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Roy J. Adams

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Article abstract

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Employment Standards in Ontario
An Industrial Relations Systems Analysis

Roy J. Adams

The author analyses the operation of employment standards in Ontario using the industrial relations systems framework.

In North America it has been customary to divide industrial relations into union and non-union sectors (Garbarino, 1984). Christie recently suggested that, from a legal perspective, there are three major industrial relations «regimes» in Canada: individual bargaining which has its basis in common law; collective bargaining which has a separate and distinct legal basis; and the rapidly expanding regime of regulation by statute (Christie, 1983). Of the three, collective bargaining has been the one most extensively researched. So prominent has it been that textbook writers often equate industrial relations with unions and collective bargaining (Hameed, 1975; Kehoe and Archer, 1983; Craig, 1986). Indeed, two American theorists have proposed that industrial relations as a field of inquiry should limit itself to collective bargaining (Strauss and Feuille, 1978). In recent years, however, an increase in litigation with regard to «wrongful dismissal» has produced a quickly expanding literature on individual bargaining (Grosman, 1985; Levitt, 1985; Mole, 1984; Wood, 1983; Christie, 1980). There also has been a good deal of recent research on certain aspects of statutory regulation of employment including occupational health and safety (Manga *et al.*, 1981; Bryce and Manga, 1985) and human rights at work (Jain, 1985; Abella, 1984). However, about the structure and operation of employment standards, a regulatory regime which operates in all Canadian jurisdictions, very little is known. Labour economists have done some work on the economic effects of minimum wage laws but traditional industrial relations concerns about the structure and process of rule making, rule administration, and rule adjudication have been virtually ignored. It was the dearth of knowledge about these issues which prompted the research reported here.

* ADAMS, Roy J., Professor, Faculty of Business, McMaster University

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EMPLOYMENT STANDARDS AS INDUSTRIAL RELATIONS SUB-SYSTEM

For the purposes of gathering data about the structure and operation of employment standards in Ontario the industrial relations (IR) system framework was utilized.

The IR system schema has been widely used in Canada since the 1960s. The Woods Task Force on Labour Relations which conducted the most comprehensive study of labour-management relations to date utilized one version of the framework to organize its inquiry (see *Canadian Industrial Relations*, 1968). Other versions have been used by Craig (1986) and by Anderson and Gunderson (1982) to provide conceptual bases for their textbooks.

Although there are many versions of the IR system framework, all of them share certain attributes in common. Every IR system (or sub-system) may be thought of as consisting of «actors» (Dunlop, 1958) or parties of interest (the term used by the Woods Task Force) interacting in patterned ways (*e.g.* collective bargaining) to produce outcomes relevant to the employment relationship (*e.g.* terms and conditions of employment; rules such as employment laws and collective agreements; strikes). Although Dunlop suggested in *Industrial Relations Systems* (1958) that his conceptual schema could be usefully applied both to union and non-union situations, in fact, it has been most often used to conceptualize and organize inquiry into union-management relations. One purpose of this paper is to illustrate that the IR systems concept may serve as a useful guide to research into areas beyond collective bargaining. In a previous paper I suggested that the first task of the investigator using the IR systems approach is to identify labour, management and government actors interacting in patterned ways to produce employment related outcomes (Adams, 1983). The approach may be followed at several levels and on different planes. Thus one may sensibly speak of the Canadian IR system, the IR system in the Canadian steel industry and the IR system at the Steel Company of Canada (now Stelco, Inc.) One may also conceive of the Canadian collective bargaining system; the Canadian employment standards system and the Canadian system for regulating occupational health and safety. In each of these cases one may identify labour, management and government actors interacting with systematic regularity to produce employment related outcomes.

A concrete example may be offered by briefly describing and contrasting the collective bargaining system and the employment standards system in Ontario. The primary actors in the collective bargaining system are 1) trade unions and those employees whom they represent; 2) the management of individual enterprises and enterprise associations;

3) government and 4) neutrals. The key government agencies are the Ministry of Labour which provides conciliators and mediators in the event of disputes and has a general responsibility for overseeing union-management relations policy in Ontario, and the Labour Relations Board which is specifically responsible for administering the primary act regulating union-management relations. Neutrals include arbitrators chosen jointly by labour and management to resolve disputes occurring under collective agreements. For particular purposes other parties may be included as actors in the system. For example, parents often play an important part in teacher-school board relations.

