

Notes on the Evolution of Compulsory Conciliation in Canada Notes sur l'évolution de la conciliation obligatoire au Canada

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Résumé de l'article

Durant plus de soixante ans, le gouvernement fédéral (et quelques gouvernements provinciaux) ont appliqué une politique de solution des conflits du travail basée sur l'intervention gouvernementale. L'expression « conciliation obligatoire » traduit assez bien cette politique. Conciliation obligatoire implique une suspension obligatoire d'un arrêt de travail jusqu'à ce qu'une investigation conduite par un gouvernement soit complétée. La procédure actuelle d'investigation prévoit l'emploi d'un officier et d'une commission de conciliation.

Le but de cet exposé est de présenter un panorama de l'évolution de l'expression conciliation obligatoire dans la législation fédérale du travail. L'auteur se propose de signaler quatre aspects de cette évolution qui semblent avoir été négligés dans la littérature sur ce sujet.

Premièrement, le système actuel de conciliation obligatoire représente le résultat d'efforts accumulés et reliés de la part du Fédéral pour développer un mécanisme de solution des conflits qui réduirait à un minimum le nombre d'arrêts de travail. Les « lois de conciliation » de 1900, 1903, de 1907 et de 1948 démontraient ce résultat.

Deuxièmement, dans la loi de 1800, le Fédéral exprimait déjà sa confiance dans la méthode de négociation collective obligatoire. De plus, le terme « conciliation », que la loi utilisait, signifiait ce qu'on appelle aujourd'hui négociation collective. Dans les lois de 1903 et 1907, le Fédéral reconnaissait la faiblesse de la négociation collective sur une base volontaire et adopta le mécanisme d'investigation obligatoire pour la corriger. Plus tard, les deux mécanismes, investigation et négociation collective obligatoires, étaient combinés. L'intégration de ces deux mécanismes constitue le caractère frappant du système canadien actuel de solution des conflits industriels. C'est pourquoi, il faut distinguer entre la politique actuelle de solution des conflits et ses formes antérieures d'expression.

Troisièmement, le terme « conciliation obligatoire » ne décrit pas d'une façon précise la politique fédérale actuelle de solution des conflits. Il serait plus précis d'utiliser les termes investigation et médiation obligatoires; ou encore, médiation avec inventaire des faits et recommandations. Cette mise au point permettrait de distinguer entre la politique actuelle et politiques antérieures qui utilisaient le même terme « conciliation », mais dans des contextes tout à fait différents.

Quatrièmement, la politique du Fédéral en 1900 s'inspirait de l'expérience anglaise. Cependant, cette dernière fut plus tard délaissée pour faire place à l'expérience américaine en matière de politique de solution des conflits.

Notes on the Evolution of Compulsory Conciliation in Canada

C. Brian Williams

The purpose of this paper is to review the historical evolution of the concept of compulsory conciliation in federal labor law, and to suggest some four features in its history which appear to have been overlooked in the literature on the subject.

For many years the federal government and many of the provincial governments have operated a labor dispute settlement policy based on governmental intervention. This policy is commonly called « compulsory conciliation ». By compulsory conciliation is meant a compulsory postponement of a work stoppage pending the completion of a government sponsored investigation. The current investigation procedure includes the use of a conciliation officer and a conciliation board.

Considerable debate has centered upon the effectiveness of compulsory conciliation. The consensus of most scholars is that compulsory conciliation has not led to the strengthening of collective bargaining as a method of achieving industrial peace nor to a reduction in the use of economic force to settle labor management disputes. Indeed, the system may well have only further complicated an already over-complicated situation. Professor Woods, an intimate observer of the Canadian system, offers the following observations:

Canadian legislation has recognized the importance of these losses (work stoppages) and has attempted to reduce them by compulsory conciliation designed to delay the work stoppage and maintain continuous production. Unfortunately, there is evidence that

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not only the work stoppage, but also its mediatory influence is delayed. The net result may be no gain or conceivably a loss due to the damage to the bargaining progress.

. . . There is no doubt that it has had the effect of postponing some strikes. But the experience of those who have served on behalf of the parties . . . shows that in a great many cases the procedure has produced long delays and frustration, and has seriously weakened collective bargaining as a private legislating process . . . The prospect of facing the compulsory conciliation officer tends to restrain bargaining until the parties are before him . . . Each of the parties attempts to jockey the board into writing a report which will strengthen its bargaining position. The conception that the parties are assisted out of a deadlock by the conciliation agencies overlooks the fact that in many cases the deadlock has been reached because of the compulsory steps ahead, and at the expense of genuine bargaining . . . It appears that Canadian labor relations policy could profit by considerable research. »¹

The significant characteristic of current federal labor relations policy is that it combines compulsory collective bargaining with compulsory conciliation under government auspices. In fact, as illustrated in the above comments by Professor Woods, the provisions requiring compulsory conciliation are locked into the provisions requiring collective bargaining. Indeed, much of the discussion on the effectiveness of compulsory conciliation centers on the effects of the requirement on the collective bargaining process. According to Cunningham:

« Doubt have been expressed about the advisability of combining these two main approaches. In particular, questions have been raised as to whether or not compulsory conciliation emasculates the process of collective bargaining. Are the two approaches complementary or contradictory in their effects on the behavior of the disputing parties? »²

The intention of this paper is not to deal specifically with the strengths or weaknesses of the Canadian compulsory conciliation system.³ Rather, the purpose is to explore the historical growth of

(1) H. D. WOODS, « Canadian Collective Bargaining and Dispute Settlement Policy: An Appraisal », *Canadian Journal of Economics and Political Science*, Vol. XXI, No. 4, November 1955, pp. 453, 464 and 465.

(2) W. B. CUNNINGHAM, *Compulsory Conciliation and Collective Bargaining; The New Brunswick Experience*, p. 1.

(3) For comments on the effectiveness of the compulsory conciliation system see H. D. Woods, « Canadian Collective Bargaining and Dispute Settlement Policy: An Appraisal », *Canadian Journal of Economics and Political Science*, Vol. XXI, No. 4, November 1955 and W. B. Cunningham, *Compulsory Conciliation and Collective Bargaining; The New Brunswick Experience*, Montreal: New Brunswick Department of Labor and McGill University Industrial Relations Center, 1958.

the compulsory conciliation concept in Canada and to suggest some features in its origin which appear to have been overlooked in the literature on the subject. The following paragraphs will be concerned with providing evidence to sustain the following propositions.

