1978 inclusive. It can be seen that these declined somewhat during the period of wage and price controls (October 1975 to April 1978) but now appear to be on the rise again. The number of man-days lost and of workers involved dropped drastically in 1977, however, indicating work stoppages of much shorter duration than in 1976 and probably of smaller units. For 1977 in particular, it would appear that work stoppages were curtailed where larger unions and employers were concerned.

TABLE 1

Time Perspective on Work Stoppages
État rétrospectif des arrêts de travail

<i>Period</i>	<i>Number</i>	<i>Work stoppages in existence during month or year</i>		<i>% of estimated working time</i>
		<i>Workers involved</i>	<i>Duration in man-days</i>	
<i>Période</i>	<i>Nombre</i>	<i>Travailleurs en cause</i>	<i>Durée en jours-hommes</i>	<i>% du temps ouvrable estimatif</i>
Year-Année				
1971	569	239,631	2,866,590	0.16
1972	598	706,474	7,753,530	0.43
1973	724	348,470	5,776,080	0.30
1974	1,218	580,912	9,221,890	0.46
1975	1,171	506,443	10,908,810	0.53
1976	1,030	1,582,631	10,624,130	0.55
1977	803	217,557	3,307,880	0.15
1978	949	385,405	7,480,030	0.33

¹ These figures are issued by Labour Canada; the data for 1978 are listed as "subject to revision".

The *number* of stoppages in 1978 has not increased substantially, but the percentage of lost working time has more than doubled over 1977 and the number of man-days-lost has increased almost to the same point. According to figures released by Labour Canada for 1978, much of this increase in lost working time and number of man-days lost can be attributed to a few large altercations. The two largest stoppages under federal jurisdiction in 1978 were at B.C. Telephone and Canada Post Office, accounting for 60% of federal figures. Inco Metals Ltd. in Ontario, iron mining in Quebec and Labrador, and construction carpenters in Ontario represented 27% of all man-day losses under provincial jurisdiction. It would not appear that the departure of wage and price controls has brought any great surge of strikes, but there have been a few severe and serious ones. Removal of the right to strike/lockout might constrain the severe cases but it would also impose controls on the many who settle with little or no resort to stoppage.

Of more concern than the absolute numbers of stoppages, workers involved, and man-days lost is the general increase in percentage of estimated working time lost, since this is relative to all of the others. In this respect, the time lost in 1978 was equivalent to 33 man-days per 10,000 man-days worked, compared to .15 (15 man-days) in 1977 and .55 in 1976.

While these percentages follow a pattern similar to the others, it is worth noting that this is not the first time in the history of Canadian industrial relations that these percentages have reached present levels. In 1919, the percentage of lost working time through work stoppages was .60; in 1946, it was .54. These percentages are based on a ratio of number of man-days lost for every 10,000 man-days worked, e.g. 53 lost per 10,000 in 1975. While there are many more union members in Canada now than in 1919, or even in 1946, the *relative* loss of working time is no more severe. The "system" seems to be functioning normally.

These interpretations of the statistics are not intended to imply that our problems in labour-management relations are of little consequence, but rather to suggest that more refined analysis of the situation can bring more appropriate and feasible solutions than disposing of the adversary system and running the proverbial risk of "losing the baby with the bath water". Even so, it must be acknowledged that in 1976 Canada vied with Italy, on a list of 35 countries, for the most time lost due to strikes and lockouts. Canada had 55 man-days lost per 10,000 worked during that year.

Over the years, the Canadian pattern of industrial relations has consistently brought about peaceful settlements in the majority of cases.

Jamieson² makes general reference to a figure of 5% or less of negotiations related to collective agreements in Canada that result in strikes or lockouts, but this rate is low for some periods. In 1976, as shown in Figure 2, Labour Canada records 637 agreements negotiated in the industrial sector (excluding construction) of the economy in Canada; of those, all but 84 (13.2 per cent) were settled without work stoppages. In 1977, all except 33 (5.7 per cent) of 577 agreements in the industrial sector were settled amicably. In 1978, all but 6.5% (44) were concluded without stoppages. A very respectable record, but why is it that we seem unable to overcome the "crisis" syndrome of peaks and troughs in work stoppages?

A fruitful search for answers to this question might be undertaken through an analysis of the collective bargaining system itself rather than through an exploration of labour economics or labour law, although it is unrealistic to assume that such highly complex and interdependent components can be separated easily for purposes of analysis. Indeed it could be argued that attempts to extract simple "cause and effect" sequences as adequate interpretations of these complex trends has tended more to confuse the issue than to clarify possible problems.

In broad terms, what are the implications of employer, union and government behaviour during the past decade in Canadian industrial relations? The interpretations set forth below constitute an analysis of developments which may be of interest and value to employers, unions, and governments who have the power and responsibility for coping with the apparent instability of the adversary system.

The adversary system represents the foundation of employer-union relations in this country. It has developed traditionally in Canada with the private sector and it is constituted ideally on the assumption that a strong employer and a strong union, each with a respect for the power of the other, can negotiate a collective agreement which will integrate the interests of both parties more effectively than any method which would give either side (or a third party) the unilateral power to make decisions for both. The confrontation of these two groups in a "balance of power" has revolved around the distribution of the fruits of economic endeavour, with government maintaining a legislative regulation of the bipartite relationship as guardian of the public interest. With the parties sharing control over the process, there is the further assumption that both sides will feel a sense of responsibility for the effective administration of the collective agreement

² JAMIESON, S., *Industrial Relations in Canada*, Macmillan Company, Toronto, pp. 78-79.