Collective bargaining is the primary process of interaction but the parties also interact via the procedures of the Labour Relations Board and through grievance procedures established to settle disputes over the terms of collective agreements. Occasionally, the courts become actors in the system and consequently court procedures become an interaction process. The parties also interact at a political level in attempts to influence government policy and achieve legislative revision.

The primary outcomes of the collective bargaining system are collective agreements, Labour Board decisions, arbitral jurisprudence, and laws and policies regulating both the process and substance of union-management relations. All of these «rules» relate in one way or another to terms and conditions of employment or more generally to the rights and obligations of unions, individual employees covered by collective agreements and management. Another major class of outcomes is industrial conflict; strikes and lockouts being the most prominent forms.

Under employment standards the primary actors are individual employees, their employers, the government and neutrals. The principal government agency in the system is the Employment Standards Branch of the Ministry of Labour. The Branch oversees the administration of the *Employment Standards Act* and related acts and provides adjudication when disputes over interpretation of legislation occur. Unlike most Canadian jurisdictions there is no separate agency in Ontario with responsibility to establish or to recommend new regulations or changes to existing standards (Malles, 1976). Nor is there any separate agency, as there is in several provinces, whose function it is to resolve employer-employee disputes. However, in certain cases, independent referees are appointed to settle disputes.

Employment standards have their primary substantive effect in small enterprises[1]. As a result, associations of small business play a role in representing the interests of their members to government. Employees who are directly affected by employment standards laws have little collective representation. The Ontario Federation of Labour, which is the major political voice for labour in the province, devotes its efforts primarily to issues of direct concern to its unionized members.

An important point of interaction between labour, management and government occurs when a change in employment standards is being contemplated. Changes are generally proposed by the Ministry of Labour after consultation with the relevant parties. However, because unorganized employees have no spokesman, discussions are largely with employer groups. The Ontario Federation of Labour is consulted primarily with respect to the likely impact of changes on its members and on its interest in organizing the unorganized.

Another main point of interaction is between the individual employee and his/her employer when there is a dispute regarding the implementation of a substantive standard. *The Employment Standards Act* contains a procedure which involves the Employment Standards Branch (ESB) and, on occasion, neutral referees, to settle such disputes.

A third point of interaction is between the ESB and individual employers. Each employer is responsible for implementing the substantive standards but the Branch has an oversight and inspection function. In order to ensure compliance with the law «routine» investigations may be initiated by the Branch.

In cases where employers refuse to put ESB decisions into effect, the courts sometimes become the focus of interaction.

Major outcomes of the system include the standards themselves, and the jurisprudence resulting from complaints and appeals. Another key outcomes is the degree to which the standards are complied with by employers. In their studies regarding the impact of the minimum wage labour economists generally have assumed that compliance with the law is universal. However, Ashenfelter and Smith have recently demonstrated that compliance with minimum wage laws is far from universal in the U.S. (Ashenfelter & Smith, 1979). Industrial conflict in the form of strikes and lockouts is not an issue in the employment standards system.

1 Interviews with several officials of the Employment Standards Branch of the Ontario Ministry of Labour were carried out between 1983 and 1986. This statement as well as several others not otherwise documented are attributable to these interviews.

THE RESEARCH FOCUS

One advantage of utilizing the IR system framework is that it directs one's attention to similar dynamics and structures in different systems. In so doing, it leads one to examine phenomena that might otherwise be skipped or passed over lightly. One predominant concern of research into collective bargaining has been on the issues of consistency and fairness in the administration of collective agreements and the adjudication of disputes arising from the interpretation of collective agreements. It seemed to me that similar research could be fruitfully carried out on the operation of employment standards. Specifically, I wanted to know whether the procedures for dispute resolution under employment standards:

a) produced fair, equitable and just outcomes when employees alleged that their rights were being infringed;
b) assured compliance with the substantive terms of the *Employment Standards Act.*

In both cases I considered experience with collective bargaining to be a base of comparison. In other words I wanted to know whether dispute resolution procedures under collective bargaining and employment standards worked equally as well when measured against the norms noted above.

