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AN OVERVIEW OF THE CANADIAN AND
AUSTRALIAN INDUSTRIAL RELATIONS
SYSTEMS*

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The purpose of this paper is to provide an overview of selected aspects of the Canadian and Australian industrial relations systems. We begin by outlining the constitutional framework governing private sector industrial relations and the actors in the system. This will be followed by a discussion of the negotiation process, dispute settlement and wage determination. As described below, the institutional frameworks are quite different in the two countries. In Australia, most industrial relations activity is based on a system of conciliation and arbitration established over eighty years ago, whereas in Canada, collective bargaining is the dominant industrial relations institution.¹

1. Division of Powers Among Governments.

In Canada, the federal government's jurisdiction in industrial relations is limited to national industries, e.g., transportation, communications and banks. As a result, only about 10 percent of the workforce is covered by federal legislation. Australia is a federation of two territories and six states. The federal government's jurisdiction is limited to inter-state industrial disputes. Section 51, XXXV of the Australian Constitution states Parliament may enact laws with respect to: "Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State." The federal government's industrial powers are largely limited to making laws with respect to conciliation and arbitration machinery. With the exception of its own employees and workers in the Territories, "the federal government cannot directly regulate the terms and conditions of employment of those employees falling within the federal labour relations jurisdiction"² The states are responsible for intra-state industrial disputes and may legislate in regard to specific employment conditions, e.g., long-service leave,

shorter standard hours and annual leave (vacations). The federal government's jurisdiction is wider in Australia than Canada - approximately 44 percent of the workforce is covered by federal arbitration awards, including virtually all workers in pace-setting industries.³ The effect of the federal arbitration tribunals is more pervasive than this figure suggests since federal awards often flow-on to state awards (i.e., set the pattern).

In contrast with the United States, public policy in Canada and Australia has placed greater emphasis on the prevention of industrial conflict. The Canadian approach, which utilizes non-binding dispute procedures, began with compulsory two-stage conciliation (Industrial Disputes Act 1907) and moved to single-stage conciliation in the last 15 years. In Australia, federal law embraced compulsory conciliation and arbitration to prevent and settle industrial disputes early in the twentieth century (Commonwealth Conciliation and Arbitration Act, 1904), and this remains the cornerstone of Australian labour policy today. The Act is administered by the Australian Conciliation and Arbitration Commission (the Commission), which in its capacity of preventing and settling disputes is responsible for the registration of unions and employer associations and assumes a prominent role in Australia's centralized wage-fixing system.

Most of the discussion will focus on the Commission because it is the most influential tribunal. In addition to the Commission, special federal tribunals have been established to regulate industrial disputes in specific industries or occupations, e.g., coal, the public service and flight crew officers.⁴ Intra-state disputes are handled by state arbitration tribunals;

Tasmania is the only state which does not employ a compulsory arbitration model.⁵

2. Union Recognition

In Canada, unions organize on a plant-by-plant basis and acquire bargaining rights through voluntary recognition or certification. To be certified, a union must satisfy a labour relations board that it is a properly constituted labour organization and that it has majority support in an appropriate bargaining unit. Once certified, the union becomes the exclusive bargaining agent for all the employees in the bargaining unit. The employer is required to recognize the union and bargain in good faith in an attempt to reach a collective agreement.

Union recognition, like most aspects of industrial relations in Australia, is regulated by arbitration tribunals established under the compulsory conciliation and arbitration system. The vast majority of labour organizations are registered under federal and/or state law. As a result, "registration through conciliation and arbitration legislation guarantees the union legitimacy before the tribunal"⁶ and enables unions to extract employer recognition. By submitting a dispute to arbitration, the arbitration tribunal can compel the parties attendance at meetings and make a legally binding award to settle the dispute. Registration also provides unions with exclusive jurisdiction to represent before specific arbitration tribunals employees in particular occupations and industries. In other words, it effectively confers a monopoly and other trade unions cannot be registered in the same industry or occupation.⁷

Other advantages of registration are that it provides access to tribunals through which unions can seek to improve wage and nonwage benefits

for their members and protect their interests. A notable example is the granting of awards which require employers to give preference to hiring union members. Registration also provides for legally enforceable awards and a mechanism for redressing award violations.⁸ Registration also imposes certain obligations. For example, unions are required to meet certain standards in regulating their internal affairs (e.g., the conduct of elections, financial matters and so forth).