TABLE 2

**Number and Percentage of Settlements and Employees
by Settlement Stage and by Industry, 1977-1978
(500 or more Employees per Bargaining Unit,
Excluding the Construction Industry)**

**Nombre et pourcentage de nouvelles conventions et de
travailleurs par stade de règlement et par industrie, 1977-1978
(tous les groupes de négociation de 500 travailleurs ou plus
autres que ceux de l'industrie de la construction)**

	<i>Bargaining</i>		<i>Third Party Intervention</i>		<i>Work Stoppage</i>		<i>All Stages</i>	
	<i>Agreements</i>	<i>Employees</i>	<i>Agreements</i>	<i>Employees</i>	<i>Agreements</i>	<i>Employees</i>	<i>Agreements*</i>	<i>Employees</i>
<i>Year</i>	<i>Agreements</i>	<i>Employees</i>	<i>Agreements</i>	<i>Employees</i>	<i>Agreements</i>	<i>Employees</i>	<i>Agreements*</i>	<i>Employees</i>
<i>Année</i>	<i>Conventions</i>	<i>Travailleurs</i>	<i>Conventions</i>	<i>Travailleurs</i>	<i>Conventions</i>	<i>Travailleurs</i>	<i>Conventions*</i>	<i>Travailleurs</i>
	<i>All Industries/Toutes les industries</i>							
1976	281	(44.1) 704,945 (50.3)	272	(42.7) 581,165 (41.5)	84	(13.2) 115,885 (3.7)	637	1,401,995
1977	297	(51.6) 551,790 (53.0)	247	(42.6) 450,065 (43.2)	33	(5.7) 38,870 (3.7)	577	1,040,725
1978	286	(42.4) 421,510 (32.1)	344	(51.0) 805,250 (61.4)	44	(6.5) 82,970 (6.3)	674	1,309,730

*Due to the possibility of a multi-province agreement having more than one settlement stage for one agreement, the total number of settlement stages may exceed the total number of settlement.

*Le nombre total de stades de règlement peut excéder le nombre total de règlement, étant donné la possibilité qu'une convention collective couvrant plus d'une province peut avoir plus d'un stade de règlement.

and will possess the detailed knowledge and awareness of its intent, a factor which is often critical in making effective administration of the agreement possible.

As with any other human system, the practice of collective bargaining in Canada has not been a pure reflection³ of the theory. For one thing, the *balance* of power which undergirds an atmosphere of mutual respect between employer and union is not always evident. This is particularly so when either party cannot "bargain from strength" because of inadequate resources such as financial support, size, strong affiliations and the like. Imbalance of power can create temptations for the *more* powerful to use that power arbitrarily against the less powerful. For another thing, the lockout was intended theoretically to be the employer weapon to counteract the strike weapon of the union, but until recently the lockout has not been used to any extent in Canadian industrial relations. This has contributed to power imbalance on occasion and it has placed added responsibility on government to control arbitrary uses of power.

In spite of such shortcomings, the adversary system was effective enough to cause the Government of Canada to legislate, in 1967 under the Public Service Staff Relations Act, a pattern of collective bargaining for its own employees in the public sector which embraced similar principles of confrontation, insofar as this was feasible. This was a step taken with good intentions and with an implicit faith in the viability of the adversary system. In retrospect, it has produced some unexpected consequences which merit consideration in the light of present circumstances. It is becoming increasingly evident that inconsistencies between theory and practice also exist in the public sector. Government now has a responsibility as an *employer* dealing with unions as well as a regulator of the private sector. This represents a new and significant dimension which has emerged within the past twelve years, meriting depth consideration in any analysis of the total adversary system in Canada.

For purposes of this discussion, public sector union members are considered to be those whose bargaining rights are established under the Public Service Staff Relations Act and whose employer is the federal government.

³ BROOKBANK, C.R., *The Swedish System of Industrial Relations*, Nova Scotia Department of Labour, 1968. A "free system of Collective bargaining", based on the principle of self-regulation and self-control by the parties, is perhaps best exemplified in Sweden. The extensive organization of Swedish workers in unions and of employers in employers' organizations has created a balance of power in that country which places strong constraints on abuses by one party towards the other, for fear of retaliation. It also evokes a sense of responsibility on both sides with respect to their potential power to affect the national economy.

It is extremely difficult, if not impossible, to analyze all public sector employer-union activities within the same context when the variations in legislation at the provincial level are so great and when further differences exist at municipal levels of government. There seems little doubt that the expansion of union activities in the public sector has added to the complexity of employer-union relations, particularly with respect to the adversary system, and that trend is central to much of the present analysis. While there are similarities across various levels of government with respect to patterns of employer-union relations which can be useful for comparing certain broad principles, the projection of a "model" relationship applying to all three levels would have to disregard a number of significant discrepancies.

For one thing, inclusion in the adversary system has given union members in the public sector a steady growth in numbers and in power which is now exceeding⁴ that of their counterparts in the private sector. Provincial governments have, for the most part, followed the lead of the federal government in its efforts to provide bargaining rights for public sector employees, with acquiescence if not encouragement by the employer. Private sector unionization, on the other hand, has remained stable⁵ or experienced a slight decline over the past decade while further efforts at organization have faced a considerable degree of informal reluctance on the part of private-sector employers. With this trend, it becomes apparent that public sector unions are in the process of accomplishing a degree of organization within a period of 12 years which private sector unions have never been able to achieve in Canada.

