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Rights disputes procedures in Canada and New Zealand

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This paper examines the resolution of rights disputes in Canada and New Zealand. It begins with an overview of the statutory distinction between interest and rights disputes and traces the development of rights disputes procedures in both countries. This is followed by a comparison of the characteristics of rights disputes procedures in each country, e.g., scope and third-party involvement. The final section considers the performance of disputes procedures, including whether they act as a strike substitute and provide timely and cost effective dispute resolution. The implications of these findings for employment justice also are considered.

1. Introduction

Although Canada and New Zealand share a British heritage and have adopted labour policies that encourage government intervention for the prevention and settlement of industrial disputes, each has developed a distinctive approach to the settlement of disputes during the life of a collective agreement or an award. As well, the distinction between interest and rights disputes commonly found in North America and northern Europe, was not formally adopted in New Zealand until 1973.[1]

The primary objective of this paper is to provide a broad comparison of dispute resolution in the private sector. It is recognised that within each country the methods of dispute resolution may vary, e.g., between the private and public sector or among the federal and provincial jurisdictions in Canada. Although a detailed review of these differences is beyond the scope of this paper, occasional references are made to significant departures from national patterns of dispute resolution.

Conflict arising out of contract negotiations normally is described as an interest dispute, whereas conflict associated with contract interpretation or administration is referred to as a rights dispute. Government intervention initially focussed on the negotiation of collective agreements and the establishment of awards. By the early 1900s, New Zealand had adopted a system of compulsory conciliation and arbitration, whereas Canada introduced compulsory conciliation (i.e., the establishment of conciliation boards with the authority to investigate disputes and make non-binding recommendations for settlement).

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1 However, the existence of rights disputes was acknowledged in the Industrial Conciliation and Arbitration Act 1951 which provided that any award or agreement *may* create local disputes committees to settle any dispute or difference between the parties, including any matter arising out of or connected with an award or agreement.

In North America, the recognition of rights disputes and the development of grievance and arbitration procedures gained impetus in the 1930s when collective bargaining moved from the organisational stage to the contract development stage (Slichter, Healy and Livernash, 1960). The widespread adoption of private procedures in the United States provided a model for Canada. To facilitate the peaceful settlement of rights disputes, Privy Council Order 1003 (1944) prohibited strikes and lockouts during the life of a collective agreement and required that all unresolved disputes be submitted to final and binding arbitration. Following World War 2, federal and provincial collective bargaining laws adopted this approach. All collective agreements must provide for the final resolution of rights disputes by arbitration or *some other means*. The vast majority of collective agreements have adopted grievance arbitration as the method of dispute settlement. Legislative policies "favoured the general withdrawal of the courts and of direct economic action from the field of contract enforcement, ... and their replacement by a comprehensive system of grievance arbitration" (Adell, 1970, p. 166).

In general, Canadian labour law requires collective agreements to provide for the arbitration of all differences between the parties. It also contains a model arbitration clause which specifies how arbitration board members are to be selected, time limits and what constitutes a majority board decision. If the parties fail to incorporate an arbitration procedure in their agreement or include one that does not meet the minimum statutory requirements, the model clause is deemed to form part of the collective agreement. Additionally, there are numerous legal ground rules for grievance arbitration, e.g., the appointment of arbitrators[2] and the enforcement of arbitration awards. Although the legal framework governing rights disputes may appear considerable, the parties are free to design their own internal grievance procedures and have wide latitude to negotiate arbitration procedures which go beyond statutory minima.

In New Zealand, no attempt was made to distinguish interest and rights disputes and develop grievance procedures throughout most of the twentieth century. There have been several reasons for this. First, most employees were covered by awards that established minimum working conditions on an industry-wide or district basis. Since these conditions could be supplemented by negotiations between unions and individual employers, it was difficult to distinguish interest disputes from rights disputes. Second, at the workplace level, there was and continues to be a minimum of formal rule-making. Moreover, the prevalence of unwritten customs and practices made the rights-interest dichotomy less meaningful (Geare, 1983). Third, multi-unionism at the enterprise level and award proliferation made it difficult to establish good relations and communications necessary to develop uniform procedures to handle rights disputes.