3. Union Organization

Union density is substantially higher in Australia than in Canada (57 and 39 percent, respectively in 1985).⁹ What is remarkable in the Australian context is the profound effect compulsory arbitration had on union growth in the early part of the twentieth century.

Under the shelter of the arbitration system the unions have prospered. From 1901 to 1926 the proportion of the Australian workforce covered by unions grew from 6.1 percent to 55.2 percent.... The number of trade unions rose over that time from 198 to 372.¹⁰

Although union density in Australia has fluctuated since 1926, it remains at about the same level today. As in Canada, unions successfully organized white-collar employees in the public sector and the labour movement remained strong despite economic upheaval between 1975-85. However, Australian unions have performed much better than their North American counterparts among "harder-to-organize" white-collar employees in the private sector. For example, in the Australian finance, real estate and business services industries union density is 65 percent, whereas in Canada it is less than 3 percent.¹¹

There are numerous similarities and differences in the structure and organization of unions in the two countries. Like their Canadian counterparts, many Australian unions are relatively small (approximately half the unions have 1,000 or fewer members). The proliferation and survival of these often small unions is related to the arbitration system.

The large number of small trade unions in Australia and the relative stability in the structure of the union movement can be explained by a number of factors. Isaac and Ford have pointed out that the compulsory arbitration system has both encouraged the formation of unions and given them legal protection. Size has been irrelevant to survival in the arbitration system. Unions have neither had to struggle with employers for recognition nor struggle with other unions for membership. Moreover the doctrine of comparative wage justice and the practice of flow-ons through which tribunals have passed on gains made by one union almost automatically to members of another have meant that the less powerful sections of the union movement have not been greatly disadvantaged by their lack of bargaining ability.¹²

The majority of Australian unions organize workers by craft or occupation rather than along enterprise or industry lines. This contributes to fragmentation. Since virtually "all unions enrol members from more than one industry, workers in a medium sized factory of 500 or so typically will be covered by five to ten unions."¹³

The locus of decision-making in industrial relations is more centralized among Australian unions. Negotiations are often conducted by federal unions and day-to-day industrial relations problems, e.g., compliance with awards and strikes, are handled by the state branches of federal unions. This is in sharp contrast with local union control in Canada. Once again this pattern has been shaped by the arbitration system, i.e., the need for state or federal bodies to represent members before arbitration tribunals. In Australia, union affiliation with the peak union federation is greater with 90 percent of the members belonging to unions

affiliated with the Australian Council of Trade Unions (A.C.T.U.).¹⁴ In Canada, less than 60 percent of the union members belong to unions affiliated with the Canadian Labour Congress (C.L.C.).¹⁵ While the A.C.T.U. provides many of the same services as the C.L.C., one of its most important functions is to represent organized labour in national wage cases, i.e., the mechanism by which the Commission may adjust the wages of all employees covered by federal awards. Broadly speaking, this is the equivalent of a minimum wage adjustment. The A.C.T.U.'s role has been described as an "attempt to win improved wages on behalf of trade unions and trade unionists as a whole when participating in ... national wage cases."¹⁶

Australian unions, partly through their affiliation with the Australian Labour Party (A.L.P.),¹⁷ have made greater use of political action to achieve their objectives. In addition to direct lobbying on legislation, unions participate in and shape the A.L.P. platform. The A.C.T.U. also has enlisted federal government to make submissions on its behalf to the Commission in national wage cases. A particularly significant recent event was the Prices and Incomes Accord (reached in 1983), which gave organized labour a voice in social and economic decision making.

The Government is guaranteed that wage increases will be limited to CPI movements, and that hours of work reduction will go no further than 38 per week, with the added proviso of balancing cost offsets. Also, unions agree to abide by the agreement for designated periods, two years in the Accord Mark I (1983-85) and six months at a time in the Accord Mark II (1985-87). The unions, for their part, are guaranteed that in Arbitration Commission hearings the Government will support the arguments for real wage maintenance and that there will be certain legislative initiatives. Some of these have been achieved: the abolition of particular laws offensive to unions, especially those that had enabled the Industrial Relations Bureau ("the industrial relations policeman") to operate, and measures governing occupational health and safety. Other legislative initiatives are in train: superannuation legislation to facilitate the introduction of nationwide schemes for unionists; and taxation reform, which will include the introduction of capital gains tax, the abolition of

arrangements particularly attractive to non-wage earners and lowering the two highest marginal tax brackets....¹⁸

As might be expected, this arrangement has required the A.C.T.U. to exercise greater direction and control over its affiliates than is practiced by the C.L.C.