Public sector unions negotiating with the Federal Government are embracing the strike option⁶ in preference to compulsory arbitration in increasing numbers⁷. In the normal course of events, this will tend to increase

4 Corporations and Labour Unions Returns Act, 1976, pp's 74-75. In Public Administration, 461,807 of an estimated 685,000 workers were union members. This represents 67.4% of those eligible, and does not include 148,000 members of the Public Service Alliance of Canada. This sector has the highest percentage of workers unionized and is second only to manufacturing in terms of absolute numbers, the latter sector having 834,844 union members in an estimated potential of 1,919,000 (45.5%).

5 *Ibid.*, "In 1976, 32.2% of an estimated 8,631,000 wage and salaried workers in the major industry groups ... were members of labour organizations reporting under the Corporations and Labour Unions Returns Act".

6 The Public Service Staff Relations Act allows the Union a choice between two options (the right to strike or resort to binding arbitration) in the event that agreement cannot be reached through collective bargaining.

7 ANDERSON, V.C., and T.A. KOCHAN, "Collective Bargaining in the Public Service of Canada", *Relations Industrielles - Industrial Relations*, Québec, Vol. 32, No. 2, 1977, pp. 234-249.

the potential frequency of strikes in the public sector. While the design for confrontation between employer and union in the public sector is similar in principle to that of the private sector, the pattern which is emerging in practice reflects some significant differences. In the private sector, an employer may decide to "take a strike" with considerable hardship to himself but with substantially less difficulty for the general public in most instances.

In the public sector, however, it is often the general public which "takes the strike" if the employer decides to stand firm in the face of union demands. At that point, elected members of Parliament tend to find themselves in the position of risking their political futures if they do not make concessions which will achieve agreement and restore services. Such political pressures have not been a factor in private sector bargaining where confrontation has traditionally focused on economic arguments by both sides, and settlements tend to be reached in light of economic constraints rather than political pressures. Where the public interest may be seriously affected, government has intervened to protect it.

Use of the adversary system in the public sector is further complicated by the fact that government as *employer* does not resort to the lockout as a method for countering the strike option of the union. While such is theoretically possible, the idea of government denying services to the tax-paying public by locking out union members is inconsistent with the mandate⁸ of government to serve the people.

In further contrast to the private sector, the government as employer has less opportunity to opt for reduction of the work force as a means of reducing costs when pressed into major concessions through collective bargaining. Private sector unions can ensure that procedures for laying off workers are fair and consistent, but they can seldom prevent lay-offs. Many government workers have a form of job tenure, on the other hand, which protects them from public or political manipulation or abuse as "servants of the Crown" but which also does not allow them to be laid off or replaced easily by technology and other "efficiency" measures.

Perhaps the most important unexpected consequence of the emergence of public sector bargaining is the increasing tendency of major public sector confrontations to be perceived as pace-setters for subsequent negotiations. Those familiar with the industrial relations scene in Canada will acknowledge the traditional role of major employers and unions in the

⁸ Until fairly recently, work stoppages through the use of the strike have also been rejected as an option by some unions such as the Firefighters. Such principles are in the process of change; in Sweden, the government as *employer* has used the lockout against unions.

private sector as pace-setters in negotiations. In the steel industry, automobile manufacturing, forest products and the like, strong unions have faced strong employers to argue their cases in the light of economic considerations, including those of foreign trade and international competition. With a strong power balance between employers and unions, settlements in these areas are not achieved without substantial consideration of the facts of economic life, and they have tended to establish a level of wage increase which subsequent negotiators on both sides come to use as a guideline. If this pacesetting function is increasingly assumed by public sector units at the national level, albeit unintentionally, the parameters of bargaining will tend to become increasingly political and economic constraints such as productivity or markets will be less significant in the context of collective bargaining.

Some significant differences between public and private sectors with respect to union affiliation (the right of association) are also worth noting here. Approximately one-third of those employees in the private sector in Canada who are eligible for union membership are, in fact, members of unions; this percentage has remained relatively stable over the period in which public sector unions have come to the fore. If private sector unions wish to organize any of the remaining two-thirds, a procedure which usually requires potential members to sign cards and pay dues precedes the application for certification of a new bargaining unit. This procedure is based in large part on the assumption that private sector employees must demonstrate a sincere desire for union membership, a motivation which extends beyond any simple gesture. As a protection for those who may not want to be unionized, a vote is often required to insure that a majority are in agreement with the formation of the new bargaining unit. The employer in the situation may, and often does, contest the application. In many situations, the worker who actively indicates an interest in the formation of a union local *perceives* himself to be risking his job if the certification is not approved - whether or not that fear is justified. Whatever the complex reasons for lack of interest in unionization and collective bargaining on the part of private sector employees as compared with public sector employees, the fact remains that the private sector work force is still relatively unorganized.

It has already been pointed out that union membership in public administration has been growing steadily with the result that the percentage organized in that sector now exceeds those of the various private sectors. There are no constraining procedures for union certification in the public sector comparable to those in the private sector, nor does there appear to be any presumed "conflict of loyalties" implied in union affiliation for the

public sector employee. Has the question ever been raised, as it has been implicitly in the private sector, that there may be a need to protect public sector employees from union affiliation if they do not wish to be organized? If not, why should there be this discrepancy in certification procedures between the public and private sectors? Why should the ground rules for eligibility to engage in collective bargaining, for partnership in the adversary system, be different in principle if the "right to representation in collective bargaining" is similar in principle in both sectors?