Notwithstanding these factors, it was widely acknowledged that workplace grievances constituted a persistent and major source of work stoppages. In the early 1970s, New Zealand moved toward the North American model by making a distinction between interest and rights disputes. This was first recognised in the Industrial Conciliation and Arbitration Amendment Act 1970. It specified a voluntary procedure for wrongful dismissal and a mandatory procedure for disputes of rights. This was prompted by growing labour unrest in the 1960s and pressure from employer representatives who had visited the United States and were impressed by collectively bargained grievance procedures. Support for grievance procedures came not only from employers wishing to prevent strike action over dismissals, but unions (particularly the weaker unions) seeking compensation and/or reinstatement for dismissed workers (Geare, 1983). There was a

2 Where the parties are unable to select an arbitrator, the appropriate Minister of Labour may be asked to make an appointment. A number of expedited grievance arbitration procedures require Ministerial appointments of arbitrators or give a labour relations board jurisdiction to arbitrate grievances. Although there are no national data on the proportion of appointments made by government departments or agencies, there is clearly a greater public aspect to arbitration in Canada than in the United States (Rose, 1989).

general concern with deficiencies in the common law handling of dismissals, e.g., employers were not required to give reasons for dismissal or justify any reasons, and reinstatement was not available as a remedy (Anderson, 1988).

The Industrial Relations Act 1973 required that all awards and agreements incorporate 2 statutory procedures, one for disputes of rights (i.e., the interpretation, application or operation of an award or agreement) and the other for personal grievances (unjustifiable dismissal and other employer actions which disadvantage an individual employee). A mechanism was established which permitted the parties to modify the statutory procedures or develop alternative grievance procedures. The statutory procedures provided for the establishment of grievance and disputes committees, mediation and arbitration. Thus, as in Canada, the procedures provided for the arbitration of all differences pursuant to an award or agreement. While the Industrial Relations Act 1973 was a significant development, the need for reform was recognised in the Government's Green Paper on industrial relations (Department of Labour, 1985). As described below, the Labour Relations Act 1987 introduced a number of changes, including a broader definition of personal grievances, greater accessibility to the procedures and establishment of the Labour Court to succeed the Arbitration Court.[3] The revised statutory procedures were extended to government workers by virtue of the State Sector Act 1988 and to 6 industries previously covered by other labour laws (Hince and Vranken, 1989).

2. Characteristics of grievance procedures

Table 1 summarises the major characteristics of grievance procedures. Four features are compared: (1) coverage; (2) structural characteristics; (3) third party intervention; and (4) compliance.

Coverage

Two central aspects of coverage are the scope of grievable issues and access to grievance procedures. In general, the protection provided by grievance and arbitration procedures in Canada is determined by the substantive provisions of the collective agreement. The scope of collective bargaining allows the parties to negotiate over any and all issues they wish to pursue. As a result, collective agreements will reflect the interests and relative bargaining power of the parties and will define the rights and obligations of the parties. They also contain elaborate grievance and arbitration clauses to facilitate the administration and enforcement of the collective agreement. In designing these clauses, the parties must satisfy the statutory requirement for final and binding arbitration of all unresolved differences arising from the collective agreement. The latter requirement prevents the parties from excluding designated contract terms from grievance arbitration as is permissible in the United States.

3 The new law reorganised the Arbitration Court into the Arbitration Commission (interest disputes) and the Labour Court (disputes of rights, personal grievances and enforcement). Hereinafter, the term Court is used in the text.

Table 1: *Selected features of grievance and arbitration procedures*

Characteristic	Canada	New Zealand
1. Coverage	The parties negotiate comprehensive collective agreements with elaborate grievance and arbitration procedures. All disputes involving the collective agreement are subject to arbitration.	Prior to 1987, negotiations were limited to "industrial matters" and statutory procedures were narrow in scope. Since 1987, "industrial matters" and the statutory procedures have been broadened.
2. Structural characteristics	There are detailed multi-step procedures with hierarchical appeals; unresolved matters may be referred to arbitration.	Statutory procedures are primarily concerned with the establishment and operation of tripartite committees. Some details are provided concerning settlement procedures prior to the committee stage in the case of personal grievances.
3. Third-party intervention	There is a system of quasi-public arbitration. Arbitrators are selected on an ad hoc basis and cases are heard by single arbitrators or tripartite boards.	Disputes and personal grievance committees are chaired by government-employed mediators. If a matter is not settled at that stage, it may be referred to the Labour Court.
4. Compliance	The law prohibits mid-contract work stoppages and substitutes arbitration as the final and binding method of dispute resolution. Arbitration awards are enforceable in the courts.	The statutory procedures provide for final and binding without work stoppages. In the past, enforcement has depended on voluntary compliance. Since 1987, the Labour Court has been given broader powers to order compliance with procedures.

Grievances may be initiated on behalf of any employee covered by a collective agreement (i.e., union members and non-members alike) and typically involve individual, group or union policy grievances. Frequently grieved issues include discipline, discharge, seniority, wages and other payments. For a grievance to be arbitrable, the matter in dispute must be founded on a violation of the collective agreement. Moreover, most collective agreements stipulate that an arbitrator is prohibited from making a decision

which is inconsistent with the collective agreement or would alter, modify, amend, or add to its terms.