- 1) The present compulsory conciliation system, as expressed in federal legislation, is the result of a long history of attempts on the part of the federal government to develop a dispute settlement device which would reduce the number of work stoppages to a minimum. These attempts are represented by the « conciliation laws » of 1900, 1903, 1907 and 1948. ⁴
- 2) In earlier days the device consisted of an expression in favor of voluntary collective bargaining. To this voluntarism was later added a policy in favor of compulsory investigation as a supplement to voluntary collective bargaining. Still later, the compulsory investigation concept was merged with the concept of compulsory collective bargaining. The integration of compulsory collective bargaining with compulsory investigation is one of the most striking characteristics of the present Canadian industrial dispute settlement system. For this reason the present expression of policy in dispute settlement must be distinguished from the earlier expressions of policy.
- 3) The term « compulsory conciliation » does not adequately describe the present dispute settlement policy of the federal government. The present method should be called compulsory investigation or, alternatively, compulsory fact finding with recommendations in order to distinguish the current method from earlier methods which used the term « conciliation » in quite a different context.

The Terms Conciliation and Arbitration : Past and Present

Unfortunately, some of the vocabulary of industrial and labor relations was developed without precise definition. Consequently, even today some of the terminology carries a different meaning to different persons. Our purpose here is to briefly explore the different meanings of the words conciliation and arbitration, both in history and in present day usage. First, what is the current definition of conciliation?

(4) Our attention in this paper will be concerned only with the origins of the federal law. It is generally agreed that the federal system of conciliation is representative of the similar laws administered by most of the ten provinces.

Professor Cunningham, in defining the term, suggests that:

« . . . no distinction is made, as is sometimes done elsewhere, between conciliation and mediation. In Canada, the assistance of third parties in collective bargaining is commonly referred to as conciliation, the result no doubt of the general use of this term in the various government acts which have required third party intervention. »⁵

Professor Doherty, in a recent work, defines conciliation synonymously with mediation but draws a critical distinction sometimes made between the two terms; a distinction which will receive considerable elaboration in the following paragraphs.

« *Mediation*. Usually used interchangeably with conciliation to mean an attempt by a third party, usually a government official, to bring together the parties to an industrial dispute. The mediator has no power to force a settlement. Mediation is sometimes distinguished from conciliation: conciliation merely being an attempt to bring the two sides together; mediation suggesting that compromise solutions are offered by the third party. »⁶

However, during the period from 1870 to 1900 the words arbitration and conciliation were often used synonymously to describe the coming together of employers and employees, or employer and employee representatives, to discuss and, between themselves, to find a solution to their industrial dispute.

In short, the terms arbitration and conciliation were used to describe a process which today we call collective bargaining. Although there is no shortage of literature suggesting the collective bargaining context of conciliation and arbitration, the literature that will receive our attention are the writings of Sydney and Beatrice Webb, Henry Crompton and A.J. Mundella.

According to the Webbs, the classic work on the subject of arbitration and conciliation is Henry Crompton's « *Industrial Conciliation* », written in 1876. In this volume Crompton makes reference to developments which centered around the work of A.J. Mundella, an employer in the British hosiery trade. In the year 1860, after prolonged strikes

(5) CUNNINGHAM, *op cit.*, p. 2.

(6) ROBERT E. DOHERTY, *Industrial and Labor Relations Terms: A Glossary for Students and Teachers* (The New York State School of Industrial and Labor Relations, Cornell University, Bulletin 44), p. 18.

at Mundella's Nottingham hosiery works, the manufacturers in the hosiery trade convened to discuss action that they should take in their defense. According to Crompton they:

« Wise and nobly . . . resolved to try a better alternative . . . a handbill was issued inviting a conference between masters and men. Three of us . . . told them the present plan was a bad one, that they took every advantage of us when we had a demand, and we took every advantage of them when trade was bad, and it was a system mutually predatory. Well, the men were very suspicious at first; indeed, it is impossible to describe . . . how suspiciously they looked at each other. Some of the manufacturers also depreciated our proceedings, and said that we were degrading them. However, we had some ideas of our own, and we went on with them, and we sketched out what we called « a board of arbitration and conciliation ».⁷

According to Crompton this board of arbitration and conciliation proceeded as follows:

« They agreed to refer all questions in dispute to the board; . . . composed of an equal number of manufacturers and workmen . . . The proceedings of the board are very informal, not like a court, but the masters and men sit around a table . . . The proceedings are without ceremony, and the matter is settled by what the men call a long jaw discussion and explanation of views . . . They agree by coming to the best arrangement possible under the circumstances . . . The long jaw, ending in agreement, may take a long time, but it is the true practical way out of the difficulty. »⁸

The Webbs, referring to the formation of this Nottingham board of arbitration and conciliation, stated that:

« The Nottingham hosiery board established in 1860, often described as a model of arbitration was, in effect, nothing more than machinery for Collective Bargaining, no outsider being present, the casting vote being given up, and the decision being arrived at by what the men called a long jaw. »⁹

It is also interesting to note that Crompton referred to Mundella as « the father of conciliation ».

Clearly, the historical evidence referred to above indicates that the boards of conciliation or the boards of arbitration established by

(7) HENRY CROMPTON, *Industrial Conciliation*, pp. 35 and 36.

(8) *Ibid.*, pp. 36-38.

(9) SYDNEY and BEATRICE WEBB, *Industrial Democracy*, pp. 223-224.

Mundella and referred to by Crompton were little more than boards established by the parties themselves, or their representatives, for the purpose of promoting collective bargaining. The point is that the terms used to describe the various dispute settlement devices of today were used to describe quite different devices in earlier years. Also, the distinctions drawn today between the various devices were not as clearly drawn in former times.

But how does this historical meaning of the words conciliation and arbitration relate to the conciliation system in Canada? The relation is this: the conciliation board introduced under the first federal conciliation law (1900) was the same type of board established by Mundella and discussed in the works of Crompton and the Webbs. The evidence of this relationship is demonstrated in the debates centering upon the 1900 law and in the legislation itself. The conclusion reached is that the 1900 conciliation law, expressing the policy of settlement of industrial disputes by boards of conciliation, meant nothing more than a statement of policy urging the adoption of free collective bargaining to settle industrial disputes. The term « conciliation » meant what we today call collective bargaining. The act also expressed the policy of active encouragement in the formation and use of these boards.

The Conciliation Act, 1900¹⁰

The entry of the federal government into the dispute settlement field commenced with the passage of the Conciliation Act of 1900. However, some of the provinces had passed similar legislation at an earlier period. The first legislation of this type in Canada was passed in Ontario in 1873, followed by British Columbia in 1883, Nova Scotia in 1888 and Quebec in 1901.¹¹

The Conciliation Act of 1900 was purely voluntary and placed the good offices of the newly formed Department of Labor at the disposal of the parties to the dispute. The law enunciated the desirable principle of voluntary use of a conciliation board, (i.e., collective bargaining) for the settlement of labor disputes. In addition, the law recognized

(10) For an outline of the provisions of the Act and the text of the Act see *The Labour Gazette, (Canada)*, Vol. 1., No. 4, Septembre 1900, pp. 28-34.

