

Labour Issues in the Provision of Essential Services

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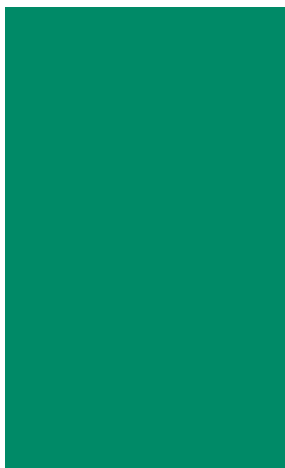
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Introduction

Our industrial relations system relies heavily on collective bargaining and on the right to strike and lock out for reaching a balance between employer and employee interests in the workplace. But how can the right to strike and lock out be reconciled with the public's need for certain services? Do the various regulatory approaches to the protection of essential services across the country allow enough room for collective bargaining? Do they adequately protect the public interest, and are they responsive enough to the increasingly felt need for responsible management of public finances?¹

In recent years governments across Canada have tried to deal with the issue of the provision of essential services through new or amended legislation. More specifically, the attention has been focused on whether strikes should be permitted and if so, whether certain employees should be designated as essential. This has not been a smooth process as every attempt by politicians (regardless of party stripe) to “change the rules of the game” has been met with resistance and hostility by labour unions. The latter have been generally opposed to any legislation that would diminish or compromise their bargaining power.

This paper examines the existing legislation and experience with essential services in Saskatchewan and makes comparisons with other provinces in terms of the governments' ability to manage essential service delivery. It evaluates the role of government in achieving a balance between preserving the right to strike or lock out and the need to protect the public from immediate danger to their health and safety. This paper analyzes five separate groups of employees in the public sector that are generally perceived to perform essential services, and their history of job action under the existing provincial legislation: nurses, police officers, firefighters, municipal blue-collar workers and public-transit workers.

A good starting point for this discussion is a brief overview of the evolution of public and private sector involvement in the provision of services that are deemed to be essential during the post-war era, and the effect of these developments on collective bargaining in the public sector. Until the 1960s, government employees had been, for the most part, non-unionized and banned from striking in Canada. There were also legal barriers to collective bargaining and employer opposition to unionization. In the last few decades, however, there has been a dramatic increase in the number of public-sector employees (see Appendix 1, Table 1) and the degree of unionization among them. Between 1969 and 1981, the number of unionized public workers

¹ Bernard Adell, Michel Grant, and Allen Ponak, *Strikes in Essential Services* (Queen's University: IRC Press, 2001), p. 1.

jumped from approximately 430,000 to 1.5 million, or almost 3.5 times. Before the end of the 20th century, the responsibility for the provision of essential services had shifted from the private sector to the government and the majority of organized labour in Canada concentrated in the public sector. Along with this trend, managers in the public sector began to encounter different types of challenges, as they were no longer the protectors of the public good or service only. Their role in the decision-making process became contingent on political considerations, along with the necessary fiscal prerogatives. Public-sector managers have been put under increasing scrutiny not only to balance the books, but also to be accountable on the policy side, which has made their job more difficult and blurred the line between their responsibilities². It has also had a significant impact on the collective bargaining process and the protection of essential services.

During this period, public-sector unions were able to take advantage of their relatively strong bargaining power with respect to their employers, the establishment of which was largely influenced by the *Wagner Act* of 1936 in the United States.³ Peter Warran states: “At the heart of the Wagner Act industrial union model is job control unionism, a term for a system of job classifications, a wage rate structure and seniority-based work rules which reflect an adversarial relationship between labour and management in the workplace.”⁴ A number of factors contributed to the fairly strong bargaining position of the unions at that time: favourable economic conditions in Canada, high demand for public services and appreciably low wages in the public sector. It was also suggested that unions were quicker than managers to adapt to the specifics of the bargaining process and used the threat of strike as an effective tool to obtain benefits for their members⁵. This all changed, however, with the recession in the early 1980s. Governments became increasingly concerned with the need to balance budgets and reduce deficits. The Bank of Canada’s commitment to defeating inflation and unemployment in the late eighties brought about high interest rates, which led to rising debt-servicing costs. This, in turn, contributed to lower investment and consumer confidence. Pressure was mounting on all levels

² Adell et al. (2001), p. 2.

³ The *Wagner Act* was modelled on an adversarial relationship between workers and management. It was enacted during the “golden era” of mass production in manufacturing and directed toward private-sector employees, mainly in the steel and automobile industries, who were predominantly male with limited job skills and narrowly-defined responsibilities in the workplace (Warran, 1996).

⁴ Peter Warran, *Hard Bargain: Transforming Public Sector Labour-Management Relations*, (McGilligan Books, Toronto, 1996), p. 21.

⁵ Gene Swimmer and Mark Thompson (eds.), *Public Sector Collective Bargaining in Canada* (Queen’s University: IRC Press, 1995), p. 14.

of government to take control of their finances. The increasing expenditures on unemployment insurance during the recession in the early 1990s and the high provincial spending on cost-shared welfare programs added further to the federal debt and the public demand for fiscal restraint.

The difficult macroeconomic conditions inevitably affected the collective bargaining process throughout the public sector, and saw governments directly intervene with new or amended legislation. The most popular measures were the imposition of wage restraints or freezes and the exercise of pressure on unions to make concessions. Organized labour responded with strikes or threats to strike, which usually ended with government-imposed settlements. With few exceptions, attempts by unions to attract public sympathy and support for striking employees were unsuccessful, especially if essential services were withdrawn in the process. Faced with a relative reduction of their bargaining power, unions directed their efforts to pursuing other avenues in negotiations, such as enhanced job security, limited overtime, and improved pension plans for their members.

Nowadays, many unions are professional groups that are directly involved in the delivery of services, which gives them additional bargaining power. For example, if university cutbacks were implemented, professors could decide against assigning any courses to sessional lecturers to teach, and impose restrictions on class sizes.

Basic Legislative Framework Governing Essential Services

In the early part of the 20th century, labour disputes in the coal-mining industry and the railways led to the passage of one of the first major labour-relations laws in Canada, *The Industrial Disputes Act of 1907*. The federal government had recognized that "...a cessation of work from lockout or strike in the case of a public utility involves not only loss to employers and employed, but grave inconvenience and possibly serious distress to the public at large"⁶, and it therefore introduced legislation establishing a normative procedure for resolving labour disputes through "compulsory investigation and reporting"⁷. Almost a hundred years later, it appears that little has changed in the way of dealing with labour disputes. Governments, irrespective of political ideology, prefer quick solutions to avoid strikes or lockouts in services perceived to be essential to the public, but if that does not work, they have the option to introduce back-to-work

⁶ *Labour Gazette* (1907) Vol. VII, p. 1108.

⁷ H.D. Woods, *Labour Policy in Canada* (Toronto: Macmillan, 1973), p. 56.

legislation. Their reluctance to tolerate any long-lasting disruption in the provision of essential services has been well documented. Between 1997 and 1999 a number of strikes across the country were either prevented or terminated by legislation. In that period, striking federal postal workers and nurses in Saskatchewan and Newfoundland were ordered back to work. The Quebec Government suspended the right of municipal workers to strike and later, the Alberta and Ontario governments, using their legislative powers, prevented strikes by teachers and Toronto transit operators, respectively.

The acts and regulations governing essential services vary among provinces, but fall into one of three distinct legislative systems: unlimited-strike, limited-strike, and no-strike⁸ (see Appendix 1, Table 2). Unlimited right to strike exists when, if negotiations for a new collective agreement reach an impasse, unions can direct their members to walk out subject to strike approval (usually through a voting process) and a provision of notice to the employer and the provincial labour relations board. At present, this system is widely used only in Saskatchewan and Nova Scotia where almost all provincial and municipal employees are covered by it. Even for police and firefighters whose services, if withdrawn, would create a direct danger to public health and safety, there are no statutes explicitly outlawing strikes. As a general rule, the unlimited right to strike prevails in the municipal sector where only a small number of services are perceived to be “truly” essential⁹. However, local governments are more likely to tolerate work stoppages that would create only some inconvenience than those that pose a high risk to the health and safety of residents, because many municipal services could be temporarily provided by management.

The no-strike system is the opposite. Jurisdictions in which it exists usually have legislative provisions in place for arbitration to resolve bargaining issues. Alberta and Prince Edward Island are the only provinces that prohibit the majority of their public employees from striking. The right to strike is substituted with compulsory arbitration. Other jurisdictions in Canada have limited the use of statutory bans on strikes and lockouts. In Saskatchewan the no-strike model is virtually non-existent. Public-sector unions have been in a relatively strong bargaining position with employers to negotiate contracts and enjoyed somewhat stable relations (excluding the

⁸ Adell et al. (2001) present a comprehensive analysis of the three models.