In New Zealand, disputes procedures initially provided narrower coverage and protection than is found in Canada. Whereas the parties could bargain over any lawful issue, prior to 1987, the scope of bargaining was defined by statute to include "industrial matters". Although the term "industrial matters" appeared to be broadly defined, it was interpreted restrictively by the courts. In a strict sense, this meant the scope of negotiations could be confined to a narrow range of issues (e.g., wages, hours and working conditions); matters such as technological change, work methods and superannuation were deemed "nonindustrial matters". (In practice, this did not eliminate negotiations and conflict over "nonindustrial matters"; disputes involving such issues often were settled without jurisdictional challenges). Most disputes of rights pertained to wage payments and allowances (e.g., overtime and travel). Another difficulty was that centrally negotiated awards and agreements were commonly supplemented by enterprise-level agreements, which varied in scope and formality, e.g., from written agreements to oral understandings and practices (Miller, 1984). Because central awards established minimum conditions and enterprise-level agreements often did not provide a comprehensive code of employment, there was considerable variability in the protection provided by statutory procedures. The parties infrequently adopted alternatives to statutory procedures. Alternative procedures have included modifications such as the creation of a unified disputes committee (to handle disputes of rights and personal grievances) and vesting final decision-making authority in the grievance committee chairperson (Anderson, 1978).

The widespread adoption of statutory procedures imposed some additional constraints. For example, the personal grievance procedure was available only to union members covered by an award (Anderson, 1988). The Court also took a narrow approach with respect to remedies. For example, reinstatement was infrequently used as a remedy in unjust dismissal cases. As for personal grievances involving other employer actions that disadvantage a worker's employment, the Court held this did not apply to issues such as denial of promotion, demotions and transfers. Normally a disadvantage had to involve a "tangible and demonstrable financial loss" (Anderson, 1988, p. 268). As well, disadvantage did not apply to workplace matters affecting a group of employees (Miller, 1984). It is worth noting that the Court did adopt a liberal approach with regard to procedural fairness.

Many of the foregoing restrictions were removed or modified by the Labour Relations Act 1987. Personal grievances were defined to include unjustifiable dismissal, unjustifiable action, discrimination, sexual harassment and duress (i.e., in relation to membership or non-membership in a union). The inclusion of "unjustifiable" actions by employers should enable employees to challenge management decisions that involve matters other than pecuniary loss. Coverage was also extended to all union members irrespective of award coverage and to include disadvantageous actions affecting more than one employee. As well, reinstatement was established as the primary remedy in unjust dismissal cases. It should be noted, however, that grievance committees and the Court may continue to find reinstatement impracticable under certain circumstances, e.g., where there was a personal aspect to the employment relationship or cases involving long delays (Hughes, 1988). More broadly, the new law no longer limits bargaining to industrial matters. If the scope of bargaining expands in the future, unions presumably will be in a better position to challenge management prerogatives through the dispute of rights procedure. Additionally, employment conditions are now regulated by single-tier bargaining, i.e., a worker can be covered by only one enforceable registered agreement.

Structural characteristics

In Canada, there are multi-step grievance procedures (e.g., 3 to 4 steps) with hierarchical appeals within specified time limits. Normally a grievor would discuss a matter with his or her immediate supervisor in an attempt to resolve a dispute before initiating a formal grievance. Unresolved issues would be referred to higher ranking union and management officials at each step of the procedure. Some grievances, e.g., discharge grievances, normally are processed more expeditiously and may entitle a grievor to union representation at all disciplinary meetings with management and written reasons for discharge. Failing a settlement in the internal grievance procedure, the matter may be referred to arbitration.

In New Zealand, the statutory procedures do not place much emphasis on dispute settlement activities prior to the establishment of committees. However, the personal grievance procedure does require an individual-supervisor meeting and the exchange of written documents. It is acknowledged that unions and employers normally consult and negotiate at the plant level prior to referring a dispute to the committee stage. However, such activities are informal and unstructured, and written procedures similar to those found in North America are the exception rather than the rule. The statutory procedures stipulate that disputes are to be referred to committees, normally composed of an equal number of representatives from the employer and the union (usually up to 3 each) and chaired by a mediator. Under specified circumstances (described below), disputes may be referred from the committee stage to the Court.

In Canada, unresolved grievances may be heard by a single arbitrator or a tripartite board. Arbitrators normally are selected on an ad hoc basis by the parties. When the parties are unable to agree on an arbitrator (or the chairperson of a board), the Minister of Labour may be asked to make an appointment. Arbitrators are responsible for scheduling hearings and determining the procedure of the hearing. The parties share equally the fees and expenses of the arbitrator (or chairperson). Resort to non-binding procedures, e.g., grievance mediation, is uncommon, but has become more prevalent in recent years (Rose, 1989).

