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[Aller au sommaire du numéro](#)

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Recensions

Book Reviews

Strikes in Essential Services

by Bernard ADELL, Michel GRANT and Allen PONAK, Kingston, Ont.: IRC Press, Industrial Relations Centre, Queen's University, 2001, 272 pp., ISBN 0-88886-543-0.

It is clear, from the variety of approaches used in different Canadian jurisdictions, that a consensus remains elusive, in policy and in practice, on the most appropriate means to ensure the protection of essential services in the event of a labour dispute. This book, by three respected scholars and practitioners, is a significant contribution to this most contentious issue in Canadian industrial relations.

The authors undertook an intensive study to assess and compare the three systems currently in effect in Canada for the resolution of essential service disputes: first, the “no-strike” model, with compulsory arbitration as the ultimate dispute resolution procedure; second, the “unfettered strike” model, in which there are no separate statutory provisions with regard to essential services; and, finally, the “designation” (or “controlled strike”) model, which requires the designation of the essential services to be maintained in the event of a strike or lockout, such designations to be made by agreement between the parties or, in the absence of such agreement, by a specialized essential services commission or a labour relations board.

The analysis is based on the experience of three carefully selected occupational groups—registered nurses, municipal blue-collar employees and urban transit workers—in five jurisdictions: Quebec, Ontario, Saskatchewan,

Alberta and British Columbia. As the authors point out, these jurisdictions include the four most populous provinces in Canada, represent important regional differences and have a good representation of the three types of dispute resolution procedure to which the target groups are subject. The target groups, in turn, provide different types of services, with significantly different levels of perceived essentiality. They also have a record of relatively frequent and sometimes lengthy strikes and lockouts. This allowed the authors to examine and compare the dynamics of providing essential services in the event of lengthy interruptions of work under different regulatory approaches, to consider how this might be affected by the extent to which a service is perceived to be essential and to compare, on the basis of a number of industrial relations criteria, the suitability of the different approaches to dispute resolution for different occupational groups.

They began the study with two hypotheses: first, that “a system for protecting essential services in the event of a strike or lockout works better if the ultimate decisions are put in the hands of an adjudicative tribunal, which applies pre-existing standards of essentiality rather than being left entirely to the interplay of economic or political forces;” and, second, that “the lower the degree of essentiality of the services involved in a particular dispute, the more

likely it is that the unfettered strike model will work best.”

The empirical research on which the hypotheses would be tested (and eventually confirmed) consisted of an impressive number (157) of in-depth interviews with experienced participants in dispute resolution in the sectors selected for study, supplemented by informal discussions with other knowledgeable people. A formal interview guide provided comparable data, among other things, on how the process of identifying and providing essential services works in practice in the different jurisdictions, how well it is thought to be working and what reforms might be indicated.

There are six chapters in the book. Chapter One adds a new dimension to the debate on essential services, with an original framework for evaluating the different models of dispute resolution. Chapter Two reviews the law across the country on strikes and lockouts in essential services. The next three chapters present a comprehensive review and analysis of the experience of the target groups under the various approaches to dispute resolution in each of the selected jurisdictions. Chapter 6, with which the book concludes, analyses the empirical findings and their implications in light of the criteria for evaluation established in the introductory chapter.

The empirical research left no doubt that hospital nurses provide the highest level of essential services among the groups selected for study. There was general agreement that a complete withdrawal of their services would immediately endanger health and safety, that the risk would increase with the length of a stoppage, whether it was complete or partial and that some level of services would have to be maintained regardless of the dispute resolution model in effect.

Given the consensus on the essentiality of nursing services, the authors made the protection of an adequate level

of such services a priority in comparing the suitability of the three approaches to dispute resolution to which hospital nurses are presently subject: the no-strike model in Ontario and Alberta, the unfettered strike model in Saskatchewan and variations of the designation model in British Columbia and Quebec. As would be expected, they rejected the unfettered strike model for nurses (and by extension, for other sectors “where work stoppages pose an immediate and substantial threat to public health and safety”). They also rejected the no-strike model, which might be expected to provide the greatest protection of essential services, but which experience has shown is only enforceable to the extent that it is acceptable to the workers concerned. They concluded that the designation model described above is the approach best suited to ensure the provision of services as essential to health and safety as those provided by nurses. This approach does not interfere unduly with the collective bargaining process and its results and, although some improvements in procedure would be desirable, any complaints they encountered about it “are outweighed by the need to ensure essential service coverage.” This confirmed their first hypothesis. They excluded from this recommendation the variation on the designation model that applies in the health sector, and therefore to nurses, in Quebec. In that province, the proportion of services to be maintained is prescribed by statute, and at such a high level as to make it virtually impossible to conduct an effective legal strike. This approach has not prevented nurses’ strikes in Quebec. It has only made them illegal.

The conclusions regarding municipal blue-collar and transit workers, who now have an unfettered right to strike everywhere but Quebec and British Columbia (where they are subject to designation procedures) were entirely different than for the nurses. The research indicated that most municipal

services can be suspended temporarily without jeopardizing public health and safety, that the few services that are truly essential have been maintained adequately in strike situations by supervisory, managerial or professional staff who are excluded from the bargaining unit, and that striking employees can usually be relied upon to provide the services required in the event of an actual emergency. Public transit, in all but two cities, was not considered an essential service at all. It was generally agreed that even a complete stoppage in that sector would not be a threat to health and safety, except in Montreal and Toronto, where the size of those cities and their extensive and heavily used subway systems would make a full stoppage intolerable. Accordingly, the authors concluded that the unfettered strike model for transit employees in Toronto, which they say has been "reduced to an empty shell" by the likelihood of back-to-work legislation, should be replaced by a designation model on the pattern currently in effect, and by all accounts working well, in the public transit sector in Quebec. They recommended leaving the no-strike model in place in all the other jurisdictions in which it applies both to urban transit workers and to blue-collar municipal employees. The experience of municipal blue-collar and transit employees confirmed their second hypothesis.

Finally, there is always a possibility that a government will use its power to change the established rules of the game when a strike in a service perceived to be essential is anticipated or already in progress. This is illustrated by the relatively frequent occasions on which the right to strike under standing legislation

has been unilaterally withdrawn by ad hoc legislation. The study cites examples of back-to-work legislation in the case of legal strikes by nurses, both under the unfettered strike model and under the designation model, sometimes within only hours or days after a strike has begun. The authors suggest that back-to-work legislation enacted at such an early stage of legal strikes by nurses as well as in illegal strike situations reflects a growing reluctance by governments to allow such stoppages to last for long. However, this should not detract from their conclusions on the relative merits of different regulatory approaches to dispute resolution for different occupational groups, depending on the perceived level of essentiality of the services they provide. Nor should it detract from the practical importance of suggestions they have made for improvements to the designation model.

This is an important book on an important topic. The scope of the research, the depth of the analysis and the broad general applicability of its findings are a significant contribution to the literature in this already much studied and still controversial area of industrial relations. After more than a decade of public sector retrenchment, in the face of a resurgent public sector wage militancy and in the light of increasing attempts by provincial governments to widen the scope of what are labelled essential services, notably as regards teachers, this study of essential services could hardly be more timely. It should be required reading for scholars, practitioners and policy makers alike.

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