(11) For a brief review of the federal and provincial conciliation laws see Edith Lorensten and Evelyn Woolner, « Fifty Years of Labor Legislation in Canada », *The Labour Gazette, (Canada)*, Vol. 50, No. 9, Septembre 1950, p. 1412, ff.

the use of government sponsored conciliation (i.e. collective bargaining) and arbitration (same meaning as given term today) should voluntary conciliation not lead to the settlement of a dispute.

Action under the Act could be taken in three situations: a) the Minister of Labor would arrange for the services of a conciliator if requested by either party; b) the Minister could initiate action himself; and c) if requested by both parties the Minister would assist in the establishment of an arbitration board. The Act also provided that boards of conciliation and arbitration established voluntarily by employers and employees could apply to the Minister for registration under the Act.

The dispute settling technique urged under the Act was voluntary conciliation. Where voluntary conciliation failed to produce a settlement, the Act suggested the use of a conciliator or conciliation board under government auspices. The conciliation procedure is demonstrated in Section IV (b) of the Act. It charged that the Minister responsible for the Act shall:

« Take such steps as to him seem expedient for the purpose of enabling the parties to the difference to meet together, by themselves or their representatives, under the presidency of a chairman mutually agreed upon or nominated by him or by some other person or body, with the view to the amicable settlement of the difference. »¹²

The conciliatory provisions are set out in Section V of the Act.

« It shall be the duty of the conciliator to promote condition favorable to settlement by endeavoring to allay distrust, to remove causes of friction, to promote good feeling, to restore confidence and to encourage the parties to come together and themselves effect a settlement, and also to promote agreements between employers and employees with a view to submission of differences to conciliation or arbitration before resorting to strikes or lockouts. »¹³

In the above discussion it has been indirectly suggested that there existed a difference between the terms conciliation and arbitration. Indeed, such a difference in terminology did exist. This distinction is clearly illustrated in discussion during the debate on the Act in the 1900 Session of the Canadian Parliament. Mr. Muloch, the sponsor of the

(12) Conciliation Act, C. S. 1900, c. 24, Section IV (b).

(13) *Ibid.*, Section V

Bill and then Postmaster General, in explaining the Act drew the following distinctions between the function and operation of the board of conciliation and the board or arbitration.

« There is, however, a wide difference between the determination of a dispute by a Board of Conciliators and by a Board of Arbitrators. In case of the reference of the dispute to a Board of Conciliators the conciliators are the parties to the dispute themselves. The employers, or their representatives constitute the Board. There is not, as in the case of arbitration, the delegation of power to settle the dispute to an outside tribunal, which may or may not be composed of persons in any way directly or indirectly in the trade concerned, but also the persons directly interested in the difference are the persons to settle that difference.

He continued:

... The parties concerned meet together, employer and employees, around the same table; they exchange views, they become, perhaps, better acquainted, each side with the other, a better spirit is evoked, and the result is that, ultimately, consent is reached. In case of arbitration, it is a delegation of authority to an outside tribunal, whose decision, not being the decision of the parties concerned, is accepted, perhaps, binding, but not to the same degree of alacrity, perhaps sullenly. »¹⁴

From the above description of the conciliation process outlined by Mr. Muloch, it should be clear that the conciliation referred to by Muloch involved the bringing together of the parties to discuss, argue, debate and hence try to reach consent among themselves. Little, emphasis, if any, is placed on the role of the third party as a participant in formulating the terms of settlement. It is suggested that the conciliation referred to in the above law, and envisaged on the part of the legislators, was not more than what we today call collective bargaining, in the sense of bringing parties together to discuss and work out their dispute differences. The role of the third party was not so much to partake of discussions and suggest possible areas of settlement (to mediate) as it was to bring the parties together for purposes of collective bargaining (to conciliate).

The case in support of the above meaning of the word conciliation hinges upon the successful establishment of a relationship between the boards of conciliation established under the 1900 law and the boards

(14) Canada, House of Commons Debates, Session 1900, Vol. 3, p. 8400.

of conciliation and arbitration established at an earlier date in England and described by the Webbs as what we today call collective bargaining. The English practice of boards of conciliation and arbitration received government encouragement under the Conciliation Act passed by the Imperial parliament in 1896. This Act was a direct outcome of a Royal Commission appointed in 1891.

« Early in 1891 the government, alarmed at the state of affairs, appointed a Royal Commission to inquire into the questions affecting relations between employer and employee, and the conditions of labour which have been raised during the recent trade disputes in the United Kingdom, and to report whether legislation can with advantage be directed to the remedy of any of the evils that may be discussed, and if so in what manner. The Commission conducted an exhaustive investigation into the whole field of arbitration and it endeavored to ascertain the various opinions of organized labour and managements as to the best means of resolving industrial dispute. »¹⁵

The report of the Commission recommended that the state not interfere with the existing voluntary agencies of conciliation and arbitration and suggested that the greatest benefit would be gained by granting certain powers to the Board of Trade.

« Whilst the Commission considered that no state action should be taken which might impair or interfere with the existing voluntary agencies of conciliation and arbitration, they thought that discretionary powers might with advantage be bestowed on the Board of Trade to enable it to take the initiative in aiding by advice and local negotiations the establishment of voluntary boards of conciliation and arbitration in any district or trade and further to nominate upon the application of employers and workmen interested, a conciliator or board of conciliation to act when any trade conflict may actually exist or be apprehended... The Conciliation Act, 1896, was the legislative outcome of the Commission's labours. »¹⁶

The 1900 Conciliation Act of Canada was introduced to the House as Bill Number 187 on September 7, 1900. According to Muloch, the Bill, as introduced, had two major objectives: a) to aid and encourage the establishment of boards of conciliation; and b) to establish an agency for the gathering and dissemination of statistics regarding the conditions of labor. The objects of the Bill as expressed by Muloch were as follows:

(15) IAN G. SHARPE, *Industrial Conciliation and Arbitration in Great Britain*, pp. 290-291.

(16) *Ibid.*, pp. 292-293.

« One of the objects of this Bill is, by the aid of boards of conciliation, to promote the settlement of trade disputes and of differences that arise from time to time between an employer and employees, and between different kinds of employees. It is hoped that the application of this principle may prevent strikes and lock-outs, and that if, unfortunately, that extreme measure is resorted to in the case of such disputes, the adoption of this method may bring about a more satisfactory and permanent settlement of these disputes.

. . . with more information, all parties to such controversies will be better able to understand each other's views and conditions, and more amenable to conciliatory arguments and more ready to adopt peaceful arguments for the settlement of controversies. »¹⁷

According to Muloch his proposal would provide for boards of conciliation similar to the boards provided for under the English Law of 1896. He also noted that the English Act of 1896 gave recognition to the important and useful work done through the increasing number of voluntary conciliation boards.

