

LABOUR LAW I  
LAWS 2014.03  
INTRODUCTORY MEMORANDUM /  
SYLLABUS

**1. MATERIALS:**

A. Required:

- Labour and Employment Law: Cases, Materials and Commentary*,  
(9th edition), The Labour Law Casebook Group, Irwin Law,  
Toronto, 2018 (in Bookstore) – New Edition  
*Labour Law I: Supplementary Materials – 2018*, B. Archibald  
(online at Brightspace/OWL.Dal.Ca)  
*Trade Union Act and Regulations* (Online-Brightspace)

B. Supplementary:

- George Adams: *Canadian Labour Law - A Comprehensive Text*,  
Aurora, Canada Law Book, (loose-leaf) (on Reserve)
- Carter, England, Etherington and Trudeau, *Labour Law in Canada*,  
(5th edition), Butterworths, Toronto 2002, (on Reserve)
- G. Davidov & B. Langille, *The Idea of Labour Law*, O.U.P.,  
Oxford, 2011 (on Reserve)

**2. EVALUATION ALTERNATIVES:**

Students may elect the open book final examination worth 100% of their mark, or, as explained below, write the final examination but have it count as 60% or more of the final mark, with the remaining percentage acquired by submitting 4 written assignments throughout the term. Each problem assignment done is worth a maximum of 10 marks.

Problems: The problems are set out in this syllabus. It is understood that those who choose to hand in written answers to the numbered problems will be graded on up to 40% of the mark for the course on the basis of the problems. The grade will be assigned on the basis of **4 or fewer out of the 7 possible problem assignments**. Assignments must be submitted in writing BEFORE the start of the session for which the assignment is to be prepared (i.e. at the beginning of class).

Problems and questions on the materials are to be transposed to a Nova Scotia context and answered on the basis of Nova Scotia law, unless otherwise specified. **Be sure to play the assigned role and answer the questions asked.**

Each written assignment is to be prepared only from the materials assigned in this Syllabus for the Session in which the Problem is found or, if appropriate, from prior Sessions. You are not to engage in library/on-line research.

All members of the class, (not just those who opt to do the problems for evaluation), should prepare for class and attempt to answer all of the Problems as well as any questions posed in the text of the assigned reading materials.

**This year one can do a “review” of the Christie Lecture presentation by Professor Paul Davies and the presentations at the Christie Symposium in substitution for one of the problems. See reference, infra, for September 27 and 28 and Appendix A.**

### **3. SYLLABUS ABBREVIATIONS:**

Casebook = CB [Note all **references** to sections **are inclusive**]

Supplementary Materials 2018 = Supp (online at <https://dal.brightspace.com>)

Handed out in class and/or available in the materials room = Handout

Nova Scotia *Trade Union Act* = TUA

Nova Scotia *Trade Union Act* Regulations = Regs

### **4. COURSE OUTLINE:**

#### **Session I - September 6 - INTRODUCTION: THE COURSE, THE TRADE UNION ACT AND COLLECTIVE BARGAINING**

(a) Review syllabus, particularly "materials" and "evaluation alternatives" and course outline.

(b) Skim the Trade Union Act and prepare to discuss questions in "Overview of the Trade Union Act", Supp A-1; Labour Board Act (abridged), Supp A-2; and Labour Board Annual Report 2014-2015, Supp A-3. You should also read the materials in CB sections 1:100 and 1:200 and 1:300 (up to and including Langille excerpt to p. 29); and skim Archibald, Supp A-4.

#### **Session II – September 11 – NORMATIVE FOUNDATIONS: VALUES AND ASSUMPTIONS**

TUA Preamble, ss. 4A-4G and CB section 1:310

(a) Values and Assumptions: Please read at least Weiler p. 46 and 61, including Friedman, p. 55, Macpherson, p. 56, Beatty p. 60; and

(b) CB section 1:400 to 1:410 and 1:440 to 1:443.