While private sector employees have the right, in law, to be represented by unions for purposes of collective bargaining, there is no statement of principle in Canadian labour legislation that establishes the legitimacy of this right to the point that interference with it can be regarded as a serious offence. By contrast, consider the following excerpt from the United States Labour Management Relations Act⁹.

"It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

The legislation from which the above quotation is taken was introduced in 1947, and amended in 1959. If there is a similar policy - or even philosophy - extant in Canadian labour-management relations, it is not established in any relevant legislation, to the best of my knowledge.

Dennis McDermott, President of the Canadian Labour Congress, has publicly stated that unions are still not accepted by a large segment of Canadian employers as full partners in the industrial relations process. If such is the case, can the adversary system be expected to develop as the basic component of a mature industrial democracy in Canada? If the right to union representation can be fully accepted, in practice, in the public sector, resulting in a substantial growth in union membership over the past twelve years, should this right not also be reinforced and not impeded in the private sector?

There is a somewhat similar lack of organization on the employer side in the private sector. Although private sector employers find common cause

⁹ BEAL, E., E. WISHERSHAM, and P. KIENEST, *The Practice of Collective Bargaining*, Georgetown, Ontario, Irwin-Dorsey Ltd., 1972, p. 710.

in organizations such as the Canadian Manufacturers Association, the Canadian Construction Association, and the Canadian Chamber of Commerce, none of these employers' organizations exist for the primary purpose of dealing with unions. This is in sharp contrast to the situation in countries like Sweden where the large majority of both employers and employees are organized for the purpose of making industrial democracy a way of life rather than a theoretical concept.

For present purposes, the significance of the Swedish experience lies in the fact that since 1938 a free system of collective bargaining, built upon the adversary principle, has developed into a full-fledged industrial democracy in the private sector based on the sense of integrity and responsibility - not to mention skill - that has accompanied a high degree of organization on both sides. This has not happened in Canada, and in the light of present trends is not likely to do so in the foreseeable future. As a consequence, the various European formulas for industrial democracy and worker participation, which require elaborate organizational frameworks for effective administration, will not be appropriate here at present. Participation implies involvement, and the *majority* of employers and workers in the private sector in Canada are not involved in our free system of collective bargaining because they are not organized to participate.

In some European countries, adversary systems have matured into industrial democracies; in the private sector in Canada, the adversary system is still in early adolescence. In the industrial adversary system, employers and unions are opponents; they are *not* enemies. The same type of relationship prevails between Government and Loyal Opposition in our political adversary system. Would the critics of the adversary system in industrial democracy also consider the adversary system in political democracy in Canada to be out of date? Would they prefer a more "peaceful" Parliament - without an official opposition?

In spite of a growing body of opinion in some quarters that our problems of high inflation, high unemployment, lagging growth rate, and rampant industrial disputes are due to an irresponsible and ineffective adversary system in the private sector, there are also those¹⁰ who feel that the concept of industrial democracy is gaining ground in Canada. The definition advanced for industrial democracy rests upon breaking down "the traditional dichotomy between labour and management to allow workers more authority and involvement in structuring and controlling their work environment".

¹⁰ NEWTON, Keith, "The Theory and Practice of Industrial Democracy: A Canadian Perspective", Economic Council of Canada, *Discussion Paper No. 94*.

If there is to be any reasonable and ready reconciliation between those who advocate modification or rejection of the adversary system and those who foresee industrial democracy over the immediate horizon, the *power and integrity* of those employers and unions *in the private sector* who have built the traditional system in Canada - *and made it work effectively* - must be preserved and fostered. The major theme of this paper is that, by accident more than by design, the trend is in the opposite direction.

In the light of our analysis to this point, it may be more valid to redefine the problems surrounding our troubled industrial relations system by rephrasing some of the questions. In the public sector in Canada, for example, where is the balance of power between employers and unions? When the public sector union has the power to strike, does the employer have the power to take a strike, to lockout, to reduce the work force in the face of increasing costs? Is the adversary system functional for the public sector, where it has been introduced by adaptation rather than developed from within, but where it is growing apace? In the light of present trends, will the adversary system in the private sector have an opportunity to mature into industrial democracy or will it die a premature death?

In the past decade, governments have not only emerged as major employers dealing with unions but they have also increased their activities as regulators of the private sector, in the public interest. Through the Anti-Inflation Board in particular, the federal government increased controls over the collective bargaining relationship between powerful employers and powerful unions in the interest of the economy. On the national level also, the Trudeau government demonstrated a growing concern for unorganized (and less powerful) workers by the introduction of changes to the Canada Labour Code. The intent of government in these efforts is readily apparent, although it has been argued elsewhere that results have been less than expected. What are some of the *unexpected* results of these activities upon this relatively immature adversary system which is presently the subject of considerable criticism?