The statutory procedures in New Zealand emphasise mediation-arbitration. A dispute of rights may be initiated by either party or, more commonly, by mutual agreement, by referring unresolved matters to tripartite disputes committees chaired by a neutral (usually a mediator from the Mediation Service). When the parties cannot agree to a mediator, the Mediation Service may appoint one. Failing a settlement by a majority of the committee (exclusive of the chairperson) the mediator may either issue a decision (which may be appealed to the Court) or refer the matter directly to the Court. As well, either party may refer a matter directly to the Court when the other party has failed to observe the disputes procedure. A decision by the Court is final and binding.

The Labour Relations Act 1987 modified the personal grievance procedure to encourage settlements at the committee stage and to minimise delays associated with referring unresolved grievances to the Court. Specifically, it required the appointment of chairpersons to grievance committees, gave them decision-making authority, provided for appeals of chairperson decisions to the Court and allowed the chairperson to refer a grievance directly to the Court rather than making a decision. This is comparable to the practice with disputes committees. In the past, the chairperson of a grievance committee did not enter the dispute with decision-making authority. Where the parties conferred such authority on the mediator, the mediator's decision was final and binding. In cases where the mediator was not given decision-making authority, the grievance could be referred from the committee stage to the Court for a binding decision.

Compliance

In Canada, strikes and lockouts are prohibited during the life of a collective agreement and damages may be awarded for economic losses suffered as a result of an illegal work stoppage. An arbitrator's decision is final and binding on the parties to the collective agreement and the employees covered by it. Where there is non-compliance with an arbitrator's award, the award can be filed with the relevant court, whereupon it becomes an order of the court. Further non-compliance would constitute contempt of court and could result in a fine and/or imprisonment. Judicial review of arbitrators' decisions is permitted in specified circumstances, e.g., an error of law.

New Zealand's statutory procedures are intended to provide final and binding decisions without resort to work stoppages. A decision by the Court may only be appealed on a question of law. A work stoppage over a dispute of rights or personal grievance is considered a breach of the award or agreement. However, prior to 1987 doubts existed about the adequacy of penalties to deter non-compliance with the statutory procedures (Department of Labour, 1985, Volume 2). The Labour Relations Act 1987 included provisions aimed at encouraging observance of the procedures by the parties. It gave the Court broader powers including the authority to issue compliance orders in a number of circumstances, e.g., the failure to comply with decisions of a disputes committee, grievance committee and the Court. Non-observance of a compliance order could result in stiffer fines, imprisonment and seizure of property. As well, responsibility for selected economic torts and injunctive relief was shifted to the Court (Hince and Vranken, 1989).

3. The performance of rights disputes procedures

Three performance measures of rights disputes procedures are considered. These include: (1) strike prevention; (2) settlement stage; and (3) time and cost effectiveness. The comparative analysis is subject to 2 limitations. First, since it is still too early to assess the impact of the Labour Relations Act 1987, comparisons with New Zealand cover the pre-1987 period. Second, the diversity of grievance procedure characteristics and data limitations make it difficult to make direct comparisons for all of the criteria. Accordingly, quantitative and qualitative factors are examined to draw inferences about the performance of alternative dispute settlement procedures.

Strike prevention

Statutory and negotiated rights disputes procedures have a common objective: the prevention and settlement of disputes during the life of a collective agreement or an award. However, the adoption of grievance and arbitration procedures, no-strike provisions and the establishment of enforcement mechanisms are no guarantee of labour peace. This is hardly surprising since "wildcat disputes reflect spontaneous collective action born of shared frustration with working or living conditions" (Brett and Goldberg, 1979, p. 465). These frustrations may result from a variety of factors, including the level of economic activity, unsafe working conditions, poor labour-management relations, worker militancy, ineffective grievance procedures and delays in contract negotiations (Ng, 1987). Although official strike statistics rarely provide detailed reasons for such disputes, it is quite probable that a substantial proportion of mid-contract work stoppages result from issues grievance procedures were intended to resolve.

In New Zealand, it is possible to consider the effect of statutory personal grievance procedures on strikes over dismissals. The evidence reveals no discernible drop in dismissal strikes between 1971 and 1984. In fact, dismissals accounted for about 11

percent of the disputes in 1984 or about the same level as prevailed in 1973 when statutory procedures were introduced (Department of Labour, 1985, Volume 2).

There appear to be several reasons why the strike weapon was not abandoned in favour of the statutory personal grievance procedure. One factor was the genuine concern that statutory procedures failed to provide "quick, accessible and reliable dispute resolution mechanisms in substitute for industrial action" (Department of Labour, 1985, Volume 2, p. 160). Another factor was the failure to stress reinstatement as the remedy for unjust dismissal. As well, personal grievances may be linked to other issues such as "an attack on the union by dismissing a delegate or just the result of a general state of industrial disharmony" (Anderson, 1988, p. 274). Even in industries which adopted alternative disputes procedures, strikes remained a potent weapon (Department of Labour, 1985, Volume 2; Miller, 1983). The available evidence suggests that some unions were dissatisfied with the ability of statutory procedures to achieve employment justice in terms of procedural fairness and/or equitable outcomes. In such circumstances, settlements on the basis of relative bargaining advantage may have been preferable.