« . . . The number of these boards in England had increased, and the work had become so important and useful that, at last, in 1896, the Imperial parliament gave recognition to Conciliation Boards by passing the Conciliation Act of 1896. The Act provides for the Board of Trade of England keeping a register of the Conciliation Boards and Arbitration Boards throughout Great Britain, and in that way . . . machinery can be set in motion whenever the occasion arises. These Conciliation Boards are selected by the interest concerned. The Act provides that if the interests desire it, the Board of trade in England — it will be the minister charged with the carrying out of this Act in Canada — may, if requested, appoint conciliators or arbitrators. »¹⁸

. . . It will appear that it has been effective in England in settling trade disputes of far reaching importance, and I think there is no reason to anticipate less gratifying results from the principles being adopted in Canada. »¹⁹

And he continued:

« The father of conciliation board may be said to be Mr. Mundella, who, in 1860, adopted that system in connection with his own business as a manufacturer. Hon. gentlemen will find in a book by Henry Crompton, entitled « Industrial Conciliation », at page 33, a very interesting description of Mr. Mundella's experience. Throughout this book will be found a good deal of argument in support of the wisdom

(17) Canada, House of Commons Debates, Session 1900, Vol. 3, p. 8399.

(18) *Ibid.*, p. 8400.

(19) *Ibid.*, p. 8401.

of the Imperial parliament's action — which was subsequent to the publication of this work — in adopting the legislation which is now upon the Imperial statute book. »²⁰

Not only did the federal government formally adopt the policy of encouraging collective bargaining through conciliation boards, but it also urged the use of third parties to assist in the establishment of the conciliation process; or in today's terminology, to mediate the dispute between the parties.

According to Mr. Muloch:

« But in addition to that mode of settlement (i.e., conciliation) there is the mode, namely, of parties settling the dispute themselves with the aid of some person sent down to assist them under the provisions of the Conciliation Act; and here are a few illustrations of advantages taken in that way by many persons interested in industrial life, both employers and employees. »²¹

In today's terminology, the 1900 Conciliation Act urged the settlement of industrial disputes through collective bargaining with the use of government sponsored conciliation officials should the parties not be willing to get together and negotiate the dispute. The 1900 Act, with its encouragement of collective bargaining and the use of conciliators to promote this process represents the first stage in the growth of federal government dispute settlement policy.

TABLE I

SUMMARY OF THE DISPUTE SETTLEMENT DEVICES AND THEIR MEANINGS
AS USED IN REFERENCE TO THE CONCILIATION ACT OF 1900

<i>Device Introduced</i>	<i>Meaning Given by Proponents of Device</i>	<i>Term Often Used Today in Non-Canadian Literature (where applicable)</i>
Conciliation	The parties to a labor dispute meet together around the same table, exchange views and attempt to reach consent.	Collective Bargaining.
Conciliator	A third party who urges the use of conciliation to settle labour disputes. Usually a government official	One of the meanings given to the term mediator
Board of Conciliation	A body established by the parties, with or without the aid of a conciliator for purposes of conciliation.	
Arbitration	Submission of a dispute to a third party, or tribunal, for decision. Decision may or may not be binding.	Arbitration.

(20) *Ibid.*, p. 9371.

(21) *Ibid.*, p. 9373.

The Railway Disputes Act, 1903 ²²

The second stage of government intervention in industrial disputes was characterized by the introduction of the device of boards of inquiry or boards of investigation; a device similar to the current technique of fact finding or investigating commissions.

The legislators of 1903 realized that the concept of voluntarism expressed in the 1900 law would not be realized, at least in so far as it was not a fail-safe dispute settling mechanism, particularly in the railways. Work stoppages on the railways could not be tolerated. The voluntarism of the 1900 law had to be supplemented by a form of compulsion because, according to Mr. Muloch, « the Conciliation Act does not meet the case, simply because it could not be put in motion except by the consent of both parties. » ²³ While the minister had power under the Act to initiate action, he found that unless the parties were willing to meet in the spirit of the legislation, such power was meaningless.

After examining similar expressions of voluntarism in the dispute settlement laws of other countries, Muloch concluded that:

« On going through these different Acts you find that with rare exception, the stumbling block in the way of their being useful is that the law is not set in motion except on the application on one or other or both of the parties. When the two parties, employer and employee, are at arms length neither is willing to manifest a sign of weakness by invoking outside help. » ²⁴

The legislation of 1903 was precipitated by a strike in 1901 of trackmen on the Canadian Pacific Railway. ²⁵ As a result, in 1902 a measure was introduced in parliament which provided for compulsory arbitration of all railway disputes. The award of the arbitrators was to be binding. ²⁶ However, the supporters of the measure used the text

(22) An Act to Aid in the Settlement of Railway Disputes. For a discussion of the Act see *The Labour Gazette (Canada)*, Vol. 3, No. 8, August 1903, pp. 136-139. For the text of the Act, see pp. 169-174.

(23) Canada, House of Commons Debates, Session 1903, Vol. 2, p. 2572.

(24) *Ibid.*, p. 2542.

(25) A full account of this strike is given in *The Labour Gazette (Canada)*, Vol. 2 Nos. 7, 8, 9, July, August and September, 1901, pp. 63, 124-125 and 172-178 respectively.

(26) This measure was titled Railway Labor Arbitration Bill. For a discussion of the provisions and text of the Act see *The Labour Gazette (Canada)*, Vol. 2, No. 6, June 1902, pp. 738-741 and 769-779.

and the provisions of the bill only as a device for sounding out the attitude of the rail unions and rail operators to the concept of compulsory arbitration. The final text of the 1903 Act was the result of comments received on the concept of compulsory arbitration and replaced arbitration with investigation or « fact finding with recommendations ». It was expected that the results of the investigation would be made effective by force of public opinion. Sir William Muloch, comparing the 1902 and 1903 Bills, indicated that:

« This Bill may be said to differ from the other in three respects. The Bill of last session provided for arbitration only — this Bill provides for an intermediate procedure, namely, an attempt at conciliation, and failing conciliation, then arbitration. Under the Bill of the last session the award of the arbitrators was enforceable by legal process to a certain extent as it provided penalties for those who disregarded the awards — the present measure departs from that, and instead of providing compulsion through the courts, it leaves the enforcement to such influences as may be brought about, in order to have it respect by public opinion and the good judgement of the parties concerned. »²⁷

Not that the term « arbitration » and « arbitrator » in the 1903 Bill referred to a third party determination of an « award » effectuated by the parties and/or pressures of public opinion.

The Act provided for the appointment of a tripartite conciliation and mediation committee at the request of either party, the municipality concerned, or at the discretion of the Minister. The board was directed « to endeavor by conciliation and mediation to assist in the bringing about an amicable settlement of the difference to the satisfaction of both parties, and to report its proceedings to the Minister. »²⁸ If settlement could not be produced through the conciliation and mediation committee, the dispute was to be referred to a board of arbitration. The award of this board of arbitration was not binding. Note that this system embodied a two-stage dispute settlement procedure. Muloch defined the operation and responsibilities of the board of arbitration as follows.