#### **Session III – September 13 – LABOUR LAW AND THE CONSTITUTION**

(a) Division of Powers Issues: Read CB sections 1:00 to 1:520; Supp B2 and Nil/Tu, O Child and Family Service, Supp B-3

(b) The New Charter Approach: CB section 12:100 and 12:221 (BC Health) and excerpt from Archibald, "The Significance of the Systemic Relative Autonomy of Labour Law:...", Supp B-4

#### **Session IV - September 18 - EMPLOYEE STATUS UNDER THE TRADE UNION ACT**

##### **Problem # 1**

As the new Vice-Chair of the Nova Scotia Labour Board, consider the following facts to have been proven and give your reasons on the issues relating to who is an employee:

Freda Fogg recently graduated from Dal's Schulich School of Law, articulated and was admitted to the Bar but has never practised. Several months ago Freda ran into her friend, Caroline Cogg, who owns and runs a day care business in Halifax. When Freda explained her job hunting woes to Caroline, Caroline said she would be glad to have Freda work with her temporarily, as "assistant manager" and a person she could consult on legal issues. Freda accepted.

Caroline's Day Care staff consists of: (i) four full-time day care workers, who work 8 hours a day, five days a week; (ii) two part-time day care workers who work 3 hours a day, five days a week; (iii) three child-care diploma students each working full-time for 4 months as part of a Dalhousie co-op programme; and (iv) 2

irregular replacement workers who Caroline may call on mornings when one of the full-time, part-time or student workers calls in sick. (v) There are also three “general help contract workers”, as Caroline calls them. Caroline has a contract with one of them, Irma, under which for a flat \$130 a day, \$40 for each of the others and \$50 for herself, Irma has agreed they will keep the premises clean and orderly, both inside and out, including washing all dishes daily, and, if time permits, to do other chores as assigned by Caroline. She and the other two work with the children in that they teach them to pick things up and put them where they belong. Caroline must approve the workers chosen by Irma and she directs Irma and the others within the limits of the contract.

Caroline generally supervises the employees and imposes any discipline, though she has never found reason to fire anybody. She determines the hourly wages, based on her assessment of merit. As for hiring, Caroline always involves two of the full-time staff persons (on a rotating basis) for the interview, in addition to participating herself, and tries to reach a consensus. Where that proves impossible, Caroline decides whom to hire. Since there is a lot of turnover of employees, this interview process happens on a regular basis. Freda plays no part in this hiring process.

The student interns are selected by Caroline herself based only on written applications from among students enrolled in a child development program (“interns”). They stay only for a four month period, doing the same work as the regular employees, and then are replaced by another group of students. Under an agreement between Caroline and Dalhousie, they are all paid minimum wage by Caroline, who receives a partial wage subsidy in exchange for the on-the-job training and the reports she provides to the University.

In addition to very occasionally providing legal advice, Freda schedules the shifts of the day care workers and interns or replacements and supervises the operation on Mondays, which Caroline takes off, and when Caroline is on vacation. She deals with minor problems on her own, but is expected to consult with Caroline before dealing with anything major.

Until now, there has been no union at the Caroline’s Daycare, but there have been some rumblings of discontent among the full-time employees. The Canadian Association of Daycare Workers has filed an application for certification as bargaining agent for a bargaining unit of the full-time and part-time daycare workers and the contract workers, excluding Caroline Cogg and Freda Fogg and the irregular replacements. Its position is that the interns are not employees and that Freda is excluded both because she is a member of management, and because she is a lawyer. Caroline has filed a reply with the Labour Board in which she takes the position that only the part-timers and interns are employees for purposes of the *Trade Union Act*. In it she contends that the full-timers are all management exclusions since they have a role in hiring, that Freda is not management and cannot constitutionally be excluded from the bargaining unit on the basis that she is a lawyer, and that the contract workers and irregulars are not employees.

TUA ss. 2(1)(k); 2(1)(l), (2)(2)(a) & (b); 4(1) & 4(2); 13(1); 14; 16; 18; 19(1)(a); 25(12).

Who is an employee for purposes of the Trade Union Act? CB sections 3:100 and 3:200 to p. 234 and 4:100-4:340; and Supp C-1, Labour Relations Board (Nova Scotia) *Procedural Statement*, Supp C-2, *Canada Labour Code*, R.S.C. 1985, c. L-2; Supp C-3 *The Town of Amherst v. The Amherst Police Association*, (NSLRB), September 9, 1977

## **Session V - September 20 - UNION STATUS UNDER THE TRADE UNION ACT AND THE CONSTITUTION**

TUA ss. 2(1)(w); 5(d); 8; 13; 19(1)(b); 19(1)(d); 19(1)(i); 20; 23(6); 25(15); 30(3)(a); 32; 41; 53(1) and (2); s. 54(e), (f), (g), (h) & (i); 59(2); 76; 79(1); 87; Regs. 9 & 10