In the normal process of collective bargaining, each party comes to the table with a set of initial demands on the other party and these are put up for negotiation. At the same time, each side has a general (if not specific) idea of its own point of final resistance, beyond which it will resort to strike or lockout rather than make further concessions. This resistance point, of course, is not presented for immediate public scrutiny because it represents the minimum of achievement rather than the optimum. While bargaining around initial demands, each party is attempting to discover the resistance

point¹¹ of the other, hoping in the process that common ground can be discovered at a point in excess of the minimum and without resort to work stoppage. This is the very essence of a free system of collective bargaining and of the adversary process. It is extremely complex in operation because each concession must not only be negotiated with representatives from the other side but must also undergo some process of ratification by those "invisible committees" whom the negotiators represent at the bargaining table. This is particularly true for union negotiators, who are elected rather than appointed, but reputations and expectations are also at stake on the management side.

What happened to this collective bargaining process when the government, through the Anti-Inflation Board, superimposed a maximum final wage settlement before the process began? While this type of intervention did not protect the national economy against inflation, it aborted collective bargaining by a *premature* public declaration of the employer's resistance point on wage increases. The customary bargaining procedures were altered drastically because the adversaries could not perform their customary roles, resorting instead to strategies for dealing with the external control mechanism, the Anti-Inflation Board.

Under these circumstances, a strike against the employer was tantamount to a strike against the government with the employer relegated to the position of frustrated "middle-man". If the final settlement exceeded the guidelines, and wage increases were rolled back by the Anti-Inflation Board, the union might still expect the full settlement to take effect when the Board control was removed. In any event, the self-regulatory characteristics of the adversary system were subject to distortion and dissipation, along with the sense of responsibility and commitment which generally accompanies them.

Key negotiators, experienced in collective bargaining, know and understand how to function¹² effectively in the role. They also know and understand how their adversaries must function in order to meet their responsibilities. Effective negotiations depend on mutual awareness of these "patterned systems of behaviour", and when the pattern is broken by the

¹¹ WALTON, R., and R. MCKERSIE, *A Behavioral Theory of Labor Negotiations*, Toronto, McGraw-Hill Book Co., 1965, p. 420.

¹² It is acknowledged that the behavioural or functional analysis of employer-union relations represents a departure from the traditional methods of interpretation. It is the contention of this writer, however, that critical factors affecting the field of industrial relations are not considered within the more traditional reference points of labour legislation and labour economics. Employers and unions are represented by people who behave primarily according to the responsibilities of their roles as "ombudsmen" for their constituencies.

external imposition of constraints, neither party can accurately understand or anticipate the behaviour of the other. Not only is the “dynamic” factor lost in negotiations when the parties cannot move beyond predefined limits, but it is also unlikely that any sense of true commitment, normally based on legitimate agreement, will be felt by the parties towards the final settlement. Under these circumstances, erratic and unorthodox behaviour - stemming primarily from frustration - *should not be unexpected*.

For reasons very similar to those just outlined, the parties involved in private sector negotiations have been traditionally and adamantly opposed to the concept of compulsory arbitration. To a *lesser* extent than the A.I.B. guidelines (which were also reinforced by extreme arbitration power), compulsory arbitration aborts the function of self-determination and *pre-conditions* much of the negotiating process, thereby distorting bargaining table behaviour.

At the same time that the government of Canada was attempting to control, in the interests of the economy, the adversary system as it is reflected in the relationships between private sector employers and unions, it was also concerned for those many unorganized workers in the private sector who do not have the benefit of union affiliation. This concern of government was expressed in amendments to the Canada Labour Code¹³ introduced into Parliament in 1978 which provided an additional statutory holiday, additional vacation pay, and other benefits for employees in airlines, railways, banking, trucking, broadcasting, communications, port operations and grain handling. Where these employees were not members of unions with these benefits already available, these developments would be welcomed. By the good graces of government, the wages and working conditions of the less powerful, unorganized workers were brought closer to those of the more powerful, organized workers. The intended results are clear and unequivocal.

Be that as it may, what are some of the *unexpected* results of these legislative changes, particularly for the adversary system in the private sector? Since many of these workers are not organized to represent themselves, the government in effect becomes the “negotiator” for them with their employer. This is a unilateral rather than bilateral process; the employers, although required to accept the increased cost which these extra benefits represent for their operations, are not in the adversary relationship to government. They must therefore absorb these costs, increase the price of their services, or otherwise make adjustments to decisions which are not

¹³ Bill C-8, An Act to Amend the Canada Labour Code, 3rd Session, 30th Parliament, 26 Elizabeth II, 1977, The House of Commons of Canada.

directly subject to their managerial control. For their part, unions in the private sector will tend to support these trends as progressive, feeling that standards established for organized workers are being used as the model to be emulated. On the other hand, the private sector unions have not been successful in organizing the majority of unorganized workers in the private sector over a considerable period of years.

Is it not reasonable to expect that government acting as "business agent" for unorganized workers will *increase* the disinclination of the unorganized to join unions? Will this not discourage the expansion of private sector unions, in the long term, and serve as a further deterrent to the emergence of the free system of collective bargaining into the maturity of an industrial democracy?

If government is willing to act on behalf of unorganized workers, why should those workers bother to take advantage of their legal right to be represented by unions? Why should they accept the responsibility of paying union dues, attending union meetings, accepting leadership responsibilities which may place them in the adversary role vis-a-vis their employers? Why should they spend time, without pay, as union stewards ensuring that the new concessions are in fact provided by management? It is assumed, of course, that government agents are sufficient - in knowledge and in numbers - and available to perform these functions on behalf of the unorganized. Without the ability to process grievances, the new benefits may not be administered fairly. In the emergent industrial democracy foreseen for Canada, can workers be expected to assume greater authority and control over their work environment without *themselves* accepting some form of responsibility for the system?