« Assuming that the board of conciliation and mediation has failed to bring about harmony, then the Minister of Labour may refer the

(27) Canada, House of Commons Debates, Session 1903, Vol. 2, p. 2535.

(28) Dominion Railway Disputes Act, Section IV.

matter to arbitration and a board of arbitration is then appointed which may be the board of conciliation if agreed to by the parties, and if not, then the board of arbitration is appointed in like manner as the board of conciliation. The board is clothed with the power to examine witnesses, to call for the production of papers and to make the award. It will be the duty of that board to ascertain the causes of a dispute, to make suggestions for its termination and such other recommendations as it, in its wisdom may deem proper. The award and the report will then be presented to the Department of Labour and become documents of record. Copies will be given to the parties directly concerned, and to the press and the public, and it will be laid upon the Table for the information of parliament. »²⁹

Note the emphasis placed on the role of public opinion in effectuating the awards and recommendations of the board of arbitration: « . . . if we can get the employers and the employees in Canada to respond to public opinion in their dealings with each other, we will have made some progress towards solving the labor problem. »³⁰

It is interesting to note that whereas the supporters of the 1900 Conciliation Act took encouragement from the conciliation practice in England, the proponents of the 1903 Law looked south to the United States. Mr. Muloch was quite impressed by the use of the board of arbitration and public opinion to settle the Massachusetts Rail Strike of 1877.

« There is a most interesting article published in the Bulletin of the Department of Labor of the United States, the May number written by Charles Francis Adams . . . who has written a great deal on questions of this kind . . . there is a draft Bill at the end of the article. I have no doubt that the views presented by Mr. Charles Francis Adams in this article assists me in coming to the conclusions set forth in this measure. I refer to this article mainly for the purpose of pointing out that at page 670, it will be found a description of the use made of the Massachusetts Act, a measure somewhat similar to this Bill and a settlement of the great railway strike in the State of Massachusetts in 1877. The writer describes with great satisfaction how the state board, intervening at the right moment held a public inquiry summoning the parties before them, and reaching an award and gave it to the public. Both parties immediately accepted the award and peace was restored. The article proceeds to argue in favor of a settle-

(29) Canada, House of Commons Debates, Session 1903, Vol. 2, p. 2539.

(30) *Ibid.*, p. 2539.

ment of disputes by the aid of public opinion, the principle upon which this Bill proceeds »³¹

And further:

« No suggestion of the readiness to abide by any decision that might be given thereon was either asked for or given; but the board proceeded to hear witnesses and to elicit the fact. The inquiry was continued through three days; and, on the 21st of February, the report of the board was made public, appearing in full in all the newspaper of that date. In it the commissioners, after carefully and judiciously sifting out the essential facts from the evidence submitted, placed the responsibility for the trouble where the weight of evidence showed it belonged; thereupon proceeded to make such recommendations as in its judgement the exigencies called for. The effect was immediate . . . It was compulsory inquiry only, and an appeal thereon to the reason and sense of right of all concerned. Reliance was placed in an enlightened sense of right of all concerned, and an informed public opinion. »³²

In terms of the evolution of Canadian dispute settling mechanisms, the 1903 Act broadened the conciliation concept contained in the Act of 1900 to include mediation, as represented by the board of conciliation and mediation. In addition, the law introduced the concept of investigation or « fact finding with recommendations » as represented by the boards of arbitration. The power of the Minister, either party or the municipality concerned, to compel an investigation, represents the first introduction of the concept of compulsion. This concept of compulsory investigation was to receive added strength in later legislation. In 1906 the Acts of 1900 and 1903 were consolidated in the Conciliation and Labor Act, 1906.

(31) *Ibid.*, p. 2542. The article referred to may be found in Bulletin of the Department of Labor, Bulletin No. 46, May 1903, pp. 669 to 677. The title of the Bill proposed by Adams was « Proposed Bill Providing for Compulsory Investigation and Publicity — Investigation and Publicity as Opposed to 'Compulsory Arbitration' ».

(32) *Ibid.*, p. 2570.

TABLE II

SUMMARY OF THE DISPUTE SETTLEMENT DEVICES AND THEIR MEANINGS
AS USED IN REFERENCE TO THE RAILWAY DISPUTES ACT OF 1903

<i>Device Introduced</i>	<i>Meaning Given by Proponents of Device</i>	<i>Term Often Used Today in Non-Canadian Literature (where applicable)</i>
Board of Conciliation and Mediation	A body established by the parties, with or without the help of a conciliator or mediator for the purpose of conciliation (to bring parties together for collective bargaining) or mediation (to offer compromise solutions). Comprised of representatives of each party, and usually a government official acts as chairman, or other third party agreed to by the parties.	Board of Mediation
Board of Arbitration	Investigation of a dispute by a third party or tribunal. Facts and recommendations are made public with hope that public pressure produces a settlement. Comprised of representatives of each party, and usually a government official acts as chairman, or other third party agreed to by the parties.	Fact Finding with Recommendations
Compulsory Inquiry or Investigation	Refers to the power of the Minister of Labor, either party or the municipality to order a board of conciliation and mediation and/or a board of arbitration. No postponement of the work stoppage during the investigation.	

The Industrial Disputes Investigation Act, 1907³³

Of the dispute settlement laws adopted in Canada none has received more international comment and study than the Disputes Act of 1907. To many students of the subject, the law represented a model expression of public labor dispute policy. Between 1907 and 1918, five extensive studies on the Act and its operation were published by students in the United States.³⁴ Most students date the current Canadian compulsory conciliation system with the passage of this Act. The Act remained as the statutory expression of federal policy in the settlement of labor disputes until the Second World War.

Actually, keeping in mind the earlier expressions of federal policy, this law introduced little that was new in the way of dispute settlement devices. The Act seems to have received attention primarily because of its scope, the compulsory nature of some of its provisions, and the stipulation that no work stoppage may take place until the procedures of the dispute settlement device have been exhausted. The Act can best be described as basically an extension and, at the same time, a modification of the Railway Disputes Act of 1903.

According to Mr. Lemieux, the Minister of Labor and sponsor of the Bill, the Act provided that:

«... when the parties to a dispute are unable to adjust matters between themselves without having recourse to a strike or lock-out, they may refer the question to an impartial tribunal which shall have power fully to investigate all matter connected therewith; second, this tribunal will assist the parties to affect a settlement, as it will have full power to report and make recommendations concerning the disputes; it will be a means of giving to the public at large an intelligent opinion upon the respective rights and the justice of the relative positions of the parties; fourth, it will make the parties subject to an enlightened public opinion fully informed as to the matter at issue, and that before any strike or lock-out has been declared »³⁵

(33) For a report on the events leading up to the passage of this Act see *The Labour Gazette (Canada)*, Vol. 6, No. 12, December 1906, pp. 647-662. For an outline of the provisions of the Act and the text of the Act see *The Labour Gazette (Canada)*, Vol. 7, No. 4, April 1907, pp. 1108-1113 and pp. 1147-1161.