- (a) The Trade Union as an Organization: CB sections 11:100; 11:300; 11:310  
*I.M.P. Manufacturing Supp. D-1*  
*Berry v. Pulley*, CB 11:300 pp 830-837  
*Mounted Police Assoc. of Ontario v. Canada (AG)*, CB section 12:231
- (b) Restrictions on Membership / Discrimination: CB section 4:410
- (c) Employer Influence: CB section 4:420  
Canada Labour Code, ss. 25 & 29, Supp D-2  
*Royal Oak*, (Canada Labour Board) Supp D-3  
*Mounted Police Assoc. of Ontario v. Canada (AG)*, CB section 12:231
- (d) Union Successorships: TUA s. 32
- (e) The Changing Position of Unions: CB 1:420

## **Session VI - September 25 - EMPLOYER STATUS UNDER THE TRADE UNION ACT**

TUA ss. 2(1)(i); 2(1)(l); 2(1)(m); 2(1)(x); 13(2); 19(1)(a); 19(1)(d) & (j); 21; 31

- (a) Identifying the Employer? CB 3:220 & 4:510
- (b) Related Employers? CB 4:520  
*Fundy Drywall Supp D-5*  
NLRB, Supp D-7;
- (c) Successor Employers? CB 4:530  
*Tiger Electric Supp D-4*
- (d) Contracting Out? CB 4:540
- (e) The New Economy and Employer Organization: CB: 3:210 (p. 240-243)  
*Weil, The Fissured Workplace – supra*, CB 1:410 (review)

**SPECIAL SESSION VII: Christie Lecture and Symposium – September 27 and 28** CB 1:430-1:433 and Langille, Supp. M-1 and Archibald, Supp M-2  
See Appendix A (Program)

## **Session VIII – October 2 - ACQUIRING BARGAINING RIGHTS – UNIT DELINEATION I**

TUA ss. 2(1)(a); 2(1)(c); 2(1)(e); 2(1)(f); 2(1)(x); 19(1)(c); 19(1)(d); 19(1)(g); 19(1)(h); 19(1)(i); 25(4) and (14), 23 to 30; 35(b); 41; 53(3)(g); 54(a); 54(b)  
Regs: 9 to 16 and 21 and forms referred to therein

- (a) Introduction: Exclusivity Principle - CB section 6:100-6:210; *MPAO*, CB section 12:231, paras. 94 and 98
- (b) Voluntary Recognition – CB 6:220 and *Metro Community Living*, Supp E-1

- (c) Certification and Community of Interest: F-T v. P-T v. Casual - CB section 6:221; & 6:222  
*Heather Hotel* - Supp E-2  
Nova Scotia Labour Board Statement on Casuals (2018) Supp. E-4  
*Trade Centre* - Supp E-3  
*Egg Films (Reprise)*- Supp C-4 paragraphs 24-30 and 60-68.

## **Session IX: October 4 - ACQUIRING BARGAINING RIGHTS – UNIT DELINEATION II**

### **Problem # 2 due:**

Home-Mart has been operating two stores in the Halifax area for the last five years, one in the Halifax Shopping Centre (HSC), the other about seven kilometres away at MicMac Mall. Home-Mart has never been unionized, nor has any application for certification ever been filed. Until recently there have been 50 employees working primarily at the HSC store, and 40 at the MicMac store. The "primarily" description reflects the fact that, not infrequently, people work shifts at the "other" store, as needed. Wages, benefits, and scheduling practices are identical between the two stores. Ordering of merchandise for both stores is done through the HSC store, which necessitates frequent telephone and e-mail contact between employees of the two stores. Also, all staff training (re such things as operating the computer registers, customer service policies, information on new merchandise, etc.) is done jointly. The annual Christmas party and summer barbecue are also joint events. Although it has yet to file any application, UARW has recently been organizing among the employees of Home-Mart, with quite a positive response, especially at the MicMac store. 24 of the 40 MicMac employees, i.e. 60%, have joined UARW. Things have been more complicated at the HSC store.

Of the original 50 employees, UARW has signed up 26 (52%) and the organizers feel that more will sign cards shortly. But management of the clothing store adjacent to Home-Mart in the HSC decided to move to a new location, and Home-Mart got a good deal on the rent for this space. With modest renovations, Home-Mart has been able to almost instantly double the size of the HSC store, and management has advertised for 50 new employees.