In theory, a free system of collective bargaining is expected to provide a degree of self-regulation of the economy by employers and unions. In recent years, however, strong emphasis has been placed by government on the concept of a tripartite relationship involving employers, unions, and government in joint problem-solving - with the expectation of mutual benefits for the parties and for greater economic control. Should this be perceived as an extension of the adversary system or as the elimination of it? For the adversary system to function as the key component of an industrial democracy, a reasonable balance of power is required. If such is the intention, how can that balance be achieved when two-thirds of workers in the private sector are not members of unions and when their employer counterparts are not directly organized for this type of participation? From the viewpoint of government, which legitimately represents the total population, could the decision-making process be *fully* shared through a tripartite organization,

instigated by government, as it is between employers and unions under the adversary system of the private sector? How would unorganized employers and workers be represented?

Government spokesmen on the Ministerial level tend to claim that the responsibility for making economic policy for the nation cannot be shared: it is the function of the government through Parliament. Under this constraint, it would follow that the roles of employers and unions on a tripartite Council would have to be advisory in nature, with control over final decisions resting with government. This represents a significant departure from the bipartite system of free collective bargaining within which employers and unions share both authority and responsibility for reaching agreement and for its implementation. If employers and unions are not given the opportunity for total participation in a tripartite agreement, can they be expected to reflect the sense of commitment and responsibility which - as a matter of record - has been characteristic of the adversary system in the private sector in Canada?

It is possible for government to initiate a form of tripartite negotiations which would not only provide greater involvement of employers and unions in the concern for the national economy, but would also retain the integrity of the free system of collective bargaining? If the present analysis of the situation is valid, the most feasible approach would appear to be through the establishment of a Canada Labour Relations Council consisting of employers and unions from the pace-setting industries - steel, automobiles, forest products, construction, and the like - and provide them with resources to *negotiate* prices and income guidelines for collective bargaining on the national level. Within these industries is found the economic awareness, the negotiating skill, and the truest *balance* of power required to make the adversary system effective.

Resources of the Economic Council of Canada could be placed at their disposal; in this and other ways, government could *enable* them to establish - on a continuing basis - the economic framework within which all subsequent bargaining in both public and private sectors could be undertaken. Where appropriate, Regional Councils could be established on the same basis in various parts of the nation to interpret regional variations and to gather or disseminate regional information. These units, in turn, could be supported by regional information centres.

According to National Income and Expenditure Accounts (First Quarter 1978) published by Statistics Canada, the gross national product for Canada in 1977 was approximately 210 billion dollars. During the same period, Canada exported over 43 billion dollars worth of products, listed in

the Summary of External Trade, December 1977, also produced by Statistics Canada. Approximately 21 per cent of our GNP in 1977 depended upon exports, and the bulk of those exports were in the form of metals and minerals, fabricated materials (wood, paper, iron, steel etc.) and machinery or transportation equipment. These commodities are produced in those organizations where employer-union relations tend to be most highly organized and developed. Pace-setting bargaining in those areas will therefore tend to have a major impact on the total economy.

It goes without saying that this type of tripartite approach would be no less complex to administer than any other system. On the other hand, it would build upon the traditional free system of collective bargaining and expand upon the established roles of the parties, including that of government, rather than *denying* many of these legitimate functions of the adversary system. It would also retain the economic milieu rather than the political arena as the focal point for collective bargaining, building upon established bipartite relationships. Perhaps of most importance, it would initiate a framework within which a Canadian pattern of industrial democracy could develop from the present state of "adversary system adolescence".

In this analysis, it has been the intention to increase awareness of the implications, for the future of industrial relations in Canada, of major developments in employer-union relations over the past decade. It has proceeded on the assumption that the intentions of all parties are sensible and justifiable from their own perspectives. An effort has also been made to illustrate that the "road to Hell" *can* be paved with the unexpected results which can arise from good but over-simplified intentions. The only "villainy" in question here is that which must be shared by those who disregard the longer-range implications of such actions in favour of superficial solutions to current problems.

Given the present trends unaltered and even accentuated, the emergence of industrial democracy as a future method for handling Canadian industrial relations in a balanced partnership with government is improbable. Following the successful pattern of their public sector counterparts, private sector unions will tend to become more political in their strategies and activities. Shirley Carr, executive vice-president of the Canadian Labour Congress, is quoted as stating in New York¹⁴ that "it is becoming evident that labour's share of the national income will be determined less and less by collective bargaining, and more through political decision-

¹⁴ "Carr Sees Need for More Labour Muscle", Peter Meerburg, Halifax Mail-Star, December 10 th, 1977.

making". This view is reinforced by the fact that the national day of protest organized by the C.L.C. on October 14, 1976, resulted in 830,000 man-days lost - as a *political gesture*.

The more the legitimate role of unions as an equal partner in the adversary system declines, the more probable will be the transition to political avenues as a more effective channel of union power. With many private sector employers disinclined to accept organized labour as a full partner even in a bipartite relationship, the union role as anti-establishment "underdog" will be accentuated. In the face of continued employer-union conflict, governments will feel compelled to institute further controls on both public and private sectors or to allow adverse economic circumstances and high unemployment to serve as moderating factors.