(34) Two of the better known works are Ben M. Selekmán, *Postponing Strikes — A Study of the Industrial Disputes Act of Canada*. New York: Russel Sage Foundation, 1927 and Victor S. Clark, *The Canadian Industrial Disputes Investigation Act of 1907* (U.S. Bureau of Labor, Bulletin No. 76). Washington: Government Printing Office, 1908, pp. 657-740.

(35) Canada, House of Commons Debates, Session 1906-07, Vol. 2, p. 3016.

Whereas the 1903 Act provided for a two-stage procedure (conciliation/mediation and compulsory investigation) the 1907 law provided for a compulsory investigation stage only. In addition, the Act expressed the principles of conciliation as set out in the 1900 Act. Further, the Act prohibited, under penalty, strikes and lock-outs until the report had been made by the board of investigation. The important point is that the Act set out a one-step compulsory procedure only: compulsory investigation by a tripartite board of arbitration. This compulsory investigation coupled with a compulsory postponement of a work stoppage during the investigation is what we today call « compulsory conciliation ». The suggestion is that the meaning of the word « conciliation » in the term compulsory conciliation, as used today, is not the meaning given to the word in the debates on the Acts of 1900, 1903 and 1907.³⁶ Also, the dispute settlement device which we today call compulsory conciliation was called compulsory investigation in both the 1903 and 1907 Acts. In the 1903 Act, compulsory investigation meant the compulsory use of a board of conciliation and mediation and a board of arbitration. In the 1907 Act, compulsory investigation meant the compulsory use of a board of arbitration coupled with a compulsory postponement of the work stoppage.

Although the debates centering on this Act are extensive, the following words of the then Prime Minister, Sir Wilfrid Laurier, illustrate the emphasis on investigation rather than conciliation and, at the same time, illustrate the growth and development of federal dispute settlement policy:

« Some years ago we introduced the Conciliation Act, which I think has on the whole worked very satisfactorily to the country at large. As it has been applied by the Department of Labor, I think it reflects great credit on the Minister; and certainly Canada has escaped many such labor disputes as have endangered society in other countries. Three years ago we passed another Act, applying a little more drastic legislation to disputes between employers and employees on railways. This year it is proposed to advance a little further, and my Hon. friend, the Minister of Labor introduced today legislation which is intended to apply to labor employed on public utilities — coal mining, transportation and connected industries. The proposal of the government today is simply to make an investigation compulsory. We do not

(36) According to Kovacs « The Canadian system of compulsory conciliation can be said to begin with the passage . . . of this legislation ». Aranka E. Kovacs, « Compulsory Conciliation in Canada », *Labor Law Journal*, Vol. 10, No. 2, February 1959, p. 113.

propose to make arbitration compulsory. We say that it will be sufficient for the time being to provide for a compulsory investigation. The moment there is a strike threatened in the coal mine, the Minister of Labor steps in and orders an investigation into the causes of the dispute between the employers and the employees. This is a step in advance, and a very considerable one. The investigation takes place. The points in dispute between the men and their employers will be exposed to the public. The public will follow the investigation from day to day and satisfy themselves as to the merits of the cause as it unfolds. I believe this is a great guarantee of the final settlement of the dispute. »³⁷

The device for industrial dispute settlement was the board of investigation. The force or power effectuating the findings of the board was public opinion. Also, like the Act of 1903 the sponsors looked to the United States for support of the proposed government policy. Again, citing Mr. Lemieux:

«... the object of this Bill is to bring about the settlement of industrial disputes before war is declared between the parties. An investigation will be held while the parties are looking on every side for assistance, and the board, appointed as the Act provides, after having investigated the dispute, will prepare a report which will contain a recommendation for award... that award will not be enforceable by a sheriff or by a posse commitatus, but it will be enforceable through the moral support of a sound and enlightened public opinion. As I have said, this principle embodied in existing legislation has met with the unqualified endorsement of the leading commission which have sought to settle industrial troubles during the last ten years. By reason of the great coal strike which took place in Pennsylvania a few years ago... after the strike had lingered for months and months the President of the United States, who enjoys the reputation of Peacemaker in national as well as international disputes, of his own volition, appointed a commission to investigate and to report... What is the remedy advocated by the commissioners? The commissioners were George Gray, Carroll B. Wright, John M. Wilson, John L. Spaulding, Edgar E. Clark, Thomas H. Watkins, Edward W. Parker, all very eminent authorities on industrial question... we do believe... that the state and federal governments should provide the machinery for what may be called compulsory investigation of controversies when they arrive. The federal government can resort to some such measure when difficulties arise by reason of which the transportation of the United States mails, the operations, civil or military, of the government of the United States, or the free and regular movement of commerce among the several states and with foreign nations, are interrupted or directly affected, or are threatened with being interrupted or affected.

(37) Canada, House of Commons Debates, Session 1906-07, Vol. 1, p. 1042.

So we have the opinion of probably the highest commission appointed in modern times to settle an industrial dispute, endorsing strongly the principle which is contained in the measure now before the House. »³⁸

TABLE III

THE DISPUTE SETTLEMENT DEVICES AND THEIR MEANINGS AS USED IN REFERENCE TO INDUSTRIAL DISPUTES INVESTIGATION ACT OF 1907

<i>Device Adopted</i>	<i>Meaning Given by Proponents of Device</i>
Compulsory Investigation	Before the parties are free to strike or lock-out a board of arbitration must be convened and its report with recommendations made public. Comprised of a representative of each party and a chairman mutually agreed upon by the parties. This device is the same as that introduced in the 1903 Act but adds the compulsory postponement of the work stoppage.

The Act of 1907 represented the last expression of federal dispute settlement policy until the years of the Second World War.³⁹ Of course, during both World Wars, federal policy towards industrial disputes was expressed in war time legislation. During World War I the policies expressed in the Acts of 1900, 1903 and 1907 held firm. Little, if anything, was added to or subtracted from this policy. However, with World War II federal policy in the area of labor relations changed very quickly. It was at this time we had the development of the present character of the Canadian compulsory conciliation system. This system was the result of the merger of the concepts of compulsory collective bargaining and compulsory investigation into a single labor relations law. Herein possibly lies the major weakness in the Canadian compulsory conciliation system: the failure to keep collective bargaining provisions and dispute settlement provisions separate may have resulted in the merging or « locking in » of the latter to the former. It appears to have been the result of the merger of earlier expressions of federal policy in dispute settlement with the federal labor relations policy formulated in the United States during the 1930's.

(39) In 1925 the Industrial Disputes Investigation Act was held to be ultra vires the parliament of Canada. As a result, the federal parliament enacted legislation which restricted the coverage of the Act to industries clearly within federal jurisdiction. At the same time, a provision was inserted to permit the province to pass enabling legislation to make the federal law applicable within the jurisdiction of the province. Most provinces passed enabling legislation and within a few years the Industrial Disputes Investigation Act was retained throughout the country.