⁹ Municipal workers include blue-collar and public-transit employees. The services to be designated as essential vary across jurisdictions depending on their expected impact on the public at large. For example, a shutdown of transport services in Toronto or Montreal would have a much greater impact than a similar action in a smaller city or town, e.g. Regina.

events surrounding the 1999 nurses' strike, when back-to-work legislation was implemented) with the New Democratic Party (NDP) governments since 1991.

More recently, however, a general departure from the widespread use of either the unlimited-strike or the no-strike system has been observed. An increasing number of jurisdictions in Canada have adopted a different approach to dispute resolution in those cases where certain services are designated as essential. Under the limited-strike (or designation) model, the bargaining parties are required to negotiate a level of essential services to be maintained before any job action could commence. If no agreement is reached, an administrative tribunal usually settles the issue. The roots of this model can be traced to the federal *Public Service Staff Relations Act*, which, unlike statutes governing strikes at the provincial or municipal levels, gives each bargaining unit the opportunity to opt for either the limited-strike or the no-strike model. The limited-strike model is also extensively used on the provincial level. Six provinces have already put it in place for at least part of their workforce, with Quebec and British Columbia being the front-runners. Since 1982 in Quebec and 1992 in British Columbia, the majority of public-sector employees have been legislated under the limited-strike model, but these two provinces have had different experiences with essential services under the new statutes¹⁰ despite some common features¹¹. One distinction is that, even though both provinces have incorporated the provision of essential services in their statutes, this is done much more comprehensively in Quebec where there is a clearly defined and streamlined process of designation overseen by the Conseil des Services Essentiels (Essential Services Council). In British Columbia, similar functions are assumed by the provincial Labour Relations Board. On the other hand, British Columbia is the only jurisdiction in Canada where the limited-strike system governs the entire public-sector workforce. In contrast, some essential-service employees, such as police officers and firefighters, are prohibited from striking in Quebec.

¹⁰ In Quebec the collective bargaining process in the health care sector and some social services is highly centralized, while for the municipal and public transit services, it is more decentralized, which has led to a different degree of intervention by the provincial government in labour disputes. In the parapublic sector, which includes all health care and some social workers, the legislation specifies quotas of essential services to be performed during a work stoppage: “90 % in the case of an institution operating a residential and long-term care centre, a rehabilitation centre, a psychiatric hospital, a hospital providing specialized care in neurology or cardiology or a hospital centre...; 80 % in the case of an institution operating a hospital centre other than those (mentioned above)... or in the case of an institution designated as a health care centre; 60 % in the case of an institution operating a local community service centre; 55 % in the case of an institution operating a child and youth protection centre or in the case of a social services centre.”, *Quebec Labour Code*, R.S.Q., c. C-27, s. 111.10.

¹¹ For example, collective bargaining in hospitals is centralized in both provinces.

The only jurisdiction in Canada where there is entirely separate legislation establishing and governing the provision of essential services is Manitoba, which has *The Government Essential Services Act*, S.M. 1996, c.23. This statute includes a list of services provided by provincial government departments that are explicitly designated as essential. It also leaves room for more services to be added to the list by the Lieutenant Governor in Council.

Normative Criteria for the Designation of Essential Services

There is room for debate on what constitutes an essential service, but the most common view held is that they are those the withdrawal of which would create “an imminent danger to the health and safety for the whole or part of the population”. The *Canada Labour Code* is one of the two major pieces of legislation in the federal jurisdiction that govern labour relations and the provision of public services. It establishes a general concept of essentiality¹² and also, specifies a wide range of services that must be maintained during work stoppages. The other is the *Public Service Staff Relations Act*, which governs the rest of the federal workforce (Crown employees). It provides that where no collective agreement has been signed, the bargaining-party agent and the employer may resort to arbitration or conciliation. Arbitration does not explicitly require the designation of essential services, but conciliation does.

The *Public Service Staff Relations Act* was enacted in 1967, and established the Public Service Staff Relations Board (PSSRB) to play an important part in the collective bargaining process. PSSRB’s role, however, diminished to some extent after the *Canadian Air Traffic Control Association v. Canada* case in 1982. The federal government had recommended that a fairly large number of air traffic control employees be designated as essential since, otherwise, the safety of a great volume of passengers and cargo would be compromised. The union, on the other hand, argued that only emergency air services and not the majority of commercial and passenger services were essential. PSSRB agreed with the union, and designated only a limited number of air traffic controllers as essential. The Federal Court of Appeal subsequently reversed the decision by the Board, stating that the *Public Service Staff Relations Act* “...did not authorize the board to decide what **level of service** was necessary to avoid danger to public safety and

¹² “During a strike or lockout not prohibited by this Part, the employer, the trade union and the employees in the bargaining unit must continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public.”, *Canada Labour Code* (R.S. 1985, c. L-2), s. 87.4(1).

security but only to decide ‘what **employees** or **classes of employees** in the bargaining unit are... **performing duties** which are necessary for the safety and security of the public.’”¹³. The Supreme Court of Canada later upheld that judgement, thus effectively creating categories of workers whose services were deemed to be essential by law.

Characteristics of Essential Service Workers

Nurses, police officers and firefighters are perceived to be the most essential public-sector workers in Canada. Municipal blue-collar and public-transit employees are also perceived to be essential, but to a lesser extent. These five occupational groups are presented in some detail in the paper in order to analyse their treatment under provincial labour law and identify the factors contributing to the likelihood and frequency of strikes.

The nursing market is characterized by a labour force with highly specialized skills that are not easily transferable. This, combined with the high degree of essentiality of health-care services in general, gives nurses and their unions a powerful bargaining tool, and puts them in a monopoly position on the labour supply side. In Saskatchewan, a number of factors have shaped the market for nurses – demographic profile, educational requirements, scope of practice and provisions in collective agreements. Also, the demand for nurses depends critically on federal transfers to the province, which implies that nurses are either hired in large numbers or not at all. There has been a recent shortage of qualified professionals in Saskatchewan as more nurses retired or otherwise left the workforce than joined it. In 2002, a total of 324 new registered nurses¹⁴ joined the provincial labour force while 344 left.¹⁵ Over the period 1999-2002 the net labour loss due to migration was 962 nurses (see Appendix 2, Table 1 and 2). The shortfall is particularly acute in Northern Saskatchewan and other rural areas. Moreover, there has been a recent shift towards employment in “non-traditional” nursing areas, such as community and home care, and research and education at the expense of employment in surgical wards, maternity and psychiatric units¹⁶. Another troubling fact is that an increasing number of nurses are approaching retirement without an offsetting increase in graduates or in-province migrants, despite the fact that the number of nurses per 10,000 population in the province (80.8 in 2001) is

¹³ *Canadian Air Traffic Control Association v. Canada*, [1982] 1 SCR 696 (SCC), in Adell et al. (2001), p. 31.

¹⁴ The number includes only new practising nurses. Source: Saskatchewan Registered Nurses’ Association, *Annual Report 2002*, p.13.

¹⁵ The number includes all processed requests for nursing verification to other jurisdictions. Source: *Ibid.*

¹⁶ Doug Elliott, *Labour Market Analysis: Saskatchewan Nursing* (October 1999), p. vii.

higher than the Canadian average (74.3)¹⁷ and higher than the corresponding numbers in British Columbia, Alberta, Ontario and Quebec.

Another important feature of the nursing market in Saskatchewan and, indeed throughout Canada, is the existence of the so-called “legal monopolies”¹⁸ on both the demand and supply side of labour – the nursing union, as the exclusive bargaining agent and supplier of labour, and government, as the exclusive employer of that labour. The fact that nurses possess highly specialized skills and that the government is the major employer in the market, coupled with the latter’s ability to seemingly always find ways to fund the health-care system, have created monopoly conditions. This, along with the centralized nature of collective bargaining, has led to the distinct possibility (and in many cases, reality) of confrontations and decisions being made in furtherance of private rather than public interests¹⁹. In this environment, legislative provisions that completely prohibit or completely allow nurses the right to strike may only exacerbate the problem.