Unfortunately there are no aggregate measures of the relative use of procedures and strikes to resolve disputes of rights. However, it is noteworthy that the relative frequency of strikes (work stoppages per 100,000 employees) in New Zealand is 3 to 4 times greater than in Canada (Jackson, 1987). Additionally, the high incidence of short duration strikes may reflect an inability to peacefully resolve such disputes. For example, it has been shown that nearly 70 percent of the strikes in the post-World War 2 period were 2 days or less and most of these involved disputes of rights (Geare, 1983). According to Miller (1983) the interest-rights dichotomy had not been accepted and unions with clout continued to rely on the strike weapon to settle disputes of rights. Conversely, unions with little clout (e.g., clerical workers) were more inclined to adopt the statutory procedures.

Prior to 1987, one difficulty was the statutory definition of a dispute of rights failed to unambiguously differentiate between interest and rights issues. A dispute of rights might include the interpretation of the award or collective agreement as well as matters related to the instrument that are not clearly or specifically disposed of by it. Since the parties could negotiate voluntary agreements to supplement awards, it was possible to create interest disputes during the currency of an award. This could create jurisdictional problems in as much as some of these matters are referred to disputes committees. Whereas the law developed separate procedures for interest and rights disputes and strikes were lawful in the prior case, "some disputes of rights could legally be the subject of strike action due to the discrepancy between the scope of the definition of dispute of rights and the jurisdiction of the disputes committee procedure" (Department of Labour, 1985, Volume 2, p. 109). The 1987 reforms tightened up the definitions of a dispute of interest and a dispute of rights, and clarified the circumstances in which strikes are lawful.

In conclusion, the New Zealand experience prior to 1987 demonstrates that statutory procedures did not become a substitute for industrial action, nor did they reduce strikes over dismissals.

Canada provides further evidence that the statutory prohibition of mid-contract disputes is no panacea. Although arbitration is almost accepted as the mechanism for resolving grievances, it has not eliminated work stoppages. From 1960 to 1985, mid-contract disputes accounted for approximately 21 percent of work stoppages, 27 percent of workers involved and 7 percent of working days lost (Labour Canada, 1960-1985). Admittedly, some mid-contract strikes are legal (e.g., a refusal to perform unsafe work) and others involve interest disputes (e.g., a protest over the lack of progress in contract renewal negotiations). Nevertheless, a substantial proportion of mid-contract disputes are undoubtedly related to issues within the jurisdiction of grievance procedures.

There is, however, reason to believe that adherence to procedures is greater in Canada than in New Zealand. Recall that in Canada there is not a statutory procedure per se, but

a requirement that the parties establish their own procedure. The grievance and arbitration system was conceived of as an antidote to industrial unrest and an instrument of employment justice (Weiler, 1980). As an expression of self-governance, the parties have a vested interest in ensuring their judicial system works. Accordingly, grievance and arbitration procedures are given primacy over strikes. Moreover, given the broad scope of Canadian procedures and the more explicit sanctions against mid-contract disputes, one would anticipate there would be greater reliance on the procedures.

One way of estimating this is to examine the proportion of Canadian strikes attributable to dismissals and compare the results with New Zealand. Canadian data provide reasons for strikes in disputes involving 100 or more workers. For the period 1971 to 1984, only 2.3 percent of the work stoppages were related to employee dismissals. Although the Canadian data do not include smaller bargaining units and therefore may understate the incidence of such strikes, the results suggest substantially greater compliance with procedures in Canada. As a percentage of all work stoppages, dismissal strikes occur about 4 times more often in New Zealand than in Canada.

It also is possible to estimate the relative use of strikes versus disputes procedures in Canada and New Zealand. Based on figures from the province of Ontario, it was estimated there are 2 to 3 mid-contract strikes for every 100 arbitration awards issued.[4] This is well below the ratio in New Zealand reported by Miller (1983). His case studies showed there were as many strikes and often significantly more strikes than decisions by committee chairpersons and the Court. If we restrict the comparison to dismissals, the results are equally startling. In Canada, it was estimated there was less than 1 strike over dismissals for every 100 discharge arbitration decisions between 1973 and 1984.[5] For the period 1982-1984, New Zealand experienced an estimated 18 strikes over dismissals for every 100 decisions made by grievance committee chairpersons and 14 strikes for each 100 decisions issued by chairpersons and the Court. The evidence clearly indicates that the relative use of grievance procedures is greater in Canada and the resort to work stoppages is greater in New Zealand. It is reasonable to conclude that procedures are a more effective strike substitute in Canada.