UARW has sought your advice in respect of an application for certification. It had initially been planning to almost immediately file an application to be certified as bargaining agent for a bargaining unit of all employees at both Home-Mart stores, but now is not sure what to do. Advise UARW on (1) where it stands under the processes of the Nova Scotia Labour Board, including advice on (2) whether you think it should apply immediately, and on (3) whether the NSLRB would find employees only of the MicMac store to be an appropriate a unit. (4) UARW has asked specifically whether the Michelin bill precludes this.

TUA and Regs. as for Session VII

- (a) An Appropriate Unit - Geographic and Other Factors: CB section 6:230  
*I.M.P. Group* - Supp E-5  
*Michelin Tire* (NSLRB, Certification Application) Supp E-6  
*VON Nova Scotia* – Supp E-7

- (b) Statutory Bargaining Units  
TUA ss. 24 and 26; Regulation Respecting Craft Units

- (c) Multiple Bargaining Units in the Healthcare Sector  
*Health Authorities Act: Relevant Legislation- Supp E-9*  
 Lancaster House, “Nova Scotia government backs away from showdown with health care unions, avoids Charter collision”- Supp E-8
- (d) Amendment of Certifications: Administrative Change to Bargaining Rights: CB 6:240  
*NSGEU v Metro Community Living Services (NSCA)- Supp E-1*  
 NSTUA Regulation 20

**Session X - October 9 – ACQUIRING, AMENDING AND LOSING BARGAINING RIGHTS - DETERMINING EMPLOYEE SUPPORT**

TUA and Regs., as for Sessions VII and VIII plus TUA ss. 23; 25; 29; 50; 54(2) & 58(2) and Regs. 17 to 19

- (a) Determining Employee Support - CB section 6:300  
*NSLRB Statement on Secret Ballots -Supp F-1*  
*R. v. Saskatchewan Federation of Labour, Supp F-6*
- (b) Timeliness - CB section 6:400  
*Egg Films, Supp C-4 paras 31-40 and 69-70*
- (c) Revoking Bargaining Rights (Decertifications) – CB section 6:500  
*Amherst Fabricators - Supp F-3*  
*IAM and Courtesy Chrysler #1 & #4 - Supp F-4, F-5*  
*MPAO – CB 12:231, paras 86 and 94*

**Session XI – October 11 - PROTECTING THE RIGHT TO ORGANIZE I: UNFAIR LABOUR PRACTICES**

**Problem #3 due.**

You are articulated to counsel who has just been belatedly retained by the Canadian Organization of Design Employees (CODE). Your principal has asked you to write a memo on the following case, in which the Union has both applied for certification and complained of unfair labour practices. The hearing has already been held but, uncharacteristically, the Board has asked for written argument. Your principal wants to know the law and the likely outcome before the Nova Scotia Labour Board.

Three months ago CODE began organizing among the employees of Earl Edwards' Interiors Limited. The employee most actively involved is Steve Simon. All organizing was done outside working hours, but there was no attempt to hide what was going on, and Earl Edwards, the owner and manager, was aware of these activities.

CODE found a receptive audience among many of the employees. It signed up 21 of 40 employees. CODE also faced some determined opposition. Among the most firmly opposed to unionization is Mary Markle who Earl Edwards hired long before the Union began organizing. When she approached Edwards about warding off CODE, he said he didn't want to get involved. However, he said he had heard that Freddy Fun was a good lawyer for employees opposed to unions. Mary Markle consulted Freddy Fun, but did not find his advice very encouraging and had nothing more to do with him. Fun never submitted an account to either Markle or Edwards.

Two months ago CODE applied for certification for an all-employee unit of Earl Edwards' Interiors Limited. The day after the application was filed, the tires on Mary Markle's car were slashed. Mary saw her ex-husband in the act of the vandalism, but that was not what she told Earl Edwards and her fellow employees. She told everyone that she had seen Steve Simon do it. Earl Edwards saw no reason to disbelieve Mary Markle. He consulted a text on employment law from which he learned that wilful damage of a fellow employee's property as a result of job-site disagreement is just cause for dismissal and immediately fired Steve Simon. In a brief pre-dismissal interview Edwards said to Simon only that while employees had the right to try to unionize, that right did not go as far as intimidation. Steve Simon's protests of innocence did not convince Earl Edwards. Under cross-examination in the hearing before the Nova Scotia Labour Board the following was said:

CODE representative: I put it to you that you didn't want to believe Mr. Simon because you were looking for a reason to get rid of him.

