

Intelligence MEMOS



From: Richard P. Chaykowski
To: Provincial ministers of labour
Date: April 25, 2019
Re: **REFORMING THE LABOUR INTEREST ARBITRATION SYSTEM**

Interest arbitration, or third-party arbitration, is an essential element of the Canadian industrial relations system, with considerable impact on the public interest, particularly in relation to public-sector industries.

This instrument of labour relations policy has become the primary alternative to costly work stoppages. By and large, most stakeholders appear to hold the view that the arbitration system functions fairly well. But as arbitration's significance in terms of use and potential economic effect increases, several aspects are of concern. In particular, there are questions about:

- i) whether the design of the interest arbitration model – and, indeed, the broader system of interest arbitration – yields efficient and equitable labour relations and economic outcomes
- ii) whether the use of interest arbitration leads to higher wage outcomes than governments would otherwise pay, and
- iii) whether, in crafting decisions, interest arbitrators apply criteria that serve the public interest.

In my recent C.D. Howe Institute [Commentary](#), I assessed the current state of the interest arbitration system, and show that, regarding the overall question of what model and what features might best serve interest arbitration in Canada, there are four areas in which governments should undertake reviews and take steps to strengthen the system and its outcomes:

- To ensure that arbitration clearly serves the public interest, governments should consider updating the system by introducing certain criteria that arbitrators should consider – including the need to explain how each factor, whether judged relevant or not, was considered – and increasing the accountability of arbitrators by requiring that they explicitly consider and assess the submissions of the parties.
- To ensure that, where required, third parties have the skill set to perform the roles of mediator and arbitrator and are accountable to the stakeholders in the industrial relations system, governments should support a review of the competencies and skills that mediators and interest arbitrators need, with a view to setting competency standards and developing (formal) training to enhance their skills.
- To minimize the systemic risk of the parties “capturing” arbitrators and of incentives to engage in the simple patterning of awards, as well as to maintain a degree of uncertainty in the system, governments should examine formally whether or not to establish an independent roster of mediators and arbitrators.
- Finally, governments should assess whether the arbitration system needs to be modified to further strengthen the role of mediation and/or more formally follow a two-stage mediation-arbitration (med-arb) process.

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