DISPUTE RESOLUTION PROCEDURES

Should a disagreement occur between an employer and an employee over the application of an employment standard, the *Employment Standards Act* envisions the following procedure (in simplified form) being implemented. First, it is expected that the employee will discuss the issue with his/her employer. The Ministry provides advice to employees and employers unsure about their rights and obligations. In 1984-85 the Branch received about 725,000 telephone inquiries of which approximately 40% were from employers. The Branch also conducted about 29,000 in-person interviews (*Annual Report*, 1984-85, p. 53).

If the employee is unable to arrive at a satisfactory resolution of the issue through direct discussion with the employer then he/she may file a claim in writing with the Employment Standards Branch. When written claims are filed an officer of the Ministry is appointed to investigate. Officers first attempt to work out a satisfactory solution to the problem between the parties. In short, the officer first behaves similarly to that of a conciliator or mediator. If no satisfactory solution can be worked out, then the

officer assumes a role like that of the grievance arbitrator under collective bargaining and decides the issue in favor of either the employer or employee. If the decision is in favor of the employee then an order is issued to that effect. An order carries with it a financial penalty equivalent to 10% of the value of the officer's monetary award or $25 whichever is more. Most, but not all, awards have monetary consequences. Employers may appeal judgements against them to neutral referees appointed on an *ad hoc* basis by the Director of Employment Standards. Employees are not entitled to such an appeal but may have a second investigation by another Employment Standards officer.

How well does this procedure work when compared to the grievance procedure under collective bargaining? In fact, it does not come off very well in the comparison.

First of all, very few regular employees ever file employment standards grievances (see footnote 1). Instead, the great majority of complaints are filed by people who have left the employer against whom the complaint is filed. Most are, in effect, «suing» for remuneration due to them. The preponderance of formal employment standards disputes occur at the point of severance rather than in the context of an on-going employment relationship as is common under collective bargaining. The primary function of the disputes procedure under employment standards is not to resolve disputes arising out of day-to-day employer-employee relations. Instead, the Employment Standards Branch is primarily a collection agency. The internal jargon of the Branch recognizes this fact. In annual reports of the Ministry data is provided not on the number of disputes resolved but rather on the number of «collections by issue» which the Branch made during the year. No mention at all is made of disputes settled in the course of an ongoing employment relationship.

Despite this experience, it is clear that the Ontario legislature intended the disputes procedure to be used by regular employees because it included strong language against victimization of grievors in the Act.

Article 57 states that:

«No employer shall,
a) dismiss or threaten to dismiss an employee
b) discipline or suspend an employee
c) impose any penalty upon an employee or
d) intimidate or coerce an employee, because the employee,
e) has sought the enforcement of this Act or the regulations
f) has given information to an employment standards officer
g) has participated in or is about to participate in a proceeding or hearing under this Act or
h) testifies or is required to testify in a proceeding or hearing under this Act». (*Employment Standards Act*, 1982).

For engaging in victimization an employer may be fined up to $10,000 and be put in jail for six months. The employee may be reinstated with compensation. An employer who fails to comply with an order to reinstate may be fined $100 for each day of non-compliance.

Article 57 cases are very rare. They are so rare that the Branch does not keep records of them. In response to my request for data the Branch did an informal survey of long service officers. Between them three cases were identified. One was decided in favor of the employer and two were decided in favor of the employee (for Québec experience see Gagnon, 1984). This experience is very different from that under collective bargaining where effective reinstatement after a dismissal found to be unwarranted is a frequent enough occurrence (G. Adams, 1978; Shantz and Rogow, 1985).