Before we relinquish entirely the principle of the adversary system in employer-union relations, why not consider formalizing the acknowledged power of both parties in the pace-setting industries as an option to imposed controls? If "big government" is assumed to take responsibility equal to its power, why not place a similar responsibility on "big business" and "big labour"? Who is more knowledgeable in the field of employer-union negotiations? Who has more at stake? These units should be further *reinforced*, rather than *controlled*, on the basis of a performance record in the private sector which has been marked as much or more by success as by friction.

There is no simple formula to be found, either in Europe or in the United States, which can be superimposed upon the complex and troubled Canadian scene to resolve all labour-management problems. From the cultural and historical point of view, the Canadian system of industrial relations is more like the American pattern than European models, but government influence and activity in recent years has begun to alter our course. We now stand in the middle of our *own unique dilemma*. The solution, if any, will emerge from an increased awareness of the *strengths* as well as the weaknesses of our own system rather than in emulating any other.

L'antagonisme dans les relations professionnelles au Canada: fléau ou bénédiction

À la fin de 1977, les statistiques publiées par l'Organisation internationale du travail plaçaient le Canada et l'Italie au premier rang de 55 pays pour le temps perdu des grèves en 1976. Ce n'est pas la première fois dans l'histoire des relations profes-

sionnelles au Canada qu'une telle situation prévaut. La chose s'est produite en 1919 et en 1946. Les statistiques estimatives de 1977 laissent prévoir un nombre beaucoup moins considérable de grèves en 1976 et il est possible que le sommet ait été atteint et qu'il soit chose du passé présentement. Pourquoi notre régime de relations de travail, qui a en général donné lieu chaque année à des règlements pacifiques dans 90 pour cent des cas, ne semble-t-il pas triompher du syndrome de crise d'une fréquence élevée de grèves?

Le système d'antagonisme est à la base des relations professionnelles au Canada. Il est formé par tradition au Canada dans le secteur privé et il est fondé, idéologiquement, sur le postulat qu'un employeur fort et un syndicat fort, chacun conscient de la puissance de l'autre peuvent négocier une convention collective qui intègre les intérêts des deux parties plus efficacement que toute autre méthode qui donnerait à l'une ou à l'autre (ou une tierce partie) le pouvoir de prendre les décisions pour les deux. L'antagonisme de ces deux groupes, dans une espèce de «balance du pouvoir», a tourné autour du partage des résultats de l'effort économique, pendant que le gouvernement assurait par des mesures législatives les rapports entre les parties en tant que gardien de l'intérêt public. Quelles furent, au cours des derniers dix ans, les conséquences pour le système d'antagonisme au Canada du comportement des employeurs, des syndicats et de l'État? Puisque la pratique de la négociation collective au Canada n'est pas une pure question théorique, est-ce que l'antagonisme n'est plus à point comme le laissent entendre certaines critiques?

Le système d'antagonisme fut assez efficace pour décider le gouvernement fédéral à adopter en 1967, par la *Loi des relations de travail dans la fonction publique*, un modèle de négociations collectives, pour ses propres employés du secteur public qui contenait des principes identiques d'antagonisme dans la mesure où la chose était possible. Le gouvernement détient maintenant une responsabilité comme employeur de travailleurs syndiqués tout en restant législateur en ce qui concerne le secteur privé. Toutefois, ceci a eu des conséquences notables sur le système d'antagonisme. En particulier, l'inclusion dans le système d'antagonisme des syndiqués du secteur public a favorisé leur croissance continue et leur puissance à un point tel qu'elles excèdent aujourd'hui celles de leurs homologues du secteur privé. L'employeur des secteurs publics tend aussi à se comporter différemment de son homologue du secteur privé face à la grève. L'employeur du secteur privé peut décider de «subir la grève», qui lui cause beaucoup de tribulations, mais qui lui occasionne aussi beaucoup moins de difficultés en tant que le public en général est concerné dans la plupart des cas. Dans le secteur public cependant, c'est souvent la population qui «subit la grève», si l'employeur décide de tenir son bout. Les membres élus du Parlement ont tendance à se trouver dans la situation de jouer leur avenir politique s'ils ne font pas les concessions qui permettent un accord et restaurent les services. Le gouvernement en tant qu'employeur ne recourt pas habituellement au lock-out pour contrer l'acte de grève de la part du syndicat. Bien que le lock-out n'ait pas été utilisé beaucoup par les employeurs du secteur privé, il a toujours été considéré comme la contrepartie de la grève et la fréquence de son utilisation par les employeurs du secteur privé s'accroît. D'autres options, moins accessibles à l'employeur du secteur public, sont la rééducation possible de la main-d'oeuvre comme moyen de réduire les coûts ou encore le remplacement des syndiqués par l'introduction de technologies nouvelles.

Une autre conséquence imprévue de l'émergence de la négociation collective dans le secteur public est la tendance croissante de confrontations importantes qu'on

perçoit comme des précédents pour des négociations subséquentes. Cela a toujours été le rôle traditionnel des grands employeurs et des grands syndicats dans le secteur privé. Dans l'industrie de l'acier, la fabrication des automobiles et l'exploitation des produits forestiers et autres, des syndicats puissants ont obligé des employeurs puissants à débattre leur cas à la lumière de considérations économiques, y compris celles du commerce extérieur et de la concurrence internationale. Grâce à une «forte balance du pouvoir entre les employeurs et les syndicats, les ententes dans ces industries ne sont pas atteintes sans une analyse sérieuse des faits de la vie économique et ils établissent des taux d'augmentation des salaires dont les négociateurs suivants tiennent compte comme lignes directrices. Si le rôle de l'établissement des précédents est de plus en plus assumé par les groupes du secteur public, la négociation tendra à devenir davantage politique et les contraintes économiques, comme la productivité ou l'état des marchés, auront de moins en moins de signification.

