II. THE CANADIAN EXPERIENCE

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Canada is generally considered to have interest arbitration practices that are a hybrid of U.S. and Canadian laws and policies. This myth has been encouraged because of the strong resemblance between the U.S. and Canadian approaches in grievance arbitration in the private sector.

But Canada "does its own thing" in interest arbitration. Each province has a distinctly different conception of "the public interest," based on its economic, political, and social climate. The federal approach is notably innovative in that it provides optional procedures, giving the bargaining agent the right to choose either arbitration or a strike when an impasse is reached —of course, after conciliation has failed. Suffice it to say here that interest arbitration with or without "essential services" features is the prevailing mode and is sufficiently similar to U.S. approaches so as not to warrant lengthy description.

What I would prefer to do here is to describe briefly and comment on mediation combined with arbitration as practiced in some major labor-management relationships in Canada. I cannot characterize this development with the significant label of "trend" because mediation-arbitration certainly has not become widespread. It has, however, made an enormous contribution in such industries as the port of Montreal and the major Canadian railways. Under the guidance of Chief Judge Alan Gold of Montreal, an Academy member, and with the active encouragement of our federal mediation service, major improvements have been effected—certainly so far as the longshoring industry in Quebec is concerned, where there has been labor peace for nearly ten years, a situation no one would have predicted in the turbulent 1960s.

Its extension to other industries has been limited by the reluctance of other parties to try something new and by a conspicuous shortage of arbitrators brave enough to engage in this form of Russian roulette. I like to live dangerously and have accepted such an intriguing assignment with Air Canada and the Flight Attendants. Having had experience as a mediator and arbitrator,

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I find this heady stuff. When you sit there with the parties, separately or together—listening, persuading, cajoling, looking dour or relieved—your responsibility is a heavy one. Every lift of your eyebrow can be interpreted as a signal to the parties as to how you might eventually decide an issue if agreement is not reached. There may not necessarily be hard and fast rules about signing-off clauses if agreement is reached. In fact, both sides may insist on returning to square one if fondly held notions of what they have to have are rejected.

Several conclusions are apparent from my own experience and from those of my colleagues who have been involved in these med-arb situations:

1. If med-arb is to succeed, it cannot be imposed. The resentment in such an event would be counterproductive.

2. The mediator-arbitrator has to have a higher degree of credibility with the parties than an arbitrator who is used in one case and need not be seen again.

3. The mediator-arbitrator must *be* more, or become more, knowledgeable about the industry, the union, or the individuals than the normal practicing arbitrator. The process continues over a long period of time and can be very exhausting. There is the danger of venturing into perilous waters—of being asked to deal with issues that are not strictly collective bargaining matters, but may be in the area of human relations.

4. Add one more significant consideration—if fired as mediator-arbitrator, a thick skin is required to bolster the ego.

But arbitrators are expendable, and mediator-arbitrators are the most expendable.