The probable ineffectiveness of the strong sounding sanctions against victimization is indicated by the Ministry procedure for dealing with the odd complaint received from an employee in an on-going relationship. Instead of initiating an investigation on behalf of the employee the Branch conducts (or pretends to conduct) a «routine» or «preventive» investigation. The employer is informed that the Branch has decided to inspect his records as part of its regular oversight activities. According to interviews with ESB officials the identity of the complainer is kept secret precisely because it fears that the employer will illegally victimize employees who file complaints. This procedure is probably not very effective because true random investigations are rare. The number of «preventive» investigations reported to have been carried out annually declined from 1,183 in 1981/82 to 321 in 1984/85 (*Annual Reports*). In short, when the Ministry tells an employer it intends to carry out a routine investigation it is likely that the employer will reason that someone «blew the whistle». In small enterprises it should not be difficult for employers to determine likely «whistle blower» candidates. Less than 30 employees work in the average enterprise against which a complaint is filed in Ontario[2].

The conclusion that I draw from these observations is that there is no effective disputes procedure available to unorganized employees who have a disagreement with their employer about the application of employment standards. No doubt such disputes often are settled amicably by discussion between employer and employee just as most grievances are settled at the first step of the grievance procedure under collective bargaining (Gandz, 1982). However, if the employee is unable to persuade the employer about the correctness of his/her position then he/she cannot place much confidence in the available procedure to provide a just outcome. As it now

2 This figure is based on the interviews as well as on an internal, unpublished study of the Employment Standards Branch.

stands, the final practical resolution to unresolved disputes occurring in the context of an on-going relationship is unilateral decision by the employer. One cannot be confident that such a system is capable of providing justice.

THE EMPLOYMENT STANDARDS BRANCH AS COLLECTION AGENCY

If the Employment Standards Branch is really a collection agency one may ask how good of a collection agency is it? If an employee quits the job or is dismissed and the employer refuses to give to him/her vacation pay or wages due will the Branch ensure that payment is made? Table 1 provides some relevant data. In an average year during the 1980's one employee in seven (ca. 15%) who validly complains to the ESB does not receive what is due to him/her.

Delinquent employers (those against whom valid complaints are filed) may be divided into three primary groups: The Sulkers, The Shysters and the Bankrupted.

Table 1

Resolution of Investigations
1981-85
(Yearly mean)

Investigations Completed	17,225
Violation Occurred	
(a) all cases	12,534 (73% of investigations)
(b) less non-monetary cases[a]	12,355
Collection made	10,565 (86% of monetary cases)
Violation but no collection[b]	1790 (14,5% of monetary cases)

Source: Unpublished data provided by the Employment Standards Branch of the Ontario Ministry of Labour.

(a) Includes an estimated 200 cases in 1981/82.
(b) In some of these cases collections were made in subsequent years.

The Sulkers

This group is composed of employers who are sedentary (not mobile) and solvent. In a typical case the employee leaves (quits or is fired) subsequent to an angry exchange. Feeling a sense of righteous indignation the

employer refuses any payment to the «ungrateful» or «disloyal» employee. In most of these cases the ESB does not eventually collect on behalf of the employee. To do so it may have to enlist the assistance of the courts or the local sheriff. Procedures are available under which the Branch may seize the employer's bank accounts as well as redirect payments due from a third party. One section of the ESB specializes in the application of such legal techniques.

The Shysters

This group of employers deliberately set out to defraud employees. One common pattern is for an «entrepreneur» to set up a summer business. Towards the end of the summer wage payments to employees are stopped and when the last job is done the employer disappears. This type of white collar criminal often maintains multiple bank accounts and several shell corporations. The procedures of the Branch are very ineffective against them. The primary weapon is court prosecution but because that process is costly there has been a conscious decision to decrease its use. In 1978-79 some 60 active prosecutions were resolved but since 1982/83 there have been no more than four cases a year.

The Bankrupted

When companies become insolvent employees often find it difficult to collect remuneration due to them (see Adell, 1983; Carter 1983; Brown, 1985). Bankruptcy is within the federal jurisdiction. Under the federal law secured creditors (*e.g.* financial institutions) have priority over employees. Should there be any money left over when it comes the turn of the employees to collect they are only entitled to remuneration earned in the three months prior to bankruptcy up to a maximum of $500. Termination pay is generally not considered to be remuneration within the meaning of the federal act. Vacation pay, the most common collection issue, does have some protection from the priority list in the *Bankruptcy Act*. According to the Ontario *Employment Standards Act* employers are «deemed to hold vacation pay accruing due to an employee in trust...». Property held in trust is not considered to be part of the bankrupt's estate and therefore the ESB may be able to collect such payments over the claims of the creditors. Pensions and construction industry wages are protected by similar «trust» devices. In cases involving insolvency short of bankruptcy employee claims may have somewhat more security than they do under the *Bankruptcy Act*. Although the priority list is essentially the same, the maximum remunera-