It appears that the reliancé on disputes procedures reflects differences in the attitudes and expectations of the parties and general differences in industrial relations systems. In Canada, the parties assumed the responsibility for designing a system of contract enforcement. In general, grievance and arbitration procedures have been accepted as providing fair and workable solutions to employment problems, and a practical alternative to direct economic action. This type of commitment has been questioned in New Zealand (Department of Labour, 1985, Volume 1, p. 25).

> Automatic insertion of the standard procedures can be argued to lessen the commitment of the parties to them and hence act to discourage their observance. However, it is debatable whether, in their absence, it could be guaranteed that adequate procedures would be negotiated and inserted in all awards and collective agreements.

Contextual factors also have influenced the commitment to disputes procedures. It has been observed that the distinction between interest and rights disputes is more suitable to a system characterised by individual firm collective agreements which specify

4 This estimate covers 1973 to 1985 and is based on the following assumptions: (a) Ontario accounted for 30 percent of the mid-contract disputes in Canada; (b) three-quarters of the mid-contract strikes involve rights disputes; (c) the number of arbitration awards reported to the Ontario Ministry of Labour accounts for 90 percent of all awards.

5 Based on the assumption that Ontario accounts for 30 percent of the mid-contract strikes and discharge arbitrations represent 23 percent of all arbitration cases (Rose, 1986).

the actual terms and conditions of employment than it is to industry or district awards which establish minimum conditions (Geare, 1983). As well, legal penalties seem to have had a greater impact on union behaviour in Canada than in New Zealand. However, there is anecdotal evidence that the reforms introduced in 1987 have encouraged greater reliance on procedures to resolve disputes of rights and personal grievances.

Settlement stage

Grievance procedure effectiveness may be said to occur when settlements are achieved as close to the point of origin as possible or with infrequent recourse to neutral third parties, e.g., arbitrators (Lewin, 1984). The settlement stage not only has implications for the time and cost of dispute settlement, but also reflects the ability of the parties to achieve informal and mutually acceptable settlements. The evidence suggests third party adjudication is infrequent.

In New Zealand, the vast majority of disputes of rights and personal grievances are settled voluntarily. Unfortunately data are not available on grievance initiation or settlement rates prior to the formal hearings by grievance and disputes committees. However, Miller (1984, p. 128) reported that with the exception of 5 strike-prone industries, most rights disputes and personal grievances are settled "without work stoppages and without the involvement of neutrals". Although difficult to quantify, our interviews with practitioners and Miller's results (1983) suggest that perhaps as many as 90 percent of the cases are settled prior to the formal hearing stage.

The vast majority of disputes of rights and personal grievances referred to committees are settled at the hearing stage. From 1979 to 1982, 40 percent of the cases were settled by the parties and 50 percent were resolved by a chairperson's decision. Case studies of 4 private sector industries in the period 1977 to 1981 produced similar results (Miller, 1983). From 1982 to 1984, 45 percent of the cases were settled by the parties and 36 percent by a chairperson's decision. It is worth noting that these figures actually understate the extent of settlement achieved by the parties. Our interview results were consistent with earlier findings, namely that decisions by chairpersons "frequently incorporate partial or full settlement reached by employers and unions" (Miller, 1983, p. 22). In conclusion, mediation stimulates negotiated settlements.

While these results are significant, the effectiveness of the procedures is problematic for several reasons. First, between 1979 and 1984, approximately 12 percent of the cases that reached the committee stage were referred to or appealed to the Court (Miller, 1983 and Department of Labour, 1985, Volume 2). This appears to be substantially higher than the referral rate for unsettled grievances in North America (discussed below) and may reflect the less well defined procedures prior to the committee stage. It also suggests that the cost of disagreeing at the committee stage and proceeding to the Court is very low. Second, and perhaps more importantly, the final disposition of 15 to 20 percent of the cases at the committee stage is reported as "unsettled". It is significant that many of these cases did not get resolved either at the committee stage or by the Court. For example, 167 of the 437 (38 per cent) unsettled personal grievances were never referred to the Court. Although the precise reasons for this pattern is not known, considering that most of these cases involve dismissals, it does raise important questions about the operation of the procedure (Department of Labour, 1985, Volume 2).