(38) *Ibid.*, Vol. 2, p. 3019.

War Time Measures and the Industrial Relations Disputes Investigation Act, 1948

At the beginning of World War II the War Measures Act of 1914 automatically came into effect and authorized the federal government to take the necessary steps to secure order and welfare during war time. In the succeeding years the federal government repeatedly issued labor relations measures designed to facilitate the war effort, each of which was heavily influenced by the development of labor relations policy in the United States. On November 7, 1939 under authority of the War Measures Act, the application of the Industrial Disputes Investigation Act was extended to cover employees and employers engaged in war industries. This action was taken under an Order-in-Council (P.C. 3495).⁴⁰ On June 20, 1940, after a joint conference between the prime minister, his cabinet and industry and labor, the government issued a second Order-in-Council dealing with labor relations (P.C. 2685).⁴¹ In this Order the government set forth the general principles which it hoped would govern the war time relations between employers and employees. Failure to observe the « principles » was not subject to penalties. The adoption of the principles was completely voluntary. The prime minister considered the Order « as an obligation that should be lived up to by all parties concerned. »⁴² The principles that will concern us here are those dealing with the rights, obligations and responsibilities of employers and employees and the encouragement of collective bargaining. The order suggested :

5. That there should be no interruption in productive or distributive operations on account of strikes or lockouts. Where any differences arise which cannot be settled by negotiation, between the parties, assistance in effecting a settlement should be sought from the government conciliation service, and failing settlement of the difference in this matter, it should be dealt with in accordance with the provisions of the Industrial Disputes Investigation Act which has been extended under the War Measures Act to apply specifically to all war work.
6. That employees should be free to organize in trade unions, free from any control by employers or their agents . . .
7. That employees, through the officers of their trade union or through other representatives chosen by them, should be free to

(40) For a brief discussion on the provisions and texts of the Order see *The Labour Gazette (Canada)*, Vol. 39, No. 11, Novembre 1939, p. 1087.

(41) For a report on the conference proceedings and the text of the Order-in-Council see *The Labour Gazette (Canada)*, Vol. 40, No. 6, June 1940, pp. 530-532 and Vol. 40, No 7, July 1940, pp. 678-679.

(42) *The Labour Gazette (Canada)*, Vol. 40, No. 7, July 1940, p. 678.

negotiate with employers or the representatives of employers' associations concerning rates of pay, hours of labor and other working conditions, with a view to the conclusion of a collective agreement; 8. That every collective agreement should provide machinery for the settlement of disputes arising out of the agreement . . .⁴³

Thus, to our earlier expressions of federal labor relations policy we must add: (a) the freedom of employees to organize in labor unions without interference by employers or their agents; (b) the freedom of employees to negotiate collective agreements through their trade union officers or other chosen representatives; and (c) that employees, in exercising their right to organize, should not use coercion or intimidation to influence any person to join their organization.

However, before long it was recognized that the above expression of policy was not being realized. As a result, and under heavy pressure of organized labor, who desired protection of their right to organize and bargain collectively, the government issued a third Order-in-Council on February 17, 1944. This Order, titled « War Time Labor Relations Regulations » (P.C. 1003) suspended the Industrial Disputes Investigation Act and recognized the weaknesses of P.C. 2685.⁴⁴ The effect of this Order was to :

- 1) Require employers to negotiate in good faith with the employee representatives of their own choosing.
- 2) Establish the War Time Labor Relations Board to administer the regulations and to determine questions of representation.
- 3) Empower the Minister to appoint conciliation officers and boards to investigate and try to settle disputes.

A strike or lockout was prohibited until fourteen days after the conciliation board had submitted its report to the Minister.⁴⁵

The merger of the policy promoting collective bargaining with the policy of settling labor disputes through compulsory investigation (conciliation officers and boards of conciliation) was complete. The origin of the present character of federal labor relations policy, with its interlocking compulsory collective bargaining and two-stage compulsory

(43) *Ibid.*, p. 679.

(44) For a brief summary of the provisions and text of the Order see *The Labour Gazette (Canada)*, Vol. 44, No. 2, February 1944, pp. 135-143.

(45) In order to avoid possible confusion over the meaning of the word « conciliation », this procedure — the use of conciliation officers, conciliation boards and postponement of the work stoppage — will be called compulsory investigation rather than compulsory conciliation.

investigation, originates with P.C. 1003.⁴⁶ Under Sections 10 to 14, entitled « Negotiation of Collective Agreement » provisions were made for compulsory collective bargaining and compulsory investigation of disputes. These provisions have been summarized as:

- i) A procedure is established for the election of bargaining representatives by a majority vote of employees and for the certification of such representatives by the board.
- ii) Compulsory collective bargaining may then be initiated by either the employer or the bargaining representative of the employees on notice to the other party and the parties are thereupon required to negotiate with each other in good faith to complete the collective agreement.
- iii) In event an agreement cannot be reached without outside assistance, conciliation services are provided initially by the use of a Conciliation Officer and subsequently by the appointment of a conciliation board. Until bargaining representatives have been appointed and during the prescribed process of negotiation for collective agreement, strikes by employees are prohibited and, in like manner, lockouts by employers are prohibited during the period of negotiation.⁴⁷

At the end of World War II the authority of the federal government to legislate in labor relations matters reverted to that granted under the Canadian constitution. In 1948 the federal government replaced orders in effect since March 1944 with the Industrial Relations and Disputes Investigation Act. This Act repealed the Industrial Disputes Act of 1907 and incorporated the principles set down in P.C. 1003, i.e., the certification procedure, compulsory collective bargaining, procedure for the settlement of disputes during the life of the contract without resort to a work stoppage and a compulsory two-stage (conciliation officer/conciliation board) investigation procedure for the settlement of negotiation disputes with work stoppages prohibited during the period of the investigation. Although procedural changes have been made in the legislation, the dispute settlement policy remains as it was with the passage of the Act in 1948.

(46) The provisions of this measure are said to have been recommended by the National War Labor Board in its report to the government as a result of a public inquiry held by the Board under authority of P.C. 1141, dated February 11, 1943. However, a review of both the majority and minority reports shows that they dealt only with compulsory collective bargaining in their recommendations. « Compulsory conciliation » is not recommended in a majority report and receives only slight references in the minority report. However, the provisions of P. C. 1003 covered compulsory collective bargaining and « compulsory conciliation ». Why the latter became inserted in the Order is not known to this author. The majority and minority reports were published as a supplement to *The Labour Gazette (Canada)*, Vol. 44, No. 2, February 1944.

(47) *The Labour Gazette (Canada)*, Vol. 44, No. 2, February 1944, pp. 135-136.