Political strikes also are more prevalent in Australia. During the 1970's, there were disputes related to foreign policy issues, e.g., apartheid, as well as domestic issues, ranging from a protest against proposed changes to the national health insurance plan to green bans aimed at blocking developments which might adversely affect the environment or result in the demolition of buildings of historical significance.¹⁹ Political ideology has also been a source of union rivalry and industrial conflict. This has been particularly evident in the construction industry where the Building Workers Industrial Union (B.W.I.U.) is aligned with the pro-Moscow Socialist Party of Australia and the Building Labourers Federation (B.L.F.) is affiliated with the pro-Chinese Communist Party of Australia (Markist-Leninist).²⁰ This left-wing political orientation is in marked contrast to the staunch conservatism found among building trades unions in Canada.²¹

4. Employers Associations

Employers associations in Australia play a larger role in the industrial relations system than do their counterparts in Canada. This not only reflects the need to respond to unions, but the central role of the arbitration system in attempting to regulate industrial conflict and bargaining outcomes. Because the federal statute encourages "the organisation of representative bodies of employers and employees and their registration", associations have assumed responsibility for negotiations and

representing employers' interests before tribunals.²² An association can be registered at the federal level by demonstrating its members are engaged in a single industry and have employed a monthly average of 100 employees among them in the preceding six months. The principal of exclusive representation applicable to unions does not extend to employer associations. Consequently, employers enjoy wider latitude in selecting a representative organization.²³

There are no precise figures on the number of employers associations operating in Australia. Whereas employers generally have criticized the "excessive" number of unions in Australia, there is evidence that a large number of employer groups exist as well. In 1980, 81 employer associations were registered under the federal arbitration system and nearly 400 employer groups were covered by those states with registration procedures.²⁴ Furthermore, even if a comprehensive list of employers organizations was available, it would not convey "the intricacies of relationship and affiliation among them."²⁵

Employer associations provide economies of scale in dealing with the multiplicity of tribunals (state and federal), awards and agreements which affect members. They perform such functions as the processing of union claims (bargaining demands), representing members in negotiations and before tribunals, providing advice and keeping members informed. Considering the occupational basis of unionism and the fact that a single establishment may be covered by multiple unions and awards, it is not surprising that individual employers seek assistance from associations.²⁶

The complexity of the arbitration system is especially cumbersome for small employers with limited resources. For example, in the metal industry, the major award covers 300,000 employees in numerous occupations and

industry components. Additionally, "there are over 220 Federal and State Acts, Awards, Determinations and Industrial Agreements which have application in the Metal Trades Industry"²⁷. Thus a key role of the association is to help members find "their way about the awards, to know which of them apply to their employees and what particular requirements particular employers must meet".²⁸

As is generally the case in industrialized countries, a high degree of employer organization is not necessarily synonymous with employer solidarity. For one thing, competition among employer groups for members often impedes joint action. As well, the decision to join a particular association is often tempered by a reluctance to surrender individual autonomy. The pragmatism of individual members to do their own thing in industrial relations matters suggests association loyalty is problematic. The ability of associations to effectively control their members often is limited to peer pressure. Resort to sanctions against dissidents, e.g., expulsion, to enforce policy decisions may be ineffective and counterproductive.

Employers associations fall into two broad categories: single industry and multi-industry umbrella associations. Industry associations differ in their handling of industrial relations. Some depend, in whole or in part, on umbrella organizations for servicing whereas others, e.g., the Metal Trades Industry Association and the Master Builders Federation of Australia, conduct their own labour relations. At the state level, the dominant umbrella organizations are the state employers' federations (which in several states confine themselves to industrial relations) and the state chambers of manufactures, which handle commercial and industrial matters (in three states these organizations have merged creating confederations of

industry). Each of these bodies is organized into a national federation (the Australian Council of Employers' Federations - A.C.E.F. and the Associated Chambers of Manufacturers of Australia - A.C.M.A.). The A.C.E.F., A.C.M.A. and various national industry associations are affiliated with a peak umbrella organization, the Confederation of Australian Industry - C.A.I. The C.A.I.'s National Employers' Industrial Council handles industrial relations and is the employer counterpart of the A.C.T.U.²⁹ The C.A.I. largely reflects manufacturing interests which is understandable since several major groups - notably mining, construction and farmers - are not affiliated with the C.A.I.³⁰

5. The Negotiation Process

In Canada, private sector collective bargaining normally occurs between a certified local union and a single company. Negotiations are governed by a minimum number of formal rules (e.g., the parties must bargain in "good faith"), the process is essentially bilateral, and when third-party assistance occurs it entails non-binding conciliation or mediation. Work stoppages are permissible as the parties endeavour to influence bargaining outcomes. Negotiations culminate with a legally binding collective agreement covering a period of from one to three years.