The labour market for police officers and fire fighters is different from other labour markets. On one hand, the educational requirements for a job are fairly low (usually a high-school diploma); the knowledge is less specialized and more transferable, which reduces the barriers to entry in the workforce and the expected monetary returns in the form of wages. On the other hand, policing and firefighting are essential occupations involving high levels of stress, so they should be rewarded accordingly. Remuneration for police officers and firefighters depends mostly on experience, demographic characteristics, crime rates and expected risk of fires. Local authorities have often satisfied union demands for higher wages; at the same time, the unions have tried to avoid taking job action given the reluctance of governments and the public at large to tolerate strikes of any magnitude or duration. Also, the additional costs involved in setting up an arbitration board to resolve a labour dispute have been an incentive to the bargaining parties to negotiate in good faith.

Police officers and firefighters are prohibited from striking almost everywhere in North America. It is believed that (even temporary) withdrawal of their services would create an immediate and serious danger to public health and safety, and the normal functioning of the

¹⁷ Canadian Institute for Health Information, *Number of RNs Employed in Nursing per 10,000 Population by Province/Territory of Registration, Canada, 1997-2001*. See Appendix 2, Table 3.

¹⁸ Claude E. Forget, *Towards A Consensus On Continuing Chaos*, C.D. Howe Institute Commentary, No.179, February 2003, p. 9.

¹⁹ *Ibid.*

economy. In Saskatchewan, however, the governing legislation imposes no limits on the right to strike, but interestingly, this right has almost never been used. Currently, there are 800 municipal and 1,200 RCMP (excluding the RCMP training academy) police officers in Saskatchewan, the budget for which is around \$200 million per annum²⁰. RCMP officers bargain collectively with the federal government while municipal police officers settle their contracts locally. Firefighters also negotiate their contracts locally. Table 1 presents the rates of increase of the starting wages for nurses, police officers, and firefighters in Saskatchewan between 1994 and 2001²¹ (see also Appendix 4).

Table 1. Wage Increases (%): Nurses, Police Officers, and Firefighters, 1994 – 2001

	1994	1995	1996	1997	1998	1999	2000	2001
Nurses	0.0	2.5	0.0	0.0	1.0	4.2	3.1	4.2
Police Officers	2.3	2.7	2.2	2.2	1.8	2.4	2.5	3.0
Firefighters	2.4	1.9	1.6	1.0	3.4	2.3	2.5	2.4

During this period, the cumulative average wage increase for police officers in Saskatchewan was 20.8% and for firefighters, 18.9%. In comparison, for the same period, the cumulative increase in wages for the nurses in Saskatchewan was 15.9%. Unfortunately, the available data were not sufficient to adequately explain these results. More empirical research is needed to establish any rationale for the different rates of wage increases for these groups of essential workers. Appendix 4 compares the wage increases for police officers, firefighters and nurses to the Saskatchewan average, and the corresponding increases in the Canadian public and private sectors, and the Consumer Price Index. It can be seen that the increases in wages for police officers, firefighters and nurses in Saskatchewan have not substantially deviated from the wages in the entire Canadian public and private sectors, and the Consumer Price Index (CPI). Between 1987 and 1993, and for the most part of 1997-2001, the police officers in the province settled for less than the country's average in both the public and private sectors (except the public sector in 1991). Their wages were also increasing at a slower rate than the CPI during that time (except in 2001), and between 1994 and 1996, they were higher than the increases elsewhere. The wage

²⁰ Department of Justice, Government of Saskatchewan, available online at: http://www.saskjustice.gov.sk.ca/Law_Enforce/default.shtml.

²¹ The data compiled are calculated average starting wages for Regina, Saskatoon, Moose Jaw and Prince Albert. For 1994-97 (police officers) and 1994 and 2001 (firefighters) data were not available for Regina.

increases for firefighters follow a similar trend with increases elsewhere in Canada as that for police officers. The increases in the wages for Saskatchewan nurses deviated from the increases in the Canadian public and private sectors, and the Consumer Price Index in all years, for which data were available. In 1991, 1993, 1994, 1996, 1997, and 1998, they were lower, and in the remaining years of the observed period, they were higher than the increases elsewhere in Canada.

Recently, some concerns have been expressed in Saskatchewan over the continuous rise in firefighting costs, of which more than 90% are currently for wages and salaries. The most recent financial settlement (for the period 2001-2003) was determined through interest arbitration, which is resorted to when the bargaining negotiations reach a stalemate²². However, relying on interest arbitration as the dispute resolution mechanism in Saskatchewan (given the arbitration board's historical tendency to give relatively high awards to firefighters) may not prove to be the most efficient way of distributing a local budget in the long run. Unless citizens are prepared to face future property-tax increases or cuts in other municipal services, or new sources of revenue are discovered, arbitration may prove to be costly and unsustainable. A similar argument could be made for policing costs as well.

Municipal employees across Canada fall under the jurisdiction of local city and town authorities, but are subject to provincial legislation. They perform a wide range of services, including transportation and garbage collection, some of which are regarded as essential (e.g. public transit in Toronto and Montreal). Except British Columbia and Quebec²³, in all other provinces, municipal workers have an unlimited right to strike. Part of the reason for the current status quo is because the majority of municipal services are not perceived as "truly" essential by the populace, as their (temporary) withdrawal would not cause an imminent danger to the public health and safety. There would be, however, a negative economic impact, the magnitude of which is difficult to quantify, and it would likely affect certain groups of people, such as the elderly, students, and lower-income individuals, more than others. As well, most employees in the municipal sector do not require specialized knowledge and skills, which makes them easily replaceable. Despite the existing right to strike, unions have generally not been able to achieve monetary gains on the same scale as their provincial-level counterparts given their weaker bargaining power and lower political profile, except in the bigger cities (mostly Toronto and

²² Anne Kyle, *Raise for firefighters puts pressure on city's budget*, Leader Post [Regina]: January 24, 2003. The projected pay increase for 2003 is 5.75% including classifications adjustments.

²³ These two provinces have a process of designation for municipal workers.

Montreal). As well, municipal governments have experienced fiscal constraints in recent years resulting in a negative impact on workers' wages.

Provincial Legislation Governing Essential Services Workers

Various statutory provisions respecting strikes govern registered nurses across Canada. In Quebec, British Columbia and Manitoba they are subject to designation, in Saskatchewan and Nova Scotia²⁴ they have a right to strike, and in Alberta and Ontario²⁵ they are entirely prohibited from striking. The nursing field has probably been the most contentious labour relations environment of all the essential services over the last 15 years. Regardless of which of the three legal regimes identified earlier applies, there have been a number of nurses' strikes (some of which were illegal) throughout the country in recent years, most notably a 1988 strike in Alberta, strikes in 1989, 1999 and 2002 in Quebec, and a 1999 strike in Saskatchewan. All of these strikes were ended by either reaching an agreement between the government and the nurses' union or through arbitration. Because of the direct impact of a withdrawal of nursing services on public health and safety, policy-makers have been particularly sensitive about allowing nurses to strike; where strikes by nurses are permitted, governments have often resorted or threatened to resort to ad hoc legislation to terminate them.

The nurses in Alberta are governed by the *Labour Relations Code* and represented in collective bargaining negotiations by the United Nurses of Alberta Union. For two decades the legislation has prohibited any strikes by the nurses in the province²⁶ and stipulated compulsory arbitration as a resolution mechanism. This has resulted in a fairly hostile environment for labour-management relations. Since the introduction of the no-strike model in 1983, there has only been one nurses' strike in Alberta, but the union has threatened to take similar action on numerous other occasions. The union has argued that the existing no-strike model erodes its bargaining power and it will not accept it.

²⁴ Except two large hospitals, the nurses in which are subject to arbitration.

²⁵ Except nurses working in provincial psychiatric hospitals and facilities for people who are developmentally delayed. Those nurses are regulated by the *Crown Employees Collective Bargaining Act* and fall under the designation model.

²⁶ "No employees, no bargaining agent and no person acting on their behalf shall strike or cause a strike or threaten to strike or to cause a strike unless that strike is permitted by this Act.", *Labour Relations Code*, R.S.A. 2000, c. L-1, s.72 in the *Canadian Legal Information Institute*, available online at: <http://www.canlii.org/ab/sta/csa/20020815/r.s.a.2000c.l-1/whole.html>.

One of the reasons why the Alberta government has avoided walkouts by nurses in the last several bargaining rounds is that the strong fiscal position of the province has enabled it to allocate more resources to the health-care system. The nurses' union has been negotiating continuous wage increases (except in 1994) for its members, the last of which was 14.7% over two years (2001 and 2002)²⁷. This has contributed to temporary peace between the government and the nurses. Another reason is that the nursing union has been somewhat reluctant to go "all-out" on strike since the illegal walkout in 1988, after which it was convicted of criminal contempt and fined \$250,000 and later, another \$150,000 by the courts²⁸. In the subsequent year, an illegal strike by nurses in Quebec was followed by a \$10-million-dollar fine for the union. Interestingly, hospital employers in Alberta are also against the no-strike model, because, according to them, it challenges nurses to defy the legislation and spurn the collective bargaining process. Unlike the union, however, managers have expressed support for designation of certain nursing services as essential.