Earl Edwards: I knew he was active with the Union, and that was his right, even though I didn't like it, but I didn't need to look for a reason to get rid of him; he gave me one. Or at least Mary did. I had no reason not to believe her and no reason to take Steve's story over hers.

The Board's executive officer was unaware of the controversy over the tire slashing when he conducted the certification vote, knowing only that Steve Simon's right to vote was contested by Earl Edwards on the basis that he had been fired. CODE lost the vote by 23 to 16, with Steve Simon's vote still sealed.

CODE found an independent witness to confirm that Mary Markle's ex-husband was responsible for the tire slashing and filed an unfair labour practices complaint of breach of sections 53(1)(a) and 53(3)(a)(i) and (vi) on behalf of Steve Simon and on its own behalf. The Labour Board heard the unfair labour practices complaints together with the certification application.

Assume all of these facts have been proven. Write your memo on the unfair labour practices complaints. (Do not discuss remedies; that will be the focus of problem #4.)

TUA ss. 13; 14; 23(7); 25(9); s. 50; 51; 53(1) and (3) - espec. 53(3)(a)(vi); 54; 55; 56 - espec. 56(3); and 58

(a) Introduction CB section 5:100

(b) Motive and Non-Motive Unfair Labour Practices - CB section 5:200

*United Food & Commercial Workers Union & Moxon's Drug Store-Supp G-1*

*Pratt and Whitney Canada Inc. – Supp G-2*

*Amalgamated Transit Union and Zinck's Bus Company Limited - Supp G-3*

(c) Employer "Free Speech" - CB section 5:400

TUA ss. 13; 53; 58; 82

*Zinck's Bus - supra*

(d) Employer Manipulation of Working Conditions ("Freezes") - CB section 5:300  
(exclude pp 238-240)

TUA s. 23(7), s. 49(3)

*Zinck's Bus - supra*

*UFCW, Local 503 v. Wal-Mart Canada, CB section 5:730*

(e) Solicitation On Employer Property - CB section 5:500

TUA s. 54(d)

Canada Labour Code - Supp G-4

*Zinck's Bus* – Supp G-3

## **Session XII - October 16 - PROTECTING THE RIGHT TO ORGANIZE II – REMEDIES AND PROFESSIONAL RESPONSIBILITY**

### **Problem #4 due.**

Return to the facts of Problem #3. You are the Chair of the Nova Scotia Labour Board. Assume that you have found unfair labour practices on the part of Earl Edwards' Interiors Limited. Write the decision of the Labour Board as to the appropriate remedy or remedies, assuming the Union has sought all remedies that serve its interest, including damages under Section 78. (i) Be specific about the section or sections of the Trade Union Act under which any remedy is ordered, spell out your proposed remedy(ies) in detail and (ii) deal with any remedies you think would have been requested, but which you would not think it appropriate to grant. (iii) In the context of each order you grant or refuse, address the issue of enforcement of Board orders. (iv) Are there remedies unavailable to the Union under the Nova Scotia *Trade Union Act* that you think should be available to it?

TUA ss. 25(9); 25(10); 25(11); 53(1)(a); 54; 55; 56(1); 57(a); 57(b); 77 to 82; 83(1); 86; 89.