Negotiations in Australia are characterized by direct bargaining, conciliation and arbitration. In essence, unions may choose between two bargaining models. The first model - private bargaining outside the arbitration system - allows the parties to pursue a purely bilateral settlement. Negotiations of this type occur in some industries, but are not pervasive. Alternatively, unions can bargain in accordance with the requirements of the conciliation and arbitration system and be bound by the

decisions of the relevant tribunal. Most unions choose the latter route. This not only reflects the institutional security provided by the arbitration system, but the fact that the system's objective "has been to encourage conciliation and not simply to impose arbitration".³¹ Thus, even though compulsory arbitration is a distinctive feature of the Australian system, a substantial amount of direct bargaining is practiced and may result in work stoppages.

Negotiations to establish or vary an arbitration award commence when a registered union submits a log of claims to one or more employers. The Commission, in response to a request from either party or acting on its own initiative, may intervene in industrial disputes which extend beyond one state. It is worth noting that a dispute over management rights is not an industrial dispute.³² Thus, even though management policy is a persistent source of strikes, the Commission often lacks jurisdiction to resolve these conflicts.

Disputes may be divided into two categories. "Paper" disputes refer to the rejection, in whole or in part, by the employer(s) of the union's log of claims, whereas "active" disputes involve a strike or some other cessation or interruption of work. The tribunal initially attempts to conciliate a settlement and, if this fails, formal arbitration proceedings will follow. An arbitration award establishes:

... the minimum wages and conditions to be met by the employer, as well as stipulating various other procedures and terms of employment. Awards operate with the force of law for a fixed period of time, typically two or three years, but never for more than five years. The award, however, continues in force after its formal duration has lapsed until a new award has been made, unless the Commission specifies otherwise.³³

The scope of federal awards is limited to those employers (and their employees) presented with the log of claims. By way of contrast, state tribunals may issue "common-rule" awards, whereby the terms of awards may be extended beyond the parties to a dispute to other employees in an occupation or industry.³⁴ As a result, award coverage (federal and state) extends to 84 percent of the workforce. In Canada, it is estimated that only 44 percent of the Canadian workforce is covered by collective agreements.³⁵

Settlements may also be reached through direct negotiations without recourse to arbitration. Nevertheless, these agreements are submitted to the Commission for approval and, provided they do not violate "standards or principles developed by the Commission", the agreement will be certified. Alternatively the parties may request the Commission to make a consent award giving effect to their agreement. A certified agreement or consent award has "the same standing and force of law as arbitrated awards".³⁶ According to Deery and Plowman "voluntary agreement is an important part of Australian industrial relations". Approximately 20 percent of the new awards reached between 1965 and 1975 were consent awards. "In many awards which required arbitration of some of their clauses, there were many other clauses which the parties agreed upon and needed no determination."³⁷

The significance of direct bargaining is further illustrated by what is called over-award bargaining. Since awards establish minimum conditions, unions may pursue higher rates of pay and better working conditions through private negotiations. The Commission rarely gets involved in such disputes.

Of 1517 over-award disputes notified to the Commission between 1965 and 1975, only fourteen resulted in arbitrated awards or variations in existing awards. The rest of the disputes were settled by the parties themselves and, of those, seventeen led to consent awards.³⁸

Unlike Canada, which makes a distinction between interest and rights disputes, the Australian system is characterized by continuous bargaining. Over-award bargaining allows unions to improve minimum pay and employment conditions. Unions may also vary awards during their lifetime. For example, it is not uncommon for unions to submit a so-called "ambit" log of claims (a long list of often ridiculous and exorbitant demands). This approach alleviates the need to serve a log of claims on each employer each time the union seeks to vary an award. In effect, the ambit:

will become the vehicle for award negotiations [i.e., variations] for many years. So long as ambit exists, that is, so long as the demands made by the log of claims have not been fully met, a (legal) dispute exists and the Commission has jurisdiction.³⁹

Thus, if only part of the union claim is awarded the "remainder survives as ambit for future proceedings."⁴⁰ In a sense "[t]he mechanism exists for converting rights disputes into interest disputes by using the dispute settlement mechanisms employed in the making of awards".⁴¹

6. Arbitration Tribunals and Wage Determination

In its capacity of seeking to prevent and settle disputes, the Commission plays a key role in the wage determination process. What follows is a brief summary of Australia's three-tier wage system.