tion collectable is higher (*i.e.* $2000 *vs* $500) and there are no restrictions with regard to when the wages were earned. Finally, officers and directors of corporations may be held personally liable for unpaid wages. However, the recent Ontario Commission into Wage Protection in Insolvency Situations noted that such provisions «have been enforced only sporadically» (Brown, 1985, p. 52). The Commission also found that in 1982-83 some 36,000 workers in insolvency cases initially were owed vacation pay and 72% collected; some 16,000 employees were owed wages but only one fourth collected; approximately 15,000 workers were owed pay in lieu of notice and another 3,700 were owed severance pay but few «if any» collected (Brown, 1985, p. 15).

One may conclude from this review that employees who leave reputable, stable employers in Ontario may be reasonably certain that the available procedures will protect their interests. The probabilities are high that they will eventually receive the remuneration to which they are entitled. However, for people who unfortunately become involved with unscrupulous employers or happen to find themselves working for a company going bankrupt the prospects are not good. Current procedures do not adequately protect their interests.

What could be done? Employers who deliberately defraud employees could be more vigorously and regularly prosecuted. Prosecution is, however, expensive and there is no guarantee that a more extensive effort would have a significant deterrent effect. On the other hand the present system is one in which the potential criminal has little reason not to commit the crime.

In order to protect workers in bankruptcy situations, most developed countries have established wage protection schemes. The European Economic Community in 1980 «adopted a directive requiring Member States to guarantee employees' claims through assets independent of the employer's operating capital» (St. John, 1985, p. 2). Three Canadian provinces — Manitoba, Québec and New Brunswick — have established such schemes although the one in New Brunswick is not yet operative and the Québec scheme functions at present only for the construction industry. A wider Québec plan has not yet been declared in force.

Basically wage protection plans provide that employees of a bankrupt firm may collect remuneration due to them from a government agency. The agency then acquires the right to collect from the administrators of the bankruptcy. The Manitoba plan provides even broader protection. All employees on whose behalf the government is unable to collect within 30 days may be paid out of the fund. There is no requirement that the delinquent firm be insolvent. (St. John, 1985, p. 51). The Brown Commission in-

to wage protection in Ontario made a similar recommendation but severance pay (required in plant shutdown situations in Ontario) would be excluded from the definition of «unpaid wages». Pay in lieu of notice — required under common law and the employment standards statute — would also be excluded as it is in Manitoba.

Commissioner Brown gave three reasons for the exclusions. First, severance pay and termination pay are not earned in the same sense as are wages and vacation pay. For example, neither would be payable if the employee resigned voluntarily or was terminated for cause. Secondly, both severance pay and termination pay would defer eligibility for unemployment insurance benefits. Finally, severance pay and pay in lieu of notice, if paid, would be very expensive. For example, the Brown Commission estimated that during the one year period from April 1, 1982 to March 31, 1983, unpaid wages and vacation pay amounted to about six million dollars. On the other hand, «claims for pay in lieu of notice and for severance pay together totalled nearly $31 million of which little, if any, was collected» (Brown, 1985, p. 15). Making an amount of such size annually payable, Brown concluded, would «likely result in a reduction in credit to labour intensive business» (Brown, 1985, p. 42). It might also «increase the risk of an employer deliberately not giving employees notice, knowing that an insurance fund would provide them with wages in lieu» (Brown, 1985, p. 43).

From a broad economic perspective Brown's recommendation would appear to be reasonable and prudent. Individual employees, unable to collect what otherwise would be due to them, might see the matter differently.

APPEAL PROCEDURES

One of the most odious aspects of employment standards dispute resolution in Ontario is the appeal procedure. If the decision of an employment standards officer goes against the employer he/she may appeal. In those cases a neutral referee is appointed to hear the case. If an employee appeals a decision then a second officer is appointed but employees are not entitled to have their case decided by a neutral adjudicator.