In British Columbia, the nurses are governed by the provincial *Labour Relations Code* and officially represented by the British Columbia Nurses' Union. Like all other public-sector employees, they are subject to the limited-strike model of dispute resolution. The Code empowers the Labour Relations Board to determine which services are essential and should be provided during a work stoppage:

If the minister...considers that a dispute poses a threat to the health, safety or welfare of the residents of British Columbia, the minister may direct the board to designate as essential services those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia.²⁹

Since the introduction of the essential services legislation in British Columbia in 1992, there has been general dissatisfaction with it; however, both the union and management have made a concerted effort to adapt their policies and strategies to the new bargaining environment.

²⁷ The change is in the starting wage rate between August 1, 2000 and April 1, 2002. The minimum rate for registered nurses and registered psychiatric nurses is \$24.70/hr retroactive to April 1, 2002. The top rate is \$32.42/hr. Source: United Nurses of Alberta, *Starting and Top Salary Rates for RN/RPN, 1980-2002*, available online at: <http://www.una.ab.ca/documents/salaries/pay.html>. Note: RN – registered nurse; RPN – registered psychiatric nurse.

²⁸ Canadian Legal Information Institute, *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901. Source: <http://www.canlii.org/ca/cas/scc/1992/1992scc38.html>.

²⁹ British Columbia *Labour Relations Code*, [RSBC] 1996, c.244, s.72 (2).

In Quebec, where a similar dispute resolution system is in place, there has been some resentment by both unions and management of the legislative quotas of essential-service workers imposed in provincial hospitals³⁰. These quotas are largely viewed as rigid, leaving the nurses with a severely limited right to strike and the unions with reduced bargaining power. As a result, there have been two illegal strikes by hospital nurses in Quebec since 1988. Another perceived problem is that the legislation, which provides for heavily centralized collective bargaining, does not take into consideration the local demand for essential services. Provincial negotiators tend to get disconnected from local health-care problems and needs when designating the appropriate number of employees to stay on the job during a strike. Furthermore, the legislative provision prohibiting employer lockouts has embittered many hospital managers by restricting their bargaining power.

In Saskatchewan, the nurses are governed by the *Trade Union Act* and officially represented in contract negotiations by the Saskatchewan Union of Nurses. The *Trade Union Act* gives the nurses the right to strike: “Notwithstanding anything contained in any collective bargaining agreement...the employees in respect of whom the agreement applies...may, after this section comes into force and after the expiry of the term of operation provided in the agreement, commence to strike...”³¹ In recent years the Saskatchewan nurses have been lobbying the government mostly for monetary gains in light of the wage increases for nurses elsewhere in the country. They have been aiming to close (or at least reduce) the “remuneration gap”³² with other provinces in order to prevent nurses from leaving. The President of the Saskatchewan Union of Nurses (SUN), Rosalee Longmoore states: “The only way to keep the nurses we have in Saskatchewan and encourage other nurses to move to our province is to offer fair compensation.”³³ At the same time, another usually important issue - job security - has taken a “back seat”, given the ever-high demand for medical services and the net out-migration of nurses from the province.

³⁰ See footnote 6 on p. 6.

³¹ Saskatchewan *Trade Union Act*, RSS 1978, c. T-17, s. 34(1).

³² It is debatable whether such “gap” with other provinces, such as Alberta and B.C., really exists if one takes into consideration the different economic conditions and costs of living.

³³ Rosalee Longmoore, *Nurses Insulted by SAHO Offer*, Statement during the last round of collective bargaining between the nurses and their employer in Saskatchewan, March 20, 2002, available online at: http://www.sun-nurses.sk.ca/media_2002.html.

Police officers in Saskatchewan are governed by the *Police Act*, which sets out their main rights and responsibilities and outlines the process of collective bargaining and resolution mechanisms. Disputed issues may be referred to an arbitration board:

Where proceedings to conclude a collective bargaining agreement, or to revise an existing collective bargaining agreement, between a local police association and a board have, in the opinion of the parties, reached a point where agreement cannot be achieved the parties may have all or any matters...referred to a board of arbitration.³⁴

There have been relatively few police strikes in North America since the Second World War. Everywhere, the governments' reluctance to tolerate job action regarding the provision of services directly affecting the public health and safety has resulted in laws entirely prohibiting police officers from striking. Moreover, the public's very limited, if any, support for police strikes is reflected in the governments' preparedness to take a tough stance against any police officer on strike. Since the tragic events of September 11, 2001, it has become even more difficult to advocate for the right to strike for police officers and firefighters (especially in the United States), even organizing is no longer a right for many workers in North America. This was firmly illustrated by a Senate vote in the United States, conducted approximately two months after the terrorist attacks, which denied federal emergency service employees the right to bargain collectively despite the no-strike and lockout provisions in the proposed legislation:

In a procedural move that required 60 votes for passage, Republican leaders blocked a motion Nov. 6 (56 - 44) to add an amendment to the Labor, Health and Human Services appropriations bill that would have guaranteed collective bargaining rights to all the nation's emergency service professionals. Currently, 18 states do not allow public safety workers to organize and others limit their bargaining authority.³⁵

Municipal employees in Saskatchewan are governed by the *Trade Union Act*, which provides the legislative framework for dispute resolution when collective bargaining fails³⁶. There does not appear to exist a clear pattern of the degree of strike activity in the province by municipal employees, even though the number of work stoppages over the last 20 years has experienced an

³⁴ Saskatchewan *Police Act*, c. P-15.01, SS 1990-91, s. 84(1).

³⁵ American Federation of Labor and Congress of Industrial Organizations, *Senate Says 'No' to Rights for Firefighters, Police Officers, EMT's*, available online at: <http://www.aflcio.org/issuespolitics/ns11072001.cfm>.

³⁶ Saskatchewan *Trade Union Act*, c. T-17, RSS 1978, s. 34(1).

overall decline. Public transit has been another sector with a contentious labour relations environment. Strikes by public-transit workers have occurred more recently and have been longer than those by blue-collar workers. In the early 1990s there were two major public-transit strikes in Saskatoon and one in Regina. Other Western provinces, such as Alberta and British Columbia, have experienced comparatively fewer and shorter work stoppages except the most recent transit strikes in Calgary and Vancouver³⁷.

One of the reasons for Canadian public-transit employees to have struck more often and for longer periods than their blue-collar counterparts is the more adversarial relationship between their unions and management. According to Adell et al. (2001), the willingness of many local authorities to settle transit contracts before any other municipal workers' contracts and the governments' determination to keep wage increases under control have contributed to hostility and mistrust in collective bargaining. Interestingly, unlike other services analyzed in this paper, one public-transit union officer in Saskatchewan expressed desire to be considered as providing essential services believing that this way the union and its members would be in a better bargaining position and prevail in their disputes with management: "We should be classified as an essential service and we should get into mediation or third party deciding who's right and who's wrong, but for some reason they don't want to treat us that way."³⁸

Recent History of Labour Disputes in Essential Services

During the collective bargaining negotiations between the Saskatchewan Union of Nurses (SUN) and management in 1999, the primary issue was remuneration. SUN maintained its demands for a 22 per cent increase as opposed to the 7 per cent over three years³⁹ offered by the Romanow government, which led to an impasse. The union issued a province-wide strike notice and, soon after, approximately 8,400 nurses walked out. A few hours later, the provincial government passed ad hoc legislation ordering the nurses back to work, which the latter defied for ten days before finally returning to the bargaining table. As the strike became illegal, the premier released a statement accusing SUN of making unreasonable demands:

³⁷ The latest strike by transit employees in Calgary in 2001 lasted 49 days and ended with an agreement between the city and the union for increases of employees' wages and improvements in working conditions. The strike in Vancouver lasted four months and was eventually ended by ad hoc legislation.

³⁸ Adell et al. (2001), p. 177.

³⁹ Source: Executive Council, Government of Saskatchewan, *Premier Romanow speaks to SUN actions*, #99-278 (News Release: April 9, 1999).