TABLE IV

THE DISPUTE SETTLEMENT DEVICES AND THEIR MEANINGS AS USED IN REFERENCE TO
THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT OF 1948

<i>Device Adopted</i>	<i>Meaning Given by Proponents of Device</i>	<i>Term Often Used Today in Non-Canadian Literature (where applicable)</i>
Conciliation Officer	A third party, usually a government official who attempts to bring the parties to a dispute together to re-view negotiations and offers compromise solutions or otherwise attempts to obtain a settlement agreement.	Mediator, when the term is used to describe two functions of a mediator; to bring parties together and to offer compromise solution.
Conciliation Board	A body established by the parties with a mutually agreed upon third party as a chairman for the purpose of conducting an investigation of the dispute and preparing recommendations for settlement. The board follows upon the failure of a conciliation officer to effect a settlement. Often acts as a mediation board. This board is established in the same way and performs the same function as the board of arbitration of the 1903 and 1907 Acts.	Fact Finding with Recommendations
Compulsory Conciliation	No work stoppages may occur until a conciliation board has been convened and issued recommendations for settlement.	Compulsory Fact Finding with Recommendations or Compulsory Investigation

Summary and Conclusions

As noted earlier, the bulk of the research in the Canadian system of compulsory conciliation has been conducted subsequent to the passage of the Industrial Relations Disputes Investigation Act. In general, it has been recognized that the Act, and the system of compulsory investigation which it incorporates, has not led to a stable system of industrial relations.⁴⁸ Most of the criticism, both from management and labor, and those not connected with either party, centers on the effects of the compulsory investigation procedure and the delayed work stoppage on the process of collective bargaining. As a result, there seems to have been a rapid deterioration of confidence in the Canadian system. However, while such criticisms may be valid a more significant criticism centers on the wisdom of integrating compulsory collective bargaining with compulsory investigation. Originally, the dispute settlement policy of the federal government was designed to handle all types of disputes regardless of their nature. However, of the four basic types of industrial disputes — recognition, contract interpretation, jurisdiction and negotiation — only negotiation falls under the jurisdiction of the compulsory investigation scheme. In each of the other three types of disputes an alternative procedure for deciding the issue has been adopted. In effect, collective bargaining, of the type represented by the principles of P.C. 1003, has not had the opportunity to function independently and without the interference of the compulsory investigation system. The present Canadian system developed from the merger of two distinct industrial dispute settlement policies. One was based on the development of the device of compulsory investigation; the other was based on the development of the procedure of collective bargaining. Canadian experience may suggest that an integration of these two policies is not desirable. In this case the strength given by combining the two approaches may be less than the sum of the strength of its parts. Compulsory investigation may weaken the process of collective bargaining.

A review of the history of the federal conciliation laws of Canada reveals a series of attempts to develop and perfect a system for the settlement of industrial disputes. Under the Conciliation Act of 1900 the parliament expressed a policy in favour of voluntary collective

(48) The author's judgments and conclusions regarding the effectiveness of compulsory conciliation are based on the works of Woods and Cunningham, page 3, *Supra*.

bargaining and suggested the use of conciliators as an instrument to effectuate this policy. By 1903, and the Railway Disputes Act, the policy of voluntary collective bargaining and use of conciliators while retained, was supplemented by a policy of compulsory investigation or inquiry. Under the Industrial Disputes Investigation Act of 1907 the policy of 1903 was extended to cover a number of public utilities. In addition, strikes and lockouts were prohibited during the period of investigation. With the war time measures of World War II the Canadian dispute settlement model, as represented by the 1907 Act, became merged with the development of the United States labor relations model; a policy in favor of strengthening collective bargaining. The merger of these two policies into one is today represented by the Industrial Relations Disputes Investigation Act of 1948.

The present system of compulsory investigation must be distinguished from earlier expressions of federal dispute settlement policy. Compulsory investigation as a dispute settlement system interlocked with collective bargaining dates not from the turn of the century as some have suggested, but from a war time measure, P.C. 1003 dated February 11, 1944. In addition, the term « compulsory conciliation » must be placed in its proper context. If conciliation is synonymous with mediation, the term compulsory mediation certainly does not adequately describe the present Canadian system. A more accurate term, keeping in mind the historical growth of the Canadian system, is compulsory investigation, or alternatively, compulsory mediation and investigation. The latter term permits a distinction between the role of the conciliation officer and the conciliation board.

NOTES SUR L'ÉVOLUTION DE LA CONCILIATION OBLIGATOIRE AU CANADA

Durant plus de soixante ans, le gouvernement fédéral (et quelques gouvernements provinciaux) ont appliqué une politique de solution des conflits du travail basée sur l'intervention gouvernementale. L'expression « conciliation obligatoire » traduit assez bien cette politique. Conciliation obligatoire implique une suspension obligatoire d'un arrêt de travail jusqu'à ce qu'une investigation conduite par un gouvernement soit complétée. La procédure actuelle d'investigation prévoit l'emploi d'un officier et d'une commission de conciliation.

Le but de cet exposé est de présenter un panorama de l'évolution de l'expression conciliation obligatoire dans la législation fédérale du travail. L'auteur se

propose de signaler quatre aspects de cette évolution qui semblent avoir été négligés dans la littérature sur ce sujet.

Premièrement, le système actuel de conciliation obligatoire représente le résultat d'efforts accumulés et reliés de la part du Fédéral pour développer un mécanisme de solution des conflits qui réduirait à un minimum le nombre d'arrêts de travail. Les « lois de conciliation » de 1900, 1903, de 1907 et de 1948 démontraient ce résultat.

Deuxièmement, dans la loi de 1800, le Fédéral exprimait déjà sa confiance dans la méthode de négociation collective obligatoire. De plus, le terme « conciliation », que la loi utilisait, signifiait ce qu'on appelle aujourd'hui négociation collective. Dans les lois de 1903 et 1907, le Fédéral reconnaissait la faiblesse de la négociation collective sur une base volontaire et adopta le mécanisme d'investigation obligatoire pour la corriger. Plus tard, les deux mécanismes, investigation et négociation collective obligatoires, étaient combinés. L'intégration de ces deux mécanismes constitue le caractère frappant du système canadien actuel de solution des conflits industriels. C'est pourquoi, il faut distinguer entre la politique actuelle de solution des conflits et ses formes antérieures d'expression.

Troisièmement, le terme « conciliation obligatoire » ne décrit pas d'une façon précise la politique fédérale actuelle de solution des conflits. Il serait plus précis d'utiliser les termes investigation et médiation obligatoires ; ou encore, médiation avec inventaire des faits et recommandations. Cette mise au point permettrait de distinguer entre la politique actuelle et politiques antérieures qui utilisaient le même terme « conciliation », mais dans des contextes tout à fait différents.

Quatrièmement, la politique du Fédéral en 1900 s'inspirait de l'expérience anglaise. Cependant, cette dernière fut plus tard délaissée pour faire place à l'expérience américaine en matière de politique de solution des conflits.

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