(a) Union Unfair Labour Practices – CB section 5:600

(b) Remedies - CB sections 5:700 to 5:740

*Zinck's Bus Company* Supp G-3

Canada Labour Code - s. 109 - Supp G-4

*United Rubber Workers v Michelin Tire et al* 2<sup>nd</sup>

certification application - Supp G-5 and Canada Labour Code, Supp G6

Courts and Administrative Reform Act (N.S.) and Regs -Supp G-7 and G-8

Summary Proceedings Act – Supp G-9

(c) Professional Responsibility - CB section 5:800

## **Session XIII-October 18 - NEGOTIATING A COLLECTIVE AGREEMENT: PROCESS, DISCLOSURE AND SUBSTANCE**

**Problem #5.** You are counsel to the Sydney Union of Petroleum Workers (SUPW), which has been the bargaining agent for the employees of Sydney Oil Refinery (SOR) for ten years and four collective agreements. When they commenced bargaining for a new collective agreement last fall, SUPW put the following position on the table: it wanted the same three year “industry agreement” it had recently negotiated in separate collective agreements with other Canadian oil refineries, which involved no change in the existing agreement other than a 10% increase in wages. SOR counter-proposed a 2% increase for the first year of a three year agreement, with an additional 2% in each of the 2<sup>nd</sup> and 3<sup>rd</sup> years, these 2<sup>nd</sup> and 3<sup>rd</sup> year increases being conditional upon the plant’s productivity ranking having improved in the preceding year. There is no dispute that “improved productivity ranking” was understood by both parties to mean that the plant was placed higher in the list by the World Oil Refinery Institute in its published annual survey.

The parties were unable to agree, and, following conciliation, SUPW and its members commenced a legal strike. SOR continued to operate, using management employees, replacement workers hired from across Canada and some employees who crossed the picket line and returned to work. (Such employer conduct is quite lawful in Nova

Scotia, and is not the issue of concern here) Unlike the situation under the trades qualification and seniority provisions of the lapsed collective agreement (which are general across the country and are in the “industry agreement”), with these workers SOR made no distinction in assigning tasks between operations and maintenance workers, which improved productivity.

(a) Six months after the strike had begun, after a great deal of heated internal discussion, the SUPW spokesperson approached management with an offer to return to work on the terms originally proposed by SOR. At a bargaining meeting the next day SOR informed SUPW that it would now sign a collective agreement only on the basis that the seniority provisions with respect to promotions would be dropped from the collective agreement, and that a new term be inserted making promotions subject to management discretion. Outraged, SUPW seeks your advice on what prospects it has for successful proceedings before the Nova Scotia Labour Board.

For purposes of this assignment: (i) Do not discuss remedies; the issues to be addressed here involve whether there is a breach of the employer's section 35(a) obligation. (ii) Note that the strike is legal, i.e. proper waiting periods and conciliation procedures have been completed.

(b) Still bearing the preceding paragraph in mind, suppose, instead, that SOR agreed to accept SUPW's capitulation and they signed the new collective agreement as SOR had proposed it originally. Three months later SOR started bringing in 25% of its crude oil in the form of very heavy crude from a unit in the Alberta tar sands in which SOR had acquired an interest through a deal signed the week after the collective agreement. Another three months later the World Oil Refinery Institute's first post-strike annual survey showed that SOR's productivity rating has dropped from 6<sup>th</sup>, where it stood pre-strike, to 8<sup>th</sup>. In a letter to its shareholders SOR immediately explained that this was due to the introduction of the heavier crude and meant there would be no 2% wage increase for the second year of the collective agreement. Outraged, SUPW seeks your advice on what are its prospects for successful proceedings before the Nova Scotia Labour Board.

(a) Conciliation

TUA ss. 2(1)(g); 2(1)(h); 2(1)(s); 25A; 33 - 40; 47; and 61 to 75 (skim)

(b) Duty to Bargain - CB sections 7:100; 7:200; 7:400

TUA ss. 33, 34 and 35(a); 2(1)(e); 2(1)(f); 19(1)(f); 53(3)(g); 54(a); 54(b);

*IAM and Courtesy Chrysler # 1* - Supp H-1

*B.C. Health Services*, Review – CB section 12:221

#### **Session XIV-October 23 -NEGOTIATING A COLLECTIVE AGREEMENT: REMEDIES, FREEZES AND NEW APPROACHES**

(a) Remedies - CB section 7:500

TUA ss. 36; 55(5); 78; 80; 82

*IAM and Courtesy Chrysler #1, #2 and #3*, Supp F-4, H-2 and H-3

*Canada Labour Code*, Supp H-4

(b) The Bargaining Freeze - CB section 7:300

TUA ss 23(7); 35(b); 83

*Kentville Hospital* - Supp H-5

*Zinck's Bus* - Supp G-3

*Paccar v. CAIMAW* - Supp H-7

*Royal Ottawa Health Care* – CB pp 238-240

*UFCW, Local 503 v. Wal-Mart*, review CB section 5:730

(c) Alternative Approaches to Collective Bargaining -  
TUA Preamble and s. 40A, s. 52A, 52AA, and 52B – 52G  
CB sections 6:600 and 7:600  
N.S. First Contract Arbitration Diagram – Supp H-8