Our government acted to protect patient services after the Saskatchewan Union of Nurses issued a strike notice and executed it, threatening our health system over a demand for a 22 per cent increase... We understand the priceless value of the work that nurses do and that all health care workers do. But 22 per cent is too much. We simply can't afford it. And it's not fair to other public sector workers who have settled contracts for what we can afford.⁴⁰

Three days later, however, the Health Minister Pat Atkinson used a more conciliatory tone in a letter to the union president, Rosalee Longmoore, in which she appealed for resumption of the bargaining negotiations outlining the government's intentions:

First, I want to assure you, both personally and on behalf of the government that we will listen and act on the concerns of nurses and other health care providers...Second, I want to commit that the issues we discussed at our meeting last Wednesday will be addressed...Finally, I want to advise you that I have asked SAHO to be available to begin bargaining the minute your union agrees to recommend that nurses return to work. SAHO has agreed to this request.⁴¹

In response, as conditions for returning to work, the nurses demanded that the government repeal the ad hoc legislation outlawing the strike and sign a memorandum of understanding to resolve the disputed issues⁴². Eventually, the nurses won a 13.7% overall payroll increase over the following three years, and in the process, they showed that they were a force with which to be reckoned.

In the 2002 bargaining round, the union negotiated an even bigger increase in wages for most registered and graduate nurses, of around 20%. According to the *Collective Agreement Between Saskatchewan Association of Hospital Organizations and the Saskatchewan Union of Nurses*⁴³ the starting salary of a registered nurse from April 1, 2002 is \$21.34/hr and the top rate is \$29.47/hr. The terminal rates provided in the agreement, which will be in effect from October 1, 2004, are: starting - \$24.98 and top - \$35.64. This concession on the part of the provincial government occurred as a result of the tight nursing market in the province on one hand and its desire not to alienate a politically influential constituency, on the other.

⁴⁰ *Ibid.*

⁴¹ Source: Executive Council, Government of Saskatchewan, *Minister Appeals to Nurses*, #99-287 (News Release: April 12, 1999).

⁴² Saskatchewan Union of Nurses, *SUN President extends peace offer* (News Release: April 15, 1999).

⁴³ The agreement is effective from April 1, 2002 to March 31, 2005. The full text is available online at: http://www.sun-nurses.sk.ca/member_services/2002-2005_indexed_SUN%20AGREEMENT.pdf.

The nurses are largely perceived by the general public to provide essential services, but some of the arguments for higher wages appear to lose their appeal when we take into account the issues of efficiency and equity, especially when nursing services are considered alongside other essential public services. On the efficiency side, it could be argued that the registered nurses in Saskatchewan receive an abnormal return on their education compared with other essential groups (also including nurses in other provinces). Until January 1, 2000, nurses in Saskatchewan, unlike teachers for example⁴⁴, were not required to obtain a university degree in nursing in order to register and practice: “The council may register as a registered nurse and issue a licence to practice nursing to a person who produces evidence establishing to the satisfaction of the council that the person...has successfully completed a basic nursing education program...”⁴⁵ Before January 1, 2000, a basic nursing program did not have to be a university degree, but a nursing diploma, which was normally obtained upon completion of a shorter-in-duration and less rigorous set of courses. In this respect, with reference to fundamental economic principles and strictly in terms of remuneration, employees with different levels of education would be expected to receive different levels of compensation in sectors of the economy with comparable labour conditions⁴⁶. According to a report prepared for Saskatchewan Health and Saskatchewan Post-Secondary Education and Skills Training, only 19% of the registered nurses in the province in 1998 had baccalaureate degrees, which is the lowest in Western Canada and lower than the national average of 23%⁴⁷. It has to be mentioned, however, that nurses’ wages may also reflect additional factors, such as working conditions (long shifts, stress, crowded wards, and others), and the degree of difficulty of getting in and out of nursing education programs. Therefore, despite the compelling argument about nurses receiving abnormally high returns on their education, education cannot serve as the only point of departure for analyzing the level of nurses’ remuneration. On the other hand, the impact of the other factors, mentioned above, is unclear at present and more research needs to be conducted in order to assess the magnitude of that impact.

The problem with the nurses’ pay in relation to education has another dimension. Since January 1, 2000, there has been an increased demand for qualified professors in nursing in

⁴⁴ Those who hold professional “A” and “B” certificates. Saskatchewan Teachers’ Federation, *Teacher Certification in Saskatchewan* (August 2002), available online at: http://www.stf.sk.ca/prof_growth/pdf/teacher_certification.pdf.

⁴⁵ Saskatchewan *Registered Nurses Act*, cR-12.2, SS 1988-89, s. 19.

⁴⁶ Theory dictates that rational individuals would enhance their education in anticipation of a higher return on it in the form of wages and salaries in the future.

⁴⁷ Doug Elliott, *Labour Market Analysis: Saskatchewan Nursing* (October 1999), p. 11.

Saskatchewan. Now that prospective nurses are required to obtain a baccalaureate degree in order to be registered, there are not enough qualified teaching staff. In other words, the problem is that the growth in demand for nursing services - and thus, qualified nurses in Saskatchewan - is currently outpacing the supply of trained educators in nursing. There is a shortfall expressed in the form of fewer practising nurses being overworked and highly stressed on the job. This phenomenon, however, would be expected to trigger what economists call the “acceleration effect”, or the strengthening of the market at a time of insufficient supply. Efficiency dictates that the excessive time spent on the job is used to create new positions meaning a greater demand for nurses. Whether the latter will lead to more post-secondary teaching staff depends on the government’s ability to provide sufficient financial incentives for academic work and the willingness of professionals to substitute the surgical ward, for example, with a classroom. Training or simply importing qualified nursing educators would require additional funds from the provincial budget, which could be secured at the expense of other programs or by generating additional revenue. It should also be noted that the current challenges to the government and the nursing profession are as a result mostly of the ever-increasing demand for medical services and the changing demographic profile of Saskatchewan rather than purely from nurses leaving the province. Between 1996 and 2001, the population of Saskatchewan has experienced a decline in its youngest group (0-19 years) by 6.4% and an increase in its oldest group (65+ years) by 1.3%.⁴⁸ According to data presented by the Canadian Institute for Health Information, during the same period, the number of registered nurses in the province has decreased by 310 or 3.6%.⁴⁹ The combined effect of these changes has led to increased pressures on the already overburdened health-care system in Saskatchewan.

To give a better idea about how Saskatchewan nurses fare in terms of the rates of pay compared to their counterparts elsewhere in Canada, Table 2 presents the wage rates for all western provinces and Ontario. Caution must be exercised, however, when analysing absolute numbers. Relative wage-rate changes should be taken into consideration and adjusted for the current economic conditions in a province, which are expressed by a range of indicators, such as the consumer price index, real GDP, average house prices, average labour earnings, etc. To gain

⁴⁸ Source: Statistics Canada, *Age and Sex, Percentage Change (1996-2001) for Both Sexes, for Canada, Provinces and Territories – 100% Data* (Census 2001).

⁴⁹ Source: Canadian Institute for Health Information, *Registered Nurses Database, Table 1. Number of RNs Employed in Nursing by Province/Territory of Registration, Canada, 1994-2000 and 1997-2001.*

some useful insights into the evolution of nurses' wages in all five provinces, the increases of the starting and the maximum wage rates over the period between March 1999 and April 1, 2002 have been calculated. During this period, the starting rate for a nurse in Saskatchewan increased by 14.1%, which was the lowest of all five provinces (the highest was Alberta, 25.6%). The maximum rate in Saskatchewan increased by 31.9%, which was the second lowest (the highest was British Columbia, 50%). These figures imply that nurses in Saskatchewan gained less in remuneration than their counterparts in other provinces. However, in order to draw any meaningful conclusions from these numbers, we have to compare them with the corresponding increases in living costs and other public employees' wages during the same period.

Whether a particular model of labour dispute resolution is correlated with the magnitude of wage increases, no definitive statement can be made from the available data. The highest increases are observed in British Columbia and Alberta where the designation and no-strike models, respectively, are in use. The lowest increases are observed in Saskatchewan and Ontario where the unlimited-strike and a mixture of the no-strike and designation model, respectively, are in use. However, if one adjusts the numbers in Table 2 for the cost of living in each province, they may obtain a different result.