National Wage Cases. Wage determination and certain other issues (e.g., standard hours of work and annual leave), are perceived as "national issues requiring settlement at the national level". Given the prominence of wage bargaining and recognizing that changes in particular awards might trigger other disputes, the Commission has developed a special mechanism for handling what are called "national test cases". For example, the national wage case, which is heard by a full bench of the Commission (i.e., a hearing by no fewer than three members including a presidential member as opposed to

a hearing convened by an individual Commissioner), establishes a minimum national wage standard based on broad industrial, economic and political criteria. This might be characterized as a minimum wage adjustment to help workers maintain a living wage. The effect of this decision is to periodically adjust wages for all workers covered by federal awards. In most cases, the various state tribunals rubber-stamp the national wage decisions, creating a "flow-on" to workers in these jurisdictions. Considering the economic significance of national wage cases it is not surprising that the A.C.T.U. and the C.A.I. make submissions to the Commission. Thus, notwithstanding the multiplicity and diversity of union and employer organizations, there is significant authority vested in peak organizations in "the operation of a centralized incomes policy".⁴²

Although the Commission generally operates independently of the federal government, over the years "federal governments have attempted to make the Commission's wage policy conform with the government's economic policy".⁴³ The Commission is not compelled to accept government policy, but is required under the Commonwealth Conciliation and Arbitration Act, 1904 to consider the public interest and the impact of its awards on the national economy. In the absence of direct control over the Commission, government influence has been exerted through interventions in national wage cases and applications for review of decisions deemed contrary to the public interest, the appointment of Commission members and legislative amendments to the compulsory arbitration system. For example, the principal arbitration statute has been amended over 60 times since 1904; the Fraser Government (1975-81) amended it fourteen times in a struggle with the Commission over who would be the dominant actor in the system.⁴⁴ Greater harmony between

government and Commission policies is evident as a result of the A.C.T.U.-A.L.P. Prices and Incomes Accord which, among other things, supported a return to wage indexation.

... in many ways the Commission was faced with a fait accompli. It itself was of the view that indexation had considerable industrial relations and economic merit and in September 1983 it reintroduced wage indexation. In doing so it expressly made mention of the Accord as an important factor influencing its decision.⁴⁵

Industry Awards. The second tier of wage determination involves industry cases, i.e., awards covering occupational classifications mainly in one industry. In any industry or occupation, there is a primary pace-setting award and numerous secondary awards.⁴⁶ Arbitration is more important in settling primary awards than secondary awards which are regularly achieved by consent. Industry awards are "concerned with the skill of the worker or the nature of the work to be performed."⁴⁷ As such they attempt to: (1) standardize wages for different occupational classifications among firms covered by the award, (2) establish internal relativities among occupational classifications within awards and (3) promote inter-award pay equity through the doctrine of comparative wage justice. According to Plowman:

This doctrine was defined by the tribunal to mean that 'employees doing the same work for different employers in different industries should by and large receive the same amount of pay irrespective of the capacity of their employers or the industry'. Comparative wage justice had the effect of causing 'spill-over' effects (flow-ons) in wage movements from one award to others.⁴⁸

This concept is deeply imbedded in Australian wage determination.

Enterprise-Level. Over-award bargaining constitutes the third tier of wage determination and takes place at the enterprise level. As already noted, it normally is conducted independently of the Commission. Over-award payments, like industry awards, are superimposed on national wage adjustments. Since many occupational or industry awards cover a large number of employers

(e.g., there are over 10,000 employer respondents to the Metal Industry Award), over-award payments provide wage flexibility. They enable unions to pitch award claims to the "average firm" and secure larger payments from more productive firms with a greater ability to pay. Over-award payments also provide employers with a mechanism for adjusting to labour shortages and permit greater selectivity in periods of excess labour supply.⁴⁹

Over-award bargaining can have a profound effect on the Commission's ability to control wage movements. For example, between 1964 and 1975, the relative importance of national wage cases significantly declined, with the national wage case accounting for only 21 percent of total award wage increases in 1975 (down from 90 percent in 1964). This pattern demonstrated the unions' willingness to step out from under the umbrella of arbitration and secure gains from employers in a period of economic prosperity.⁵⁰ Pursuant to the Prices and Incomes Accord and the establishment of wage indexation, the Commission has assumed greater control over wage movements. In 1983-84, the national wage case accounted for 96.6 percent of total award wage increase.⁵¹

7. Enforcement and Industrial Disputation

The conventional view is that compulsory arbitration is a "strike substitute", i.e., the alternative means for resolving labour-management impasses. As noted above, the Australian system emphasizes conciliation and consensus rather than compulsion. Notwithstanding the Commission's statutory role in award-making and award enforcement, some observers believe its impact has been largely qualitative rather than quantitative.