Il n'y a aucune procédure contraignante en matière d'accréditation dans le secteur public qui soit comparable à celles qu'on retrouve dans le secteur privé et il apparaît n'y avoir aucun «conflit de loyauté» présumé découlant de l'affiliation syndicale pour l'employé du secteur public. Alors que le nombre des syndiqués du secteur public augmente constamment pendant que celui du secteur privé reste relativement stable à un tiers environ de la totalité de la main-d'œuvre, pourquoi devrait-il y avoir cette différence dans le processus d'accréditation entre les secteurs public et privé? Pourquoi les règles fondamentales d'admissibilité à la négociation collective pour les associations dans un même système d'antagonisme sont-elles différentes en principe entre les deux secteurs «si le droit de représentation dans la négociation collective» est le même en principe dans les deux secteurs?

Il y a d'une certaine façon un manque d'organisation identique du côté des employeurs dans le secteur privé. Bien que les employeurs du secteur privé possèdent des intérêts communs dans des organisations comme l'Association canadienne de la construction, la Chambre de commerce du Canada, aucune de ces organisations d'employeurs n'existe spécifiquement pour traiter avec les syndicats. Il y a un contraste frappant avec la situation qui existe dans des pays comme la Suède où la grande majorité des employeurs et des salariés sont regroupés en vue de faire de la démocratie industrielle un mode de vie plutôt qu'un concept théorique.

Dans le secteur privé au Canada, le système d'antagonisme est encore dans l'adolescence. Sous le système d'antagonisme les employeurs et les syndicats s'opposent; ils ne sont pas ennemis. Le même type de relations prévaut entre le gouvernement et l'opposition sous le régime de confrontation politique. S'il doit y avoir une réconciliation raisonnable et prompte entre ceux qui préconisent la modification ou le rejet de l'antagonisme et ceux qui prévoient la démocratie industrielle au Canada dans un avenir rapproché, la force et l'intégrité des employeurs et des syndicats du secteur privé, qui ont bâti le système traditionnel et en ont assuré l'efficacité, doivent être préservés et favorisés. Le thème central de cet article, c'est que, accidentellement plutôt qu'intentionnellement, la tendance va présentement en sens contraire.

Dans son rôle de protecteur de l'intérêt public, l'État a limité le libre système de négociation collective dans le secteur privé par une législation accrue. L'influence de la Commission de lutte à l'inflation peut avoir contrôlé les augmentations de salaire, mais elle a aussi bouleversé le processus de négociation et diminué la responsabilité des employeurs et des syndicats dans la négociation de conventions collectives viables. Les changements récents au *Code canadien du travail* ont procuré de

nouveaux avantages aux travailleurs non syndiqués, mais ils ont aussi placé le gouvernement dans le rôle d'agent d'affaires pour les travailleurs inorganisés et ils ont imposé aux travailleurs des coûts unilatéraux que ceux-ci ont été obligés d'assumer. En même temps, le gouvernement a demandé aux employeurs et aux syndicats du secteur privé de s'engager dans des relations tripartites qui peuvent assurer dans une certaine mesure l'autorégulation de l'économie. Ceci est-il perçu comme une extension de l'antagonisme ou son élimination? Comment une «balance du pouvoir» à trois dimensions peut-elle être réalisée quand les deux-tiers des salariés du secteur privé ne sont pas membres de syndicats et que la contre-partie patronale n'est pas directement organisée pour ce type de participation? Simultanément, les porte-parole du gouvernement affirment que la responsabilité d'établir une politique économique pour l'ensemble de la nation ne peut pas être partagée, qu'elle est la fonction du gouvernement par l'intermédiaire du Parlement. Sous de telles contraintes, il s'ensuivrait que le rôle des employeurs et des syndicats dans un comité tripartite ne devrait être que consultatif, le contrôle des décisions finales demeurant l'apanage de l'État. Ceci signifie un abandon significatif du système bipartite de la libre négociation collective où les employeurs et les syndicats partagent l'autorité et la responsabilité d'en arriver à des accords et de les mettre en oeuvre.

Comme moyens de faire face à plusieurs de ces problèmes d'une façon qui utiliserait, sans en abuser, les forces du système d'antagonisme dans le secteur privé, on peut suggérer une approche plus praticable par l'établissement au Canada d'un Conseil des relations de travail formé des employeurs et des syndicats des industries d'avant-garde - les industries de l'acier, de l'automobile, des produits de la forêt et de la construction - en leur fournissant les outils pour négocier les prix et les lignes directrices en matière d'augmentation des salaires en vue de la négociation collective au niveau national. C'est dans ces industries qu'on trouve la vigilance économique, l'habileté à négocier et la vraie «balance du pouvoir» requises pour rendre efficace le système d'antagonisme. Les ressources du Conseil économique du Canada pourraient être mises à leur disposition. De plus, le gouvernement pourrait leur permettre d'établir, sur une base permanente, des cadres économiques à l'intérieur desquels on pourrait s'engager dans les négociations ultérieures à la fois dans les secteurs public et privé.