Several aspects of settlement patterns in Canada (and North America generally) may be distinguished from New Zealand. First, it appears that the vast majority of grievances are more often resolved close to the point of origin, i.e., informally or at the first or second step in the grievance procedure (Lewin, 1984; Gandz and Whitehead 1989). Second, only a small fraction of written grievances (e.g., 1 to 2 percent) reach the arbitration stage. This pattern is a function of many factors including the parties' ability

and willingness to settle grievances, precedents within the workplace (Knight, 1986), the existence of a large body of arbitral jurisprudence and principles, and the desire to control the outcome of the grievance and avoid, where possible, the cost and delays associated with arbitration. Based on the foregoing, there is substantially greater emphasis placed on private settlement and less dependence on third-party neutrals in Canada. Part of the difference between the 2 countries also may be related to New Zealand's compulsory unionism and blanket award coverage system. For example, it may produce a different grievance pattern by allowing employees of small employers and less organised industries the opportunity to file grievances.

A third distinction is that one is unlikely to find as many unsettled grievances in Canada. While there may well be grievances that are abandoned, there is no evidence to refute the general perception that virtually all grievances either get settled or are withdrawn. Unions also may place unresolved grievances "on hold" until the next round of contract negotiations and attempt to settle outstanding grievances in exchange for employer concessions (Adams and Zeytinoglu, 1987). This undoubtedly reflects the high-priority placed on contract enforcement and grievance handling as core services provided by unions to their members. It would be difficult under any circumstances to imagine as many personal grievances (e.g., dismissals) remaining unsettled in Canada as reported in New Zealand. This pattern may also reflect different union responses to the duty of fair representation, i.e., the requirement that unions protect the rights of all employees covered by a collective agreement. For example, a recent Canadian study reported that one effect of the fair representation doctrine may be to force unions to devote greater resources to non-meritorious grievances, even at the risk of diminishing union effectiveness (Knight, 1987).

Time and cost considerations

While it is acknowledged that dispute settlement should be cost and time effective, few procedures satisfy these criteria. In New Zealand, there is a consensus that disputes are processed expeditiously up to the point of a referral or an appeal to the Court. Miller (1983) reported the elapsed time between the decision to invoke the statutory procedures and the convening of a committee meeting with a mediator ranged from a couple of days to a month; the average period was two weeks. Our interview results concurred with this estimate. This compares quite favourably with the time required to convene an arbitration hearing in North America.

The principal source of delay was with resolving disputes before the Court. Miller (1983) reported that for personal grievances the elapsed time between the application and the hearing was about 3 months. Between 1980 and 1983, the time interval for scheduling hearings rose from 12 weeks to 22 weeks. Additionally, it often took 4 to 6 months to schedule hearings for referrals or appeals from disputes committees (Department of Labour, 1985, Volume 2). According to our interview results, it could then take upwards of an additional 2 to 3 months for the Court to render its decision .

Part of the Court's difficulty was related to the fact there was only one judge during most of the 1970s and the Court had to travel to cities outside of Wellington. As a result, the Court's capacity to deal with its workload was hindered. For example, although only a small proportion of the personal grievances proceed from the committee stage to the Court, in 1983, these cases constituted 21.2 percent of the Court's caseload (second largest issue) and consumed 31.3 percent of the Court's hearing days (the most time consuming issue). These delays, particularly in regard to personal grievances, were described as:

> so significant that the effectiveness of the procedure as a mechanism for dealing with dismissals has been eroded. The delay makes reinstatement as a remedy

> difficult for the Court to apply. In terms of the effect on the parties, the delay factor allows employers to take the attitude "let's wait and see if it disappears" and encourages unions to take action outside the procedures e.g., industrial action, which the procedure was designed to prevent. It also conflicts with the intended objective of the procedure: the provision of a convenient means of settling personal grievances as close as possible to the point of origin (Department of Labour, 1985, Volume 2, p. 165).

Indeed, it was these concerns that led to the 1987 legislative changes making reinstatement the primary remedy for unjust dismissals.

The cost associated with the statutory procedures is quite modest by North American standards. Mediation at the committee stage and Court hearings involve no fees. The legal costs of dispute settlement also appear modest because the system seems to be less formal and legalistic (Miller, 1984).

It is still too early to determine whether the reforms contained in the Labour Relations Act 1987 will expedite dispute resolution. On the one hand, procedural changes (e.g., allowing grievance committees to proceed where the employer fails to attend) should minimise delays, and granting mediators decision-making authority may reduce the Court's involvement with personal grievances. As well, decentralisation of the Court to 3 cities and an increase in the number of judges should expedite dispute resolution. On the other hand, the Court's caseload could increase as a result of broadening the definition of a personal grievance, extending statutory procedures to the state sector and acquiring the power to issue compliance orders, injunctions and award damages. As well, it remains to be seen what affect these changes will have on the capacity of mediators and committees to achieve final and binding settlements. Some interviewees felt that giving mediators decision-making authority would make grievance committee activities more formal and legalistic. The cost of dispute settlement would undoubtedly rise if the demand for legal services increases.

