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State of the Unions: Ottawa mulls policy change

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Peter J. Thompson/National Post

It is late afternoon. Most Canadians have finished work and the picket line at Simmons in Brampton, Ont., has packed up their "On Strike" signs and gone home. But Paul Bogнар, president of Simmons Canada remains at his desk. The strike is in its second week and his company, which supplies mattresses to the likes of Sears and Sleep Country, has orders to meet.

It is a common situation in Canada. The country has one of the developed world's highest rates of work days lost due to strikes, and it's a situation garnering political attention and potential policy changes.

Federal Labour Minister Jean-Pierre Blackburn said in an interview with the *Financial Post* he would be willing to rewrite part of the labour code pending the findings of a report on work stoppages due in a few weeks. In particular, he is looking for "a new mechanism" for federal replacement worker laws that would please both employers and unions. It is hoped changes to this law and improvements to the mediation process could reduce the impact of strikes on trade and the economy.

"It costs about \$700-million for those days that we lose each year," Mr. Blackburn said. "When we do business with other countries, it's important for them to be sure that they will receive their merchandise on time."

Others, such as John Mortimer president of the Canadian LabourWatch Association, believe forced union membership and mandatory union dues for non-union members are artificially boosting the power of unions, and hence strike activity. But Robert Hickey, assistant professor at Queen's University's School of Policy Studies is quick to point out that union density is declining and strike activity, particularly in the private sector, is at historical lows.

Workers' rights have come a long way since 1872, when unions were legalized in Canada after charges were dropped against 13 strike organizers who had campaigned for improved conditions for Toronto printers. The printers had been striking to reduce their work hours to nine hours a day, six days a week. The publishers rejected the proposal, offering to pay each worker \$10 for a 60-hour work week.

Those days of weak employee bargaining power are long gone. But Randy Kaardal, senior partner at law firm Blake, Cassels and Graydon LLP in Vancouver, believes legal rights have since swung too far in favour of the unions.

"There's a perception, and I believe it's the case, that it's gone too far, especially as it relates to medium and small-sized employers because the threat of a strike, and the actual strike, is often a death knell to those employers and they have no ability to maintain their services," Mr. Kaardal said.

Federal replacement worker laws prevent employers from redistributing management staff or using the services of a worker employed after the notice for collective bargaining was given. Mr. Kaardal said this created an uneven negotiating field in favour of the unions.

"I think in order to ensure that collective bargaining is done on a more even playing field, the replacement worker ban has to be repealed, and I think that we can all hope that good minds can find some different compromises," he said.

In March, Mr. Blackburn commissioned a study on the causes and impact of work stoppages in Canada. He said the findings are due in "a few weeks."

The study is being conducted by acclaimed industrial relations and mediations lawyer Peter Annis, who has been asked to make recommendations that could improve labour mediation and reduce the number of work days lost. His recommendations have the potential to kick-start changes to federal workplace law.

"If they find a new concept, I'm ready to open Part One of the Canada Labour Code to change the way it is written," Mr. Blackburn said. However, he is wary of stepping on either side's toes and there is a significant chance any attempt to change the laws will stall. "It is very important to have an agreement on both sides," he said. "If it is possible, fine. But if it is not, well it is better to keep what we have."

Government statistics show that between 1996 and 2005, Canada had the highest number of work days lost due to labour disputes in the Group of Seven countries. Over this time, the average number of days lost per 1,000 workers in the 30-member Organisation for Economic Co-operation and Development was 42 compared with 208 in Canada.

One reason for the large number of strikes in this country is the significant boost to bargaining power it gives unions -- members receive an income supplement from the union's strike fund while employers largely halt production and take financial losses.

At Simmons Canada's head office in Mississauga, Ont., Mr. Bognar said it was in the company's best hope that the contract dispute is resolved and business continues, but he feels pre-strike negotiations were not given a fair run.

"It was our intent to keep things status quo and beyond that, there hasn't been any real negotiating that has taken place. It was their decision to go on strike and they just immediately moved to that position," he said.

Hemi Mitic, assistant to the president at the Canadian Auto Workers Union and manager of the Simmons case, gives a different story.

"It ground down to the company saying, here's our final offer, take it or leave it, and that's where we hit the ditch," he said. He said Simmons had made a number of changes to the collective agreement, which represents about 145 workers at the Brampton facility, including changes to incentives and benefits, such as the introduction of charges for long-term disability cover. Both parties are due to meet on Sept. 8 to resume talks. "I think we can narrow the issues down," Mr. Mitic said.

Mr. Bognar said the company did not want to take anything away from the workers, but business conditions were tightening. "We're just looking to contain our costs to stay status quo and it's just putting us in a non-competitive situation."

He said in addition to the financial impact of the strike, the company has recently come under pressure from more competitive market conditions at a time of unprecedented increases in the cost of its raw materials. He said steel costs were up 90%, foam costs had risen 60% due to higher oil prices, and transportation costs were up 65%.

Mr. Bognar said the company, which also has manufacturing facilities in Alberta, Quebec and British Columbia, had so far negotiated successfully with the three separate unions in those provinces.

Mr. Mortimer at LabourWatch, which provides access to information resources for non-union members, said issues such as forced union membership and compulsory union dues for non-union members were helping to keep Canada a world leader in strike activity.

"Forced union Membership and the corollary power to discipline the union gains when a unionized worker is denied the right to stay out of membership or resign from membership but still keep their job is a real factor in why Canada's performance is so out of step," Mr. Mortimer said.

While mandatory union membership is not written into the labour code, the law does allow for trade unions to negotiate compulsory membership in the collective agreement.

Martin Warren, a partner in the human resources group of international law firm Eversheds in London, said changes to U.K. labour laws in the early 1980s had a profound impact on the union movement.

He said the removal of compulsory union membership, the introduction of compulsory secret strike ballots, and the banning of secondary strike action coincided with declines in both strike activity and union membership. Membership has fallen about 48% since Margaret Thatcher was elected Prime Minister in 1979. Since that time, the number of work days lost per 1,000 workers has fallen from 132 a year to 36.

However, Mr. Warren said the situation looks bleak for unions in the U.K., with the ageing membership largely concentrated in the contracting manufacturing sector.

"Correspondingly unions do very poorly in attracting members in the service sector where they are virtually non-existent and in the new technology sector for example, telecoms which has shown significant employment growth in the U.K. in recent years but which remains largely union free," he said.

Prof. Hickey said the situation was not all roses for Canadian unions either. He said while union membership continued to rise, its share of the total workforce -- known as union density -- was declining.

"If you look at union density in the private sector and in manufacturing in particular, Canadian unions have lost substantial ground over the past decade, but not nearly to the extent that unions have in the United States over the last 20 years," Prof. Hickey said. Government figures show union density fell to 30.2% in 2007 compared with 34.6% in 1997. In the U.S., union density stood at 12.1% in 2007. This suggests that unions in Canada, while stronger than in the U.S., have lost a degree of influence in recent years.

He said while Canada was second only to Iceland in the OECD in the number of work days lost due to strikes, it was important to remember strike activity both in Canada and other parts of the world was at historic lows.

However, Prof. Hickey was concerned about a recent spurt in public sector strike action which appears to correspond with legal action in some jurisdictions designed to restrict strike activity for occupations in essential services, such as hospitals.

"Disputes are going to occur, how they're resolved is another question. Trying to legislate a ban on dispute activity is potentially a dangerous policy initiative," he said.

-- Founded in 2000, LabourWatch's membership includes law firms and industry associations across Canada. For more information: www.labourwatch.com

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