The establishment of arbitration tribunals for the prevention and settlement of industrial disputes conjures up the notion of a system in which strikes are prevented or settled before a tribunal able to compel and enforce decisions. Such a notion does not accord with reality. No system, in any country or economic

environment, can survive and provide an adequate service unless there is an acceptance by the parties in the system of the reasonableness of that system. Where compulsion has become a dominant method of operation, arbitration has been made unworkable.⁵²

The available evidence reveals that fewer than 15 percent of all industrial disputes are resolved through arbitration; the vast majority (80 to 85 percent of disputes) are settled by a return to work without negotiation or by direct negotiations between the parties.⁵³

There are several reasons why arbitration is not the dominant dispute settlement mechanism. First, although most of the Commission's work involves award-making, it largely deals with routine paper disputes rather than tense strike situations. In this type of situation, conciliation is the primary means of dispute settlement.⁵⁴ Second, since awards establish minimum conditions and over-award bargaining is permissible, arbitration over "interest" disputes is by no means the final step in the negotiation process. Thus, incorporating "a system of minimum payments into a system of arbitration designed to remove the use of strike, has resulted in the system being predicated on contradictory premises."⁵⁵ Third, the Commission's enforcement powers became largely ineffective in the late 1960s, as a result of union strike action and legislative changes. The use of penal sanctions to enforce awards against unions has for all practical purposes been discontinued. The Commission retains the power to deregister unions for serious breaches of awards and for staging industrial disputes, but has done so infrequently. Deregistration can have serious consequences, notably exposing a deregistered union to raids from other unions.⁵⁶ This may partially explain why only one union which has regained registration has subsequently been deregistered.

To understand the pervasive influence of tribunals, one must look at their ability to influence the negotiating climate and prevent disputes. Plowman has identified several major influences of the tribunal system. First, it is a highly centralized system with nearly 44 percent of the workforce covered by awards in the federal system. The national wage case has tremendous flow-on potential; it simultaneously adjusts wages in other awards within the Commission's jurisdiction and indirectly influences other federal and state tribunals. Second, a high percentage (84 percent) of the workforce is covered by federal and state tribunals and the state tribunals are able to extend coverage to unorganized workers through common-rule decisions. Third, "direct negotiations always take place within the shadow of these tribunals" (i.e., arbitration is always available if the parties wish to use it). Fourth, tribunals establish benchmarks which become recognized parameters facilitating bilateral settlements. For example, the institutionalization of comparative wage justice seeks to ameliorate wage inequities as a major source of industrial disputes.⁵⁷

The tribunal system has not been successful in resolving plant-level disputes. One estimate suggests that less than one percent of local grievances are handled by tribunals.⁵⁸ Grievances which are not resolved informally, often go unattended or result in work stoppages. This is reflected in Australia's strike profile which reveals a relatively high strike frequency. Between 1970 and 1982, there were approximately three times as many strikes in Australia (30,786) as in Canada (9,873), yet Australia only has 60 percent of Canada's population.⁵⁹ The Commission is ill-equipped to deal with a large number of plant-level disputes because it only has jurisdiction over industrial disputes which are interstate and

because most plant-level strikes are short (one or two days duration). It has been observed that many of these are demonstration stoppages which are not fought "over substantive issues, but rather to fill a shop floor grievance handling vacuum and to bring grievances to the attention of unions, management and tribunals."⁶⁰

This points up a fundamental difference between the Australian and Canadian industrial relations systems. Whereas the Canadian system is characterized by decentralized bargaining and a sophisticated shop-floor representation system for handling and resolving disputes, Australia's centralized system has not developed a coherent plant-level or shop-floor infrastructure. This is most evident in regard to grievance resolution, where formal grievance procedures are the exception rather than the rule.