Table 2. Hourly wage rates for nurses in CAD\$ as of March, 2003

	March, 1999		April 1, 2001		April 1, 2002		April 1, 2003		April 1, 2004	
	Start	Max.	Start	Max.	Start	Max.	Start	Max.	Start	Max.
BC	20.98	26.08	21.83	33.29	24.70	39.11	25.07	39.70	N/A	N/A
Alberta	19.66	24.11	22.62	28.68	24.70	32.42	N/A	N/A	N/A	N/A
Sask.	18.71	22.34	20.72	28.61	21.34	29.47	23.69	32.48	24.40	33.46
Manitoba	17.79	21.65	N/A	N/A	21.48	30.77	22.79	32.65	24.88	35.65
Ontario	18.30	28.36	21.12	31.45	21.75	32.71	22.44	33.75	N/A	N/A

Sources: British Columbia Nurses' Union, *Provincially Imposed Language (April 1, 2001 – March 31, 2004)*, Article 62 – Wage Schedule; United Nurses of Alberta, *Salary Appendix 2001-2003*; Saskatchewan Union of Nurses, *Collective Agreement Between Saskatchewan Association of Health Organizations and The Saskatchewan Union of Nurses (April 1, 2002 – March 31, 2005)*, p. 96; Manitoba Nurses' Union, *North Eastman Regional Agreement (April 1, 2002 – September 30, 2004)*, Appendix "A"; Ontario Nurses' Association, *Hospital Central Agreement (Expiry: March 31, 2004)*, p. 68.

Note: The salary grids in different provinces do not have the same number of steps. In British Columbia, there are 9 steps to reach the maximum wage rate, in Alberta and Saskatchewan, there are 8, and Manitoba has 6 steps in its salary grid.

In broader terms, the data on nurses' wages reflect to a large extent the relative bargaining power of the union, the demand and supply of nursing services, and the province's public spending priorities. The existing model of dispute resolution per se does not seem to affect the outcome of collective bargaining pertaining to wage increases. The provinces under consideration vary in the degree to which they allow their nurses to strike, from a complete ban (Alberta) to an unlimited right (Saskatchewan), yet all of them have included very generous financial compensation packages in their current collective agreements. To explain the probability of nurses' strikes and the impact on the provision of essential services, there are also other factors to be accounted for, such as the public perception of essentiality, provincial demographic profiles and the tolerance for strikes by governments and the public at large.

There have been numerous suggestions with regards to improving the existing situation in light of an expected bigger nurses and nurses' educators shortage in Saskatchewan in the future under the existing conditions. The Decter Report (2002) presents a number of specific recommendations, some of which are outlined in an open letter by the Saskatchewan Registered Nurses' Association (SRNA):

As part of a coordinated, national nursing education plan, governments should work with schools of nursing, as well as with employers who are able to provide clinical placements for nursing students, to increase the number of new, first-year seats in schools of nursing for registered nurses by 25% (roughly 1,110 new seats) in September 2004...

The number of nurse educators should be increased proportionately to the number of new undergraduate admissions and graduates.⁵⁰

There is little doubt that the sought improvements would create better conditions for nursing education and practice. However, nothing in these recommendations suggests from where the additional funding will come. One could reasonably expect that if the provincial government does not provide for substantial increases in health-care spending in the foreseeable future, it might not be long before another labour conflict involving the Saskatchewan nurses arises.

⁵⁰ *Decter Report of the Canadian Nursing Advisory Committee (CNAC)* (August 2002) in *An Open Letter*, Saskatchewan Registered Nurses' Association, available online at: http://www.srna.org/communications/documents/2002_open_letter.php. The numerical targets are for Saskatchewan.

Strikes by police officers and fire fighters have occurred much less often than by nurses. While health care, policing, and firefighting are all perceived as highly essential, some governments have only allowed work disruptions by nurses that are short in duration and do not critically impact the provision of health-care services. Also, historically, the general public has had more tolerance and support for striking nurses than striking police officers or firefighters. Another possible reason for the more regular occurrence of strikes by nurses may be found in the relationship between the bargaining parties. Nurses negotiate with provincial governments while police officers (except RCMP officers) and firefighters negotiate with local municipalities. Provincial governments are usually in a stronger bargaining position, which may sometimes create obstacles to reaching a compromise in the bargaining process and lead to a negotiations impasse. Moreover, provincial governments have deeper pockets than their local counterparts and the nurses would stand to lose more than police officers and firefighters if they did not push their demands as far as possible regardless of the legislative arrangements to which they are bound.

While the labour relations environment for police officers and firefighters in Canada has been fairly stable, one of the most recent high-profile strikes in the Western industrialized world was that of firefighters in Great Britain. The strike lasted for several months in late 2002 and early 2003, and consisted of a series of several-day stoppages. It was the first massive walkout in the country for 25 years and received widespread publicity. The main sticking point in the dispute was financial compensation with the union demanding a 40-percent increase in wages compared to only 4 percent offered by the employers – local councils. There was also opposition from union members to a proposed modernization of the fire service to make it more efficient. The general public was largely divided in their opinions while the major media outlets did not explicitly support the strike, however, some argued that the strike would not help the firefighters' cause⁵¹. At the end of the dispute, the firefighters' union agreed to a 16% increase in their members' pay over two-and-a-half years, modernization of the service, and consultation with employers about service changes.

In Saskatchewan, there has been a more co-operative and less hostile environment for collective bargaining between firefighters and their employers. Despite the fact that the

⁵¹ "The Guardian" wrote: "*It would be wrong and counter-productive for firefighters to strike now for a 40 percent claim that has no justification in terms of public sector comparisons*", in "The Washington Times", Peter Almond, *Analysis: UK fire strikes threaten Blair*, Nov. 13, 2002.

governing legislation, *The Fire Departments Platoon Act*, allows for strike action⁵², firefighters have hardly ever utilized that provision. In the majority of cases, labour-management disputes have been resolved by an arbitration board, the decisions of which are final and non-negotiable: "...every decision or award of the board of arbitration shall be binding upon the council of the city or upon any board, commission or other body established to manage, control and operate the fire department, and upon the full-time fire-fighters..."⁵³. The board consists of three members: one nominated by each bargaining party and the third is the board chairperson, who is chosen by the other two members.

Finally, given the high essentiality of police and firefighting services and the low public tolerance for strikes, it is reasonable to assume that both workers and employers would be interested in resolving collective bargaining issues without resorting to job action, even in jurisdictions where they have such right by law.

Collective bargaining in municipal services has been much more volatile than in other essential services in recent years. There has been a debate among unions, employers and governments across Canada over which municipal services should be treated as essential during collective bargaining negotiations. Some of the important factors that have been taken into account are: existing legislation, degree of potential danger to public health and safety, negative economic and social (through inconvenience) impact, management's ability to perform the duties of striking employees, and the citizens' perception of essentiality. Every decision in this respect is based on a value judgment and is subject to the current economic and demographic conditions. It is generally perceived, however, that very few services provided by municipal blue-collar workers in any jurisdiction in Canada are essential and this is reflected in the provincial statutes governing the labour-management relations on the municipal level. No province explicitly prohibits municipal workers from taking job action and governments are usually not in a hurry to prevent or terminate an ongoing strike. The political and economic costs of municipal strikes are often lower than those incurred by other essential services employees (e.g. nurses), therefore governments have been hesitant to use back-to-work legislation.

As a result of the perceived low degree of essentiality of most services provided by municipal workers, in many places across the country local authorities use contracting out as a

⁵² Unless the constitution of the union contains a clause explicitly prohibiting strikes.

⁵³ Saskatchewan *Fire Departments Platoon Act*, c. F-14, RSS 1978, s. 9(13).

means of providing certain services to their residents, which could save taxpayers money and often ensure more efficient service delivery. Also, in the event of a strike, management may be able to temporarily “cover” the responsibilities of striking employees. It is not unreasonable to suggest that residents can reduce the overall costs of a strike by making alternative arrangements and this does not usually involve high personal costs, even though there is some inconvenience, but more serious consequences are avoided. For example, if garbage collection workers walk out, people could use their own vehicles to transport their garbage to temporary collection points in their neighbourhoods thus minimizing the risk of garbage pile-ups and potential disease outbreaks, until normal services are resumed.

There is a similar attitude toward public-transit employees. It is commonly agreed that only the public transit systems in Toronto and Montreal can be regarded as essential given their economic importance. This is mostly due to the large concentration of people in those areas and their dependency on public transit, especially on the subway systems, to commute to work or school, or just to move around. According to 2001 Census Data by Statistics Canada, Toronto and Montreal were the only cities in the country with more than one-fifth of their working population using public transit (22.4% and 21.7%, respectively)⁵⁴. The next highest on the list were Ottawa-Hull with 18.5% and Winnipeg and Calgary with 13.2% each⁵⁵ (see Appendix 3, Table 1). These statistics support the argument that only in Toronto and Montreal can the public-transit systems be regarded as “truly” essential. In recent years, however, there have been threats by unions to shut down parts, if not the whole systems in those two cities, but given the fairly high profile of transit services there, the likelihood of public backlash and the quick passing of back-to-work legislation, those attempts have been rebuffed. Interestingly, the last major walkout before the creation of the Essential Services Council in Quebec was by urban-transit workers in Montreal in 1982.