The apparent reason for this unbalances scheme is a fear that, were a referee available to them, employees would make frivolous use of the right. Data in Table 2 are relevant to that theory. They indicate that under the present system employees do not «appeal» more often than do employers nor are their requests for a second investigation less meritorious than are employer requests for a referee. Indeed the appeal experience of employers and employees has been almost identical during the 1980's. Although a

review committee, appointed in the early 1980's, recommended that this anachronistic abuse of democracy be done away with it still continues in effect.

Table 2

Appeals 1981-1985
(Yearly Mean)

	Employer	*Employee*
Officer decision against	12,534	4691
Appeals		
— Number	293	123
— % of decisions against	(2.3)	(2.6)
Hearings/2nd investigations completed	194	115
Results:		
Order confirmed		
— Number	128	76
— Percent	(66)	(66)
Order modified		
— Number	37	
— Percent	(19)	
Appellant upheld		
Number	30	39[a]
— Percent	(15)	(34)

Source: Annual Reports of Ontario Ministry of Labour and unpublished data supplied by the Employment Standards Branch of the Ontario Ministry of Labour.

a. A combination of appellant upheld and order modified. Available data do not allow a finer disaggregation.

COMPLIANCE

The effective grievance procedures that exist under collective bargaining ensure that employers comply with the terms of collective agreements. Since the employment standards procedure is little used in day to day employment relations, we might expect that it is not very effective in ensuring compliance with legal requirements. In the U.S., where the dispute resolution process is similar to the one in Ontario, recent research has uncovered a substantial degree of non-compliance with the minimum wage (see Ashenfelter and Smith, 1979). Some relevant data for Ontario are presented in Table 3.

Table 3

Minimum Wage Compliance in Ontario May, 1979

	Estimated Non-Supervisory Employment	*A* *Percent Earning $3.00/hr or less*[a]	*B* *Percent Earning Exactly $3.00/hr*[a]	*Compliance Rate B ÷ A*
Forestry	14,994	0.8	0.8	1.00
Mining	21,247	*	*	1.00
Manufacturing	879,751	1.1	0.8	.73
Trade	520,703	8.6	5.2	.60
Finance, Insurance and real estate[b]	87,321	2.8	1.5	.54
Services[c]	382,847	17.8	8.7	.49
Total	1,906,863	6.5	9.6	.55

Source: Unpublished survey carried out by Ontario Ministry of Labour in May, 1979.

* Less than 0.5%

(a) The minimum wage in May, 1979 was $3.00/hr.
(b) Does not include savings and credit institutions.
(c) Does not include education and related or hospitals.

Ashenfelter and Smith in the U.S. estimated compliance by taking those earning exactly the minimum wage as a percent of all people earning the minimum wage or less. They reasoned that the resulting figure would be more accurate than the results of taking those below the minimum wage as a percent of all wage earners because most working people are earning market wages which are not directly determined by legal requirements. The Ashenfelter and Smith procedure was followed in Table 3. The data suggest that the overall compliance rate in 1979 was 55%. More than 55,000 employees were earning less than the minimum wage in that year. Some of those may have been exempt from the law but there seems to be little doubt that there is a substantial non-compliance rate.

What about non-compliance with standards other than the minimum wage? Some evidence comes from «collections» data published by the ESB. Most employment standards violations which come to light seem to occur at the point of separation. In short, if no separation had taken place no viola-

tion would have occurred. Nevertheless, the published data suggest that some of the violations discovered after a complaint by a separating employee had occurred prior to the separation. For example, in 1984/85,29 equal pay violations affecting 353 people were settled as well as 18 pregnancy leave violations. Both of these issues must have occurred in the context of an on-going relationship. There were also 1,159 overtime violations which affected 3932 people. Most of those cases probably had to do with on-going violations.

It is also interesting to note that collections were made for about 900 employees each year between 1981 and 1985 who had been paid less than the minimum wage. If in fact, over 50,000 people work for less than the minimum wage each year, as suggested by the Ministry of Labour's survey, then ESB procedures correct the situation for less than 2% of those affected.