Thus, in the Australian context grievance arbitration and grievance procedures are not synonymous and may be completely unrelated. Grievance arbitration does normally follow the informal attempts by the parties to settle their own disputes, and is provided for in grievance procedures. However, the flexibility of the Australian system, the omission of grievance procedures for most awards, the lack of commitment by the parties to any pre-ordained procedure and the parties' ability to refer matters to arbitration at any stage of negotiations, make it necessary to differentiate between grievance arbitration and grievance procedures. The latter is a recent innovation in the Australian system. Grievance arbitration is as old as compulsory arbitration itself and has an existence independent of that of formalized grievance procedures.⁶¹

Although there is nothing which prohibits the parties from developing their own grievance procedures, agreeing to no strike/no lockout clauses and establishing "no further claims" provisions for the duration of an award, the current arbitration system inhibits such developments.⁶²

Summary

This paper has examined a number of differences between the Canadian and Australian industrial relations system. Five major distinctions can be

highlighted. First, a substantially larger amount of industrial relations activity in Australia is found in the federal sector. Second, notwithstanding the importance of direct bargaining, compulsory conciliation and arbitration (rather than collective bargaining) is the dominant industrial relations institution in Australia. Third, union density is higher and employer organization is more extensive in Australia. Fourth, the Australian system is highly centralized with institutional controls over wage determination, whereas Canadian collective bargaining is decentralized and heavily influenced by market forces. Fifth, plant-level industrial relations including formal grievance handling machinery are not well developed in Australia.

Footnotes

1. Donald D. Carter, "Income Restraint and Industrial Relations: A Comparative Study of the Canadian and Australian Experiences," Reprint Series No. 61 (Kingston: Industrial Relations Centre, Queen's University, 1986), pp. 431-432.
2. Ibid., pp. 437-438.
3. D. Plowman, "The Settlement of Industrial Disputes in Australia," in T. Hanami and R. Blanpain, eds., Industrial Conflict Resolution in Market Economies (Deventer, Netherlands: Kluwer Law and Taxation Publishers, 1984), p. 35.
4. Braham Dabscheck and John Niland, Industrial Relations in Australia (Sydney: George Allen & Unwin, 1981), p. 253.
5. Tasmania utilizes tripartite industrial boards to determine awards for employees. Seventy three boards are in operation, largely where union concentration is low. The major unions have opted for coverage under the federal system. S. Deery and D. Plowman, Australian Industrial Relations, Second Edition (Roseville: McGraw-Hill Book Company, 1985), pp. 162-166.
6. Registration criteria are not onerous. Under the Commonwealth Conciliation and Arbitration Act 1904, unions must have 100 members employed in a particular industry or engaged in an industrial pursuit. Additionally, registration "is unlikely where it can be established that other registered unions exist to which workers in the particular area could 'conveniently' belong". Dabscheck and Niland, op.cit., p.129.
7. Carter, op. cit., p. 454.
8. Dabscheck and Niland, op. cit., pp. 130-131 and Stephen J. Frenkel and Alice Coolican, The Construction Industry in Australia (Geneva: International Institute For Labour Studies, International Labour Organization, 1981), p. 6.
9. Australian Bureau of Statistics, Trade Union Statistics, Australia, 30 June 1985, (Canberra: Australian Bureau of Labour Statistics, 1986) and Labour Canada, Directory of Labour Organizations in Canada 1985 (Ottawa: Supply and Services Canada, 1985).
10. Deery and Plowman, op. cit., p. 205.
11. Ibid., p. 208 and Statistics Canada, The Corporations and Labour Unions Returns Act Annual Report 1983 (Ottawa: Supply and Services Canada, 1986).
12. Deery and Plowman, op. cit., p. 211.