In Saskatchewan, it is widely believed that strikes by municipal workers would not have the same impact as similar strikes in larger urban centres in other provinces, especially in more densely populated provinces, and they are perceived to be essential to a lesser extent. Saskatchewan residents could more quickly and easily substitute (at least temporarily) for many services provided by local governments, such as garbage collection and disposal, public transit

⁵⁴ Source: Statistics Canada, *Workers’ usual mode of transportation for travel to work, census metropolitan areas, 2001*.

⁵⁵ Source: *Ibid.*

and others. For example, a strike by urban bus operators in Regina or Saskatoon would likely cause no more than some inconvenience to the commuting population and have minimal economic impact. People would be able to make alternative arrangements for transportation including car pooling, biking or walking. Another offsetting factor is the low reliance on public transportation in Saskatchewan cities in comparison with other Canadian cities. In the most-populated urban centres in Saskatchewan - Regina and Saskatoon - only 4.4% and 4.1%, respectively, of the employed population use the public transit system, which is a miniscule portion of total travel. The percentages of those who drive or car-pool to work are 88.2% for Regina and 86.3% for Saskatoon⁵⁶ (see Appendix 3, Table 1). These numbers, however, exclude groups that rely heavily on public transit – the elderly and students. Also, it has been well documented that the majority of people who use transit services are in the lower-income brackets. It may thus be argued that the costs of service interruption are distributed regressively, with underprivileged population groups incurring the highest cost. On the other hand, the ability of most transit users to make alternative arrangements for transportation tends to minimize the potential negative economic impact, which in turn seems to outweigh the implied need for designation.

The situation is similar in other smaller cities and towns. The provision of transit services is much less important to local residents thus there is little public pressure on management or the union to come to a collective agreement. In reference to Ontario (other than Toronto): “municipal public transit was portrayed...as having little prestige and a generally low political profile, partly because municipal politicians and other people with influence in the community rarely ride the buses themselves.”⁵⁷ As a result, city transit employees are in a weaker bargaining position than other public-sector employees and more vulnerable to pressures from local governments on various issues, the most important of which have recently been wage restraints and contracting out. Even in the third-largest city in Canada, Vancouver, public transit is not considered to be “truly” essential⁵⁸. The 2001 transport strike there, which was allowed to last for four months before the government intervened, is the latest testament to that fact.

⁵⁶ Source: Statistics Canada, *Workers' usual mode of transportation for travel to work, census metropolitan areas, 2001*.

⁵⁷ Adell et al. (2001), p. 139.

⁵⁸ This perception was supported by the British Columbia Labour Relations Board in a 1999 decision declining a request from an employer to designate a portion of a rapid rail line in the city as essential, in Adell et al. (2001), p. 183.

Conclusion

The prevailing systems of dispute resolution in the Canadian public sector permit the right to strike to a different extent across the country. Given the experience with groups of public employees that provide essential services - hospital nurses, police officers, firefighters, and municipal blue-collar and public-transit workers - some useful conclusions may be drawn. There has been a relative decline in strike activity in recent years that cannot be attributed to a particular legislative system or state of labour-management relations, even though the evidence suggests that the most militant unions have been those in Quebec. Improved economic conditions in the second half of the 1990s allowed both governments and unions to pursue their goals in a more cooperative environment. Also, the general public's tolerance for strikes in essential services has more recently decreased, which has put some pressure on the bargaining parties to reach an agreement without resorting to job action.

Lately, there has been a movement towards at least a partial designation of services provided by hospital nurses. There are already four provinces that use this model. Quebec and British Columbia have explicit provisions requiring the bargaining parties to agree on a list of services to be maintained before a strike could commence. Ontario psychiatric nurses are governed by similar legislation, while Manitoba has a separate statute, *The Government Essential Services Act*, which specifies the employee groups prohibited from striking. Generally, there have been mixed assessments of the limited-strike system by union representatives and managers from British Columbia and Quebec (in Adell et al., 2001). There has been more frustration and negative perceptions in British Columbia; however, it has to be noted that there are some important differences in the process of designation between the two provinces, which are the main source of dissatisfaction. British Columbia has adopted a more decentralized approach and the designation of essential services is worked out before a negotiations impasse occurs. In Quebec, the determination of essential services levels and oversight are left to the Essential Services Council, which is largely respected for its independence and expertise. Last but not least, the system in Quebec has been in place for longer than in British Columbia and the parties involved have had sufficient time to adapt to it.

From a theoretical perspective, the designation model increases the bargaining position of unions relative to the no-strike model and has the opposite effect relative to the unlimited-strike model. As a result, the general public is more adequately protected against the complete

withdrawal of some essential services. The current situation in Saskatchewan is such that the virtual monopolization of nursing services by the union combined with the existing legislation, which allows strikes, creates conditions for exploitation of bargaining power at the expense of the taxpayer. The outcomes of collective bargaining have often been influenced by substantial government-only rather than mutual concessions to arrive at an agreement. Therefore, it may be appropriate for Saskatchewan to explore the possibility of designating some nursing services in the future, even though recent nurses' strikes did not result in serious disruption in the provision of essential services by most accounts (partly because management and patients' family members helped out). However, by the end of the 1999 strike, 207 patients had been transferred out of the province for treatment and care⁵⁹ and this number could have been higher had the strike continued for a longer period. The experience and trends in other provinces and the federal government together point at a gradual shift toward designation of essential services. This does not necessarily please everyone involved in the bargaining process, but ensures more certainty for the bargaining parties in terms of what is expected from them and better public protection against any reduction or withdrawal of essential services. It could also be argued that by having to designate services prior to any strike or lockout, both the union and the employer have an incentive to bargain efficiently and in good faith while retaining the right to take job action, otherwise they would face the prospect of arbitration. In many cases, arbitration has been perceived as not conducive to collective bargaining, because the parties may rely on the arbitrator to arrive at an agreement without having to make prior concessions⁶⁰. This refers to the so-called "chilling effect", which provides a disincentive for constructive negotiations and creates an environment of labour-management mistrust. The "chilling effect" also increases the cost of reaching an agreement.

In most jurisdictions in Canada, the existing statutes governing police officers and firefighters prohibit any strike action. There have not been recent work stoppages in any province largely because of favourable financial settlements between unions and local authorities, which however, has been often costly to the taxpayer. Every increase in wages for municipal employees has to be accompanied by a corresponding increase in revenues or the

⁵⁹ Source: Executive Council, Government of Saskatchewan, *Daily Status Report on Health services*, #99-323 (News Release: April 19, 1999).

⁶⁰ Gunderson et al., *Strikes and Dispute Resolution*, in Gunderson, M. and Ponak, A., *Union-Management Relations in Canada* (Addison-Wesley Publishers Ltd., 1995), p. 397.

exploitation of new revenue sources. Otherwise, local authorities would be running deficits, a situation that could not be sustained in the long run without increasing taxes or implementing cuts in other services. It must be pointed out, though, that police officers and firefighters are regarded as probably the most essential of all public employees and there is little tolerance on the part of the general population to any job action by either of these groups. At the same time, there is willingness by unions and employers to reach an agreement without resorting to strikes or lockouts.

Finally, it is largely agreed that the existing models of dispute resolution for municipal blue-collar workers across Canada are adequate given the prevailing local economic and social conditions. All provinces, except British Columbia and Quebec⁶¹, employ the unlimited-strike model. Despite some social and economic costs incurred, job action may last for months without any real breakthrough in the negotiations. Unfortunately, the highest costs of strikes are usually borne by the least-advantaged members of society. Saskatchewan is no different in terms of its experience with the unlimited-strike model. The model has worked fairly well and it seems feasible to keep it in place. Similarly, the legislative systems of governance for public-transit services have worked reasonably well and should not be changed. With the exceptions of Toronto and Montreal, where a high proportion of the population relies on public transportation (especially the subway systems) to commute, no other city or town in the country necessitates any special consideration of its transit services. In Montreal, it is required that public transit operates during weekdays in rush hours⁶² and that some services are maintained in late nights for the security of shift employees. In Toronto, despite the right to strike given to transit workers, it is widely perceived that a full-scale walkout would pose serious problems in terms of public health, safety, and economic losses.

The differential legislative treatment of the various groups of essential services workers in Canada appears to have limited effect on the likelihood and frequency of strikes. Quebec, where the designation model is in use, has witnessed a substantial number of strikes in essential services. The nurses walked out on the job in almost every bargaining round until 1989, and again in 1999. Between 1990 and 1997, the strikes by municipal workers accounted for more than 40% of all municipal strikes in the country. Another province that employs the designation

⁶¹ They use the limited-strike model.