(d) The Limits of Public Sector Collective Bargaining  
*Meredith*, CB section 12:233  
*NS Public Services Sustainability Act*, Supp H-10 (Skim)

## **Session XV – October 25 – REGULATING INDUSTRIAL CONFLICT: WHAT CONSTITUTES A STRIKE? A LOCKOUT?**

**Problem #6 due.** The employees of the Nova Scotia town of Weldonia are organized into three bargaining units: (1) a parking enforcement officers unit, currently with twenty employees; (2) an inside workers unit, currently with 120 employees; and (3) an outside workers unit, currently with 100 employees. The parking enforcement officers are represented by the Nova Scotia Municipal Workers Association (NSMWA). Both the inside and outside workers are represented by the Canadian Union of Municipal Workers (CUMW). All three units have been through several collective agreements, and have recently all been involved in negotiations.

The bargaining between Weldonia and the Nova Scotia Municipal Workers Association has not gone well. The parties were very far apart when the union requested conciliation. The conciliation officer's report was made to the Minister on September 15, 2017. The union executive voted to accept the conciliation officer's report, but the town rejected it out of hand. (Previously, on September 1, 2017 the NSMWA had held a secret ballot vote for its Weldonian members. Of the twenty parking enforcement officers in the unit, 16 are members of the union and 12 showed up for the strike vote. Nine of those voting voted in favour of a strike.) On September 27, 2017 the NSMWA served a notice of strike on the Minister of Labour and on October 2, 2017 the union commenced a full-blown strike.

The President of the Weldonian local of the Nova Scotia Municipal Workers Association wrote a letter on October 1, 2017 to the President of the Weldonian local of CUMW saying in part: "I recognize that neither of your units is yet in a lawful strike position, but I would appreciate any help you could offer short of an illegal strike".

The Weldonian local of CUMW is anxious to put pressure on Weldonia both in solidarity with the parking enforcement officers union and in the interests of its own two units. Conciliation officers' reports have been made to the Minister in respect of both units, on September 29 and October 5, 2017 respectively. On October 5, 2017 CUMW had a general meeting for employees in both its Weldonian units; even non-members were invited. Of the 220 employees in both units, 150 showed up for the meeting. During the course of the meeting there was a show of hands on the question of whether they should go on strike; 109 voted yes, 32 voted no, and 9 did not raise their hands at all. The Local President proclaimed:

That's all the authority we need to go on strike after the 14 day clock runs out; we will serve a notice of strike on the Minister of Labour tomorrow. For the next few weeks we can take actions preparatory to a strike; we will walk off the job for real on October 19.

The CUMW notice of strike was indeed served on the Minister of Labour on October 6, 2017. Since then the following actions have been taken by employees in the CUMW bargaining units. (a) Many have picketed on their lunch hour, both in conjunction with the parking enforcement officers and on separate picket lines. (b) Most outside workers have stopped wearing the uniforms they are supposed to wear. (The inside workers have never been required to wear uniforms.) (c) Many outside

workers are now driving vehicles at half the speed limit; their usual practice is to drive at or slightly above the speed limit. (d) Many inside workers are letting the phones ring at least twelve times before answering; their usual practice is to answer by the fourth ring.

It is now October 19. The town manager of Weldonia has asked; (1) whether there is anything illegal about the parking enforcement officers' strike. She also wants to know (2) if anything being done by the inside and/or outside workers amounts to a strike, and if so (3) whether it is illegal. She is not interested at this point in legal remedies but she does want to know (4) whether she can simply tell them to stay home without pay until they are prepared to do the full job. Advise the town manager, with full explanation.

How would your answer differ if the parking enforcement officers were police or firefighters?

TUA ss. 2(1)(j); 2(1)(n); 2(1)(o); 2(1)(v); 14; 19(1)(e); 19(1)(k); 42; 44; 47 to 52; 52A to 52F; 53 (esp. 53(3)(a)(vi); 53(3)(b); 53(3)(c)); 80; 84; 85; 105; 106. Reg. 24