Several steps might be taken to improve compliance. First, a policy might be adopted that all violators will automatically be fined a minimum amount necessary to make non-compliance unpalatable. As things now stand, there is no penalty whatsoever for non-compliance if the discovered offender immediately corrects the situation. Current policy calls for mediation first and the imposition of penalties only if the offender balks at a decision of an employment standards officer. Ministry officials estimate that five to 10 percent of violators each year are repeat offenders.

Second, Ontario could require, as some provinces already do, that the standards be posted in all workplaces. That policy might at least ensure that employers knew the extent of their legal responsibilities. At present the Director of Employment Standards may require employers to post the standards but he does not make extensive use of that authority. The Branch does, however, hire summer students to visit small employers to inform them of their responsibilities but this activity is certainly not equivalent to mandatory posting.

The Branch might also increase the number of «routine» or «preventive» investigations which it conducts. In some jurisdictions truly random investigations are carried out and a target is set to visit some percentage of the relevant firms annually (Starr, 1981). In Ontario preventive investigations are carried out at the discretion of the Director and regional managers. As noted above, in recent years, the number of routine investigations has been declining, largely it would seem because of inadequate budgets. In some regions of the province true preventive investigations have been stopped altogether.

To reduce the number of blatant offenders the Branch might fruitfully employ a public relations expert who would have the job of working with the press to expose the activities of those who set out deliberately to exploit the weak and naive. As things now stand the public knows very little about the white collar criminals who lurk about the fringes of the IR system. Anonymity is a strong ally of such despicable actors.

A fifth option which might improve compliance would be to follow the Federal, Nova Scotia and Québec examples and prohibit employees from dismissing workers for reasons other than just cause — the standard now in effect under collective bargaining. If unorganized workers had confidence that the government would stand firmly behind them should make use of their right to complain, more of them might be willing to come forth. A complete reversal of the present situation could not be reasonably expected, however. When serious disputes occur in very small enterprises (*e.g.* 10 employees or less) it is very difficult for the protagonists to carry on as usual. Still, a general unjust dismissal law could be expected to improve the current situation (see England, 1982; Simmons, 1984; Gagnon, 1984; Trudeau, 1985)[3].

Finally, some consideration should be given to the establishment of statutory compliance committees (Adams, 1985). Occupational health and safety committees are now widely required and their record has been one of at least moderate success (Manga, *et al.*, 1981; Bryce and Manga, 1985). Several European jurisdictions have had long experience with statutory committees charged with ensuring compliance with legal requirements. The logic behind the establishment of the health and safety committees — that responsibility for the achievement of safe work should be placed on labour and management at the point of production — would seem to be equally applicable to the achievement of high compliance with minimum standards.

3 Gagnon's research in Québec (1984) showed that only a small percent of those who were victimized subsequent to filing an employment standard complaint were successfully reintegrate into the firm. England's research on the Federal experience (1982) was more positive but Trudeau's work on the general unjust dismissal provision in Québec (1985) produced results more in line with those of Gagnon. Given these outcomes, one referee questions the likely effectiveness of unjust dismissal provisions. I agree that a skeptical attitude is warranted. Nevertheless, it seems to me that such laws might very well have a deterrent effect. Moreover, it seems to me that one might reasonably interpret the Québec experience as suggesting that further refinement is necessary in order to improve the success of reinstatement rather than as proof that laws prohibiting unfair dismissal are futile.

CONCLUSION

In writing this paper I had two objectives in mind. First, I wanted to illustrate the utility of applying the IR systems concept to employment standards. In the course of the research reported here the IR systems framework proved to be quite useful in highlighting aspects of employment standards which might otherwise have been quickly passed over. For example, most professionals involved with employment standards consider the function of the ESB to be the collection of funds due to separated employees from their previous employers. In fact that is the dominant function served by the Branch. Nevertheless, by applying the IR systems framework and by drawing on experience with collective bargaining as an IR sub-system, it became apparent that the legislature intended the employment standards disputes procedure to apply not only to separated employees but also to those in an on-going relationship. The research reported here strongly indicates that the intended function in regard to regular employees is not being served.