In Canada, frequent concerns are expressed regarding time and cost effectiveness. Although collective agreements establish time limits for processing grievances from one step of the procedure to the next, time requirements are routinely extended by mutual agreement. This is because grievance caseloads often exceed the capacity of union and management officials to process cases expeditiously. Further delays are encountered in selecting arbitrators and scheduling hearings (some arbitrators must be booked 6 or more months in advance). As a result, it takes nearly one year from the date of the incident giving rise to a grievance to the issuance of an arbitration award (Rose, 1986).

Arbitration is expensive. Arbitrators fees for a one day hearing and preparation of an award range from $800 to $1800 in Ontario and $1500 to $2500 in Alberta. Although arbitrators' fees have been criticised by unions, it is recognised that qualified arbitrators are in short supply. Normally arbitrators' fees and related expenses (e.g., hotel and travel costs) are shared equally by the parties. As well, the parties will incur additional costs, e.g., legal counsel, fees paid to nominees on arbitration boards and lost wages to its witnesses. Clearly arbitration costs have risen as a result of the increasing reliance on legal counsel and as hearings become more formal and legalistic (Gandz and Whitehead, 1989).

Concerns over delays and costs have led to the introduction of both private and statutory expedited arbitration procedures. Although these innovations have produced substantial time and cost savings, only a modest number of schemes have been adopted in Canada. However, in the province of Ontario, expedited arbitration accounts for approximately 40 percent of total grievance arbitration activity (Rose, 1989).

4. Summary and conclusions

This paper identified important differences in rights disputes procedures in Canada and New Zealand. In general, Canadian procedures cover a broader range of grievable issues, are more elaborate and rely on arbitration as the principle form of third-party intervention. Arbitration is undertaken by private arbitrators on an ad hoc basis. Collective agreements must contain a no-strike, no-lockout provision and provide for arbitration as the final and binding method of dispute resolution. In contrast, procedures in New Zealand are somewhat less structured (at least prior to third-party involvement), place greater emphasis on mediation and rely on the Court to adjudicate rights disputes. As in Canada, New Zealand requires all awards and agreements to incorporate statutory procedures (or an alternative procedure) and the procedures are intended to serve as a strike substitute.

In both systems, most grievance settlements are achieved through informal activities or close to the point of origin. Nevertheless, there tends to be less dependence on third party neutrals in Canada. This undoubtedly is related to the parties' reliance on multi-step procedures to achieve settlements, the absence of grievance mediation from most procedures and the higher costs associated with arbitration. As well, it was suggested that industrial relations systems characteristics, e.g., compulsory unionism and blanket coverage, may also contribute to differences in grievance activity and settlement patterns. Due to differences in procedural characteristics, there is considerable variability in the time required to settle disputes. Nevertheless, lengthy delays have been associated with private arbitration and Court proceedings.

These results also indicate grievance and arbitration procedures are not always adopted as an alternative to mid-contract strikes. There are, nevertheless, differences in the perceived legitimacy of procedures. In Canada, grievance and arbitration procedures enjoy widespread acceptance in the labour relations community. For nearly 50 years, the parties have been able to construct an employment justice system tailored to their needs. This has been facilitated by a decentralised collective bargaining system and well developed shop floor procedures for handling the day to day administration of collective agreements. In New Zealand, centralised bargaining structures, awards specifying minimum conditions and union and management organisational characteristics have limited the commitment to formal grievance procedures.

In the absence of data, it is difficult to directly assess the extent to which reliance on procedures is related to perceptions of employment justice. It appears that in North America there is a stronger commitment to honour written agreements and a greater desire for order and stability. Grievance and arbitration procedures are accepted as an alternative to strikes and are perceived as an indispensable communication channel for discussing and resolving problems. Whereas grievance arbitration is often criticised, there is a consensus that the system is accessible and works well. Owing to differences in institutional arrangements and social heritage, grievance and arbitration procedures, no-strike clauses and legal penalties have been perceived differently in New Zealand. To the extent that the 1987 reforms promote accessibility and employment justice, the procedures should gain wider acceptance.

It will be interesting to see if the adoption of and adherence to rights disputes procedures increases in the future. Economic instability and the emergence of a free enterprise ideology in New Zealand have created pressures to deregulate the labour market (Hince and Vranken, 1989). Efforts to decentralise bargaining structures and move toward enterprise-level awards or agreements could profoundly influence the need for more formal and comprehensive workplace disputes procedures. For example, unions might be encouraged to negotiate comprehensive multi-step grievance procedures or seek broader statutory coverage. The current political and economic climate, with its emphasis on self reliance and a diminished role for government, might eventually lead to the adoption of other features of the North American model. One outcome could be the emergence of a

system of private mediation-arbitration (Hince, 1986). The impact of environmental forces on industrial relations generally and disputes procedures in particular will provide fertile ground for future research.

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