13. John Niland, "Gaining Against The Tide: Australian Unionism in the 1980s", Paper presented at the Thirty-Eighth Annual Meeting of the Industrial Relations Research Association, December 28-30, 1985, p.3 (forthcoming in Bulletin of Comparative Labour Relations, 1986).
14. D.W. Rawson and S. Wrightson, Australian Unions 1984 (Sydney: Croom Helm, 1985), pp. 18-20.
15. Labour Canada, loc. cit.
16. Dabscheck and Niland, op. cit., p. 147.
17. Nearly two-thirds of Australian union members are in unions affiliated with the A.L.P. In Canada, the figure is only 8 percent. D.W. Rawson and Sue Wrightson, "Membership of Australian Unions, December 1981," Industrial Relations Papers, Research School of Social Sciences (Canberra: A.N.U., 1982), p. 17 and Keith Archer, "The Failure of the New Democratic Party: Unions, Unionists and Politics in Canada," Canadian Journal of Political Science, Vol. 18, No. 2 (June 1985), pp. 360-361.
18. Niland, op. cit., p. 11.
19. Dabscheck and Niland, op. cit., p. 145 and Stephen Deery, "Union Aims and Methods" in Bill Ford and David Plowman, eds., Australian Unions: An Industrial Relations Perspective (Melbourne: The Macmillan Company of Australia, 1983), pp. 74-76.
20. Frenkel and Coolican, pp. 30-32.
21. Joseph B. Rose, "Some Notes on the Building Trades - Canadian Labour Congress Dispute", Industrial Relations, Vol. 22, No. 1 (Winter 1983), pp. 87-93.
22. Commonwealth Conciliation and Arbitration Act 1904, Section 2.
23. Dabscheck and Niland, op. cit., pp. 179-180.
24. Daniel J.B. Mitchell, "The Australian Labor Market" (Los Angeles: UCLA Working Paper Series - 59, 1983), p. 48.
25. Deery and Plowman, p. 180.
26. David Plowman, "Employer Associations: Challenges and Responses," The Journal of Industrial Relations, Vol. 20, No. 3 (September 1978), pp. 237-240.
27. Ibid, p. 243.
28. Deery and Plowman, op. cit., p. 185.
29. Plowman, op. cit., pp. 246-248.
30. Deery and Plowman, op. cit., p. 194.

31. Ibid., p. 269.
32. As noted by Chief Justice Barwick of the High Court: "Whilst it is a truism that industrial disputes and awards made in their settlement may consequently have an impact upon the management of an enterprise and upon otherwise unfettered managerial discretion, the management of the enterprise is not itself a subject-matter of industrial dispute." Cited in Dabscheck and Niland, op. cit., p. 195.
33. Ibid., p. 245.
34. Ibid., p. 193.
35. Plowman, "The Settlement of Industrial Disputes in Australia", loc. cit. and Roy J. Adams, "The Extent of Collective Bargaining in Canada," Relations Industrielles, Vol. 39, No. 4 (1984), pp. 655-667.
36. Dabscheck and Niland, op. cit., p. 246.
37. Deery and Plowman, op. cit., p. 142.
38. Ibid.
39. Plowman, op. cit., p. 29.
40. Dabscheck and Niland, op. cit., p. 194.
41. Plowman, op. cit., p. 38.
42. Mitchell, loc. cit.
43. Deery and Plowman, op. cit., p. 278.
44. Ibid., pp. 278-282.
45. Ibid., p. 282.
46. Ibid., pp. 320-321.
47. Dabscheck and Niland, op. cit., p. 332.
48. David H. Plowman, Wage Indexation: A Study of Australian Wage Issues 1975-1980 (Sydney: George Allen & Unwin, 1981), p. 11.
49. Ibid., p. 7.
50. Ibid., p. 22.
51. Niland, op. cit., p. 12.
52. Plowman, "The Settlement of Industrial Disputes in Australia," op. cit., p. 27.
53. Ibid., pp. 27-28 and Deery and Plowman, op. cit., pp. 51-53.

54. Plowman, loc. cit.
55. Ibid., p. 34.
56. Dabscheck and Niland, op. cit., pp. 258-261.
57. Plowman, op. cit., pp. 34-35.
58. Whereas only about one percent of North American grievances are resolved through grievance arbitration, the two situations are not comparable, since formal grievance procedures are extremely rare in Australia.
59. Deery and Plowman, op. cit., pp. 44-51 and Labour Canada, Strikes and Lockouts in Canada (Ottawa: Supply and Services Canada, 1970-1982).
60. Plowman, op. cit., p. 40.
61. In circumstances where interstateness is not an obstacle, the Commission's jurisdiction is limited to industrial matters as distinct from management matters. Since many disputes involve management policy, the Commission is precluded from handling disputes concerning management prerogatives. Even when the Commission lacks jurisdiction, it is prepared to provide assistance, but only when both parties are seeking a settlement. State tribunals do not become involved in disputes between parties to a federal award. David H. Plowman, "Grievance Procedures and Australian Arbitration", Research Paper No. 5 (Sydney: Industrial Relations Research Centre, University of New South Wales, 1982), pp. 5-8.
62. Mitchell, op. cit., p. 44.

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