I suggest that the IR systems framework could be fruitfully applied more extensively to regimes other than collective bargaining. If we are to acquire a more thorough and well-rounded understanding of Canadian industrial relations more studies into non-traditional areas are essential.

My second objective in writing this paper was to draw conclusions about the effectiveness of the employment standards disputes procedure. In regard to its function with respect to disputes occurring in an on-going relationship the research reported here suggests that the system performs poorly. It is, however, very difficult to design systems likely to be effective in small organizations where relationships are very personal.

As a collection agency, the ESB procedure appears to work well regarding legitimate, solvent employers who can be located and accosted. It does not work very well against insolvent employers and those determined to flaunt the law.

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L'analyse des normes du travail en Ontario en tant que régime de relations professionnelles

Il n'y a eu que peu de recherches au Canada sur les normes du travail considérées dans la perspective d'un régime de relations professionnelles. Dans le présent article, on s'est appliqué à analyser le fonctionnement des normes du travail en se référant aux cadres des systèmes de relations professionnelles. On y a proposé d'ima-

giner le service des normes du travail comme s'il s'agissait d'un sous-système de relations professionnelles dont les caractéristiques ressembleraient à celles des autres sous-systèmes qu'on y trouve.

Pour l'illustrer, on y considère les normes du travail dans leurs principaux aspects en les comparant aux divers régimes de négociation collective qu'on retrouve en Ontario. On peut observer que les normes du travail et les autres régimes sont des sous-systèmes parce que, dans les deux cas, on peut y remarquer que les travailleurs, les employeurs et l'État y sont des acteurs qui agissent réciproquement les uns sur les autres sans arrêt et d'une façon systématique en vue d'en arriver à des solutions se rapportant à des problèmes du travail.

En partant du cadre des systèmes de relations professionnelles, les recherches sur le terrain ont porté sur le mécanisme de règlement des plaintes d'après le régime des normes du travail. On y a observé ce qui suit. 1) Même si c'était l'intention du législateur d'instituer un mécanisme de règlement des plaintes dans les lois sur les normes du travail semblable à la procédure de règlement des griefs sous le régime de la négociation collective, les choses ne se passent pas ainsi dans la réalité. Peu de salariés encore au service d'un employeur portent une plainte contre lui. Au contraire, la plupart des plaintes proviennent d'anciens employés contre leurs anciens employeurs pour le refus de ceux-ci de leur avoir versé la rémunération à laquelle ils avaient droit avant la fin de leur emploi. Essentiellement, le service des normes du travail du ministère du Travail joue le rôle d'une agence de perception plutôt que celui d'un mécanisme dont l'objet est de résoudre des différends découlant des relations du travail au fur et à mesure qu'ils se présentent. On en déduit que la crainte de représailles est la cause du très petit nombre de plaintes portées par les salaires. 2) Le service des normes du travail n'est que partiellement efficace en tant qu'agence de perception. Sa façon de procéder s'avère valable lorsqu'il se trouve en présence d'employeurs solvables et stables. Il ne l'est pas lorsqu'il a affaire à des «croches» (shysters) décidés à exploiter les travailleurs et à défier la loi. Il n'est pas efficace non plus contre les employeurs insolvables. L'article a aussi examiné les solutions mises de l'avant pour mieux protéger les travailleurs lorsqu'il y a insolvabilité du côté des employeurs. 3) À cause de l'insuffisance des règlements, il s'ensuit que le refus de se soumettre aux normes du travail s'en trouve probablement accru.

Pour améliorer l'application des normes du travail, l'auteur a soumis les cinq propositions suivantes:

1. Quiconque enfreint les normes devrait automatiquement se voir imposer des amendes d'une somme suffisante pour rendre difficile le refus de s'y conformer. 2. Les normes du travail devraient être affichées dans tous les lieux de travail. 3. Des enquêtes préventives devraient être effectuées d'une façon suivie et sans avertissement. 4. Le ministère du Travail devrait retenir les services d'un spécialiste dont le rôle serait de faire connaître les activités illégales destinées à exploiter les faibles et les naifs. 5. On devrait inclure dans la loi une disposition relative aux congédiements abusifs de façon à accroître la protection garantie aux plaignants potentiels.