⁶² The argument of the Essential Services Council is that otherwise, traffic congestions would slow down emergency-service vehicles and could create immediate danger to public health.

model, British Columbia, has not had quite the same experience as Quebec, even though there have been several notable strikes by nurses and public-transit workers. The no-strike and unlimited-strike models do not seem to contribute separately to more or fewer strikes in essential services, however, the evidence suggests that municipal employees, who are covered by the unlimited-strike model for the most part, have struck more often and sometimes for longer periods than other public employees. Further research could help to determine whether a link exists between the factors influencing the outcomes of the collective bargaining process and the likelihood and frequency of strikes in essential services.

Appendix 1

Table 1. Public Sector Employment in Canada

<i>Sector</i>	<i>January 1984 (000s)</i>	<i>January 1994 (000s)</i>	<i>Percentage change</i>
Federal Administration	257.2	261.0	1.5
Provincial Administration	206.7	225.7	9.2
Local Administration	172.7	208.3	20.6
Educational Services	772.0	955.7	23.8
Health & social services	821.1	1104.4	34.5
Total public sector	2229.7	2755.1	23.6
Total Private Sector	6188.8	6925.1	11.9
Percentage of public to total employment	26.5	28.5	-

Source: Statistics Canada (monthly), in Gene Swimmer and Mark Thompson (eds.), *Public Sector Collective Bargaining in Canada* (Queen's University: IRC Press, 1995), p. 4.

Table 2. Provincial Dispute Resolution Systems in Essential Services in Canada

<i>Jurisdiction</i>	<i>Municipal</i>	<i>Police</i>	<i>Firefighters</i>	<i>Nurses</i>	<i>Crown corporations</i>
British Columbia	Designation	Designation	Designation	Designation	Designation
Alberta	Strike	No strike	No strike	No strike	No strike for most
Saskatchewan	Strike	Strike	Strike	Strike	Strike
Manitoba	Strike	Strike (except Winnipeg – no strike)	No strike	Designation	Strike
Ontario	Strike	No strike	No strike	No strike (except psychiatric nurses – designation)	Designation
Quebec	Designation	No strike	No strike	Mostly designation ¹	No strike
New Brunswick	Strike	No strike	No strike	Designation	Designation
Nova Scotia	Strike	Strike	Strike	Strike (except two hospitals – no strike)	Strike
PEI	Strike	No strike	No strike	No strike	No strike
Newfoundland	Strike	Strike (except Newfoundland Constabulary – no strike)	Strike (except St. John's – no strike)	Limited strike ²	Strike

Source: Statistics Canada (monthly), in Gene Swimmer and Mark Thompson (eds.), *Public Sector Collective Bargaining in Canada* (Queen's University: IRC Press, 1995), p. 10-11.

¹ No strikes over local or regional issues

² If more than 50% of employees are designated as essential, the union can demand arbitration.

Appendix 2

Table 1. Saskatchewan Nurses Membership Trends

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Examination	193	368	263	200	168	251	150	119	172	151	231
Reciprocity/ Equivalence	91	76	85	121	76	112	96	143	98	68	93
Renewal/ Re-registration	9078	8892	8817	8891	8918	8768	8774	8773	8717	8650	8491
Total - Practising	9362	9336	9165	9212	9162	9131	9020	9035	8987	8869	8815
Graduates	161	126	85	133	91	152	101	115	149	146	253
Non-Practising	344	336	380	487	441	403	344	358	326	289	281
Life & Honorary	49	48	47	46	45	45	47	44	44	42	42
Total Membership	9916	9846	9677	9878	9739	9731	9512	9552	9506	9346	9391

Source: Saskatchewan Registered Nurses' Association, *Annual Report 2002*, p.13.

Table 2. Saskatchewan Nurses Migration Trends

<i>Migration</i>	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
In	98	82	93	126	78	112	100	155	146	99	129
Out (All Requests)	461	444	371	315	345	350	353	341	369	437	344
Out (Only Practising Requests)								213	252	306	210

Source: Saskatchewan Registered Nurses' Association, *Annual Report 2002*, p.13.

**Table 3. Number of Registered Nurses Employed in Nursing per 10,000 Population
by Province of Registration, Canada, 1997-2001.**

	<i>Nfld.</i>	<i>P.E.I.</i>	<i>N.S.</i>	<i>N.B.</i>	<i>Que.</i>	<i>Ont.</i>	<i>Man.</i>	<i>Sask.</i>	<i>Alta.</i>	<i>B.C.</i>
1997	94.7	93.6	91.8	97.3	80.9	69.0	92.2	82.6	74.1	70.2
1998	98.3	93.0	90.9	98.3	77.5	68.9	89.2	82.4	74.9	69.8
1999	97.5	89.3	91.5	100.4	78.7	67.5	89.1	83.5	74.0	69.0
2000	100.6	90.8	92.3	96.0	79.5	69.5	87.6	83.8	73.1	68.1
2001	102.0	91.4	90.7	97.6	78.8	67.6	89.3	80.8	74.5	66.7

Source: Canadian Institute for Health Information, *Number of RNs Employed in Nursing per 10,000 Population by Province/Territory of Registration, Canada, 1997-2001.*

Appendix 3

Table 1. Public Transportation for Travel to Work, Selected Metropolitan Areas, 2001

<i>Metropolitan Area</i>	<i>Total Number of Commuters</i>	<i>Commuters Using Public Transportation (in %)</i>	<i>Drivers and Passengers (in %)</i>	<i>Commuters who Walk and Bicycle (in %)</i>
St. John's	75,735	2.8	89.6	6.0
Halifax	170,210	9.9	77.7	11.2
Saint John	53,050	4.3	87.0	7.3
Montreal	1,580,270	21.7	70.4	7.2
Ottawa-Hull	525,070	18.5	72.0	8.7
Kingston	65,375	3.5	82.4	12.6
Toronto	2,248,055	22.4	71.5	5.4
Hamilton	304,900	8.0	85.3	6.0
Winnipeg	327,740	13.2	78.4	7.5
Regina	94,295	4.4	88.2	6.6
Saskatoon	106,025	4.1	86.3	8.3
Calgary	499,050	13.2	78.6	7.4
Edmonton	469,225	8.6	84.3	5.9
Vancouver	905,995	11.5	79.2	8.4
Victoria	140,515	9.7	73.5	15.2

Source: Statistics Canada, *Workers' usual mode of transportation for travel to work, census metropolitan areas, 2001.*

Appendix 4

Table 1. Wage Increases (in %) for Essential-Service Employees in Saskatchewan, 1987 – 2001

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Police Officers in SK* (starting wage)	N/A	N/A	2.3***	3.2^	3.8^	0.0^^	0.0^^	2.3^	2.7^	2.2^	2.2^	1.8	2.4	2.5	3.0
Firefighters in SK* (starting wage)	3.2**	2.9**	3.0**	3.5^	3.8^	0.0^^	0.0^^	2.4^	1.9	1.6	1.0	3.4	2.3	2.5	2.4^
Nurses in SK (starting wage)	N/A	N/A	N/A	N/A	1.0	4.0	0.0	0.0	2.5	0.0	0.0	1.0	4.2^^^	3.1^^^	4.2^^^
SK average	2.4	2.6	2.9	3.9	4.4	3.3	1.1	1.0	1.9	1.1	0.9	1.8	2.0	3.5	2.9
Public Sector in Canada	4.2	3.9	5.3	5.6	3.4	2.0	0.5	0.0	0.6	0.5	1.2	1.6	1.9	2.5	3.2
Private Sector in Canada	3.9	4.9	5.3	5.8	4.3	2.5	1.0	1.3	1.4	1.9	1.8	1.8	2.7	2.4	3.0
Consumer Price Index (CPI)	4.4	4.1	5.0	4.8	5.6	1.5	1.8	0.2	2.1	1.6	1.6	0.9	1.7	2.7	2.6

*Average Increase

**Saskatoon Only

***Moose Jaw and Saskatoon

^Moose Jaw, Saskatoon, and Prince Albert

^^Moose Jaw and Prince Albert

^^^Registered Nurses Only

Source: *The Wage Settlements Bulletin*, January 1991, Vol. 2, Issue 1; January 1994, Vol. 5, Issue 1; January 1997, Vol. 8, Issue 1; January 2000, Vol. 11, Issue 1; December 2002, Vol. 13, Issue 12.

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