(a) Strikes - CB sections 8:100-8:414

*NABET and CJCH 920/C100 FM/CHUM* - Supp I-1

*R. v. Saskatchewan Federation of Labour*- CB 12:232

(b) Lockouts - CB section 8:420 to 8:423

### **Session XVI - October 30 – REGULATING INDUSTRIAL CONFLICT: LEGAL FORUMS FOR DISPUTE RESOLUTION AND REMEDIES**

TUA as for Session XIV

CB sections 8:430 – 8:620

*Judicature Act*, R.S.N.S. 1989, c.20 (as am.), s. 44 - Supp I-3

*NSNU and Halifax Infirmary*, Supp I-4

### **Session XVII – November 1 – REGULATING INDUSTRIAL CONFLICT: PICKETING AND BOYCOTTS**

**Problem #7.** Suppose the facts of *Brett Pontiac Buick GMC Ltd. v. NABET, Local 920* (NSSCTD) (*Handout Brightspace/OWL*) reoccurred today. You are the judge in Davidson J.'s role. Write your reasons for decision based on what you suppose the arguments of the parties would be based on the law as you understand it to be now in Nova Scotia, taking account in particular of the subsequent decisions of the Supreme Court of Canada culminating in *Pepsi* and/or “The Constitutional Quintet.”

TUA as for Session XIV

Regulation of Picketing - CB sections 8:700-8:724

Recall *Moxon's*, Session X

*B.C. Health Services*. CB sections 12:221

### **Session XVIII – November 6 - REGULATING INDUSTRIAL CONFLICT: RIGHTS AND OBLIGATIONS OF STRIKERS and ALTERNATIVES TO INDUSTRIAL CONFLICT**

TUA as for Session XIV plus TUA Sections 37 to 40B; 52A to 52G and ss. 61-75

(a) Employee Status During a Strike - CB sections 8:800-8:820

*Kelly's Ambulance* – CB pp. 514-517

*Halifax Infirmary* - Supp I-4  
*Paccar* – Supp H-7

- (b) Alternatives To Labour Management Conflict: CB sections 8:900-8:930  
Review CB paras. 11:140-11:200  
*R. v. Saskatchewan Federation of Labour*, CB section 12:232  
*Meredith v. Canada (AG)* CB section 12:233  
N.S. First Contract Arbitration Diagram- Supp H-8

**- FALL STUDY BREAK (NOVEMBER 12-16)**

**Session XIX - November 20 - COLLECTIVE AGREEMENTS AND  
MANDATORY RIGHTS ARBITRATION: STATUTORY  
AUTONOMY?**

TUA ss. 2(1)(e); 2(1)(j); 8; 19(1)(c); 41 to 46; 48; 56(2); 88; 107

- (a) Collective Agreements, Arbitral Adjudication and Management Rights: CB sections 9:100-9:229
- (b) Contract Interpretation and Arbitrators Powers: CB sections 9:300-9:320 and 9:400 to 9:430
- (b) Discipline, Discharge and Arbitral Remedies: CB sections 9:342-9:430

**Session XX - November 22 – ARBITRATION, OTHER FORA AND  
OTHER APPROACHES: CONSTITUTIONAL AUTONOMY?**

TUA as in Session XVII plus ss. 46A-46D

- (a) Fundamental Rights and The Expansion of Arbitration: CB sections 9:330-9:341
- (b) Institutional Dimensions - Other Fora: 9:500-9:600 and 10:230  
*Arbitration Act (N.S.)* – Supp. J-1  
*Roberval Express* - Supp J-2  
*IMP Group and CAW* - Supp J-3  
*NSGEU and NS Public Service Commission* – Supp. J-4
- (b) Critiques of Arbitration and Alternatives - CB section 9:700

**Session XXI - November 27 - THE INDIVIDUAL EMPLOYEE UNDER  
COLLECTIVE BARGAINING: DUTY OF FAIR REPRESENTATION**

TUA ss. 4(3) and (4); 15; 25(15); 27; 30(3)(a); 41; 54(e),(f),(g),(h) & (i); 54A; 55; 56(4); 56A; 57(e); 59; 60; 78 & 86; 93

- (a) The Primacy of the Collective Agreement - CB sections 10:100 - 10:220
- (b) Duty of Fair Representation - CB sections 10:300-10:320  
*Noël v. Société d'énergie de la Baie James* - Supp L-5  
*Complainant 6344 and Union et al.* – Supp L-3  
*Complainant 6368 and Union / Union Representative* - Supp L-4

**Session XXII -November 29 - THE INDIVIDUAL EMPLOYEE, THE UNION AND THE CHARTER: MEMBERSHIP AND FREEDOM OF ASSOCIATION**

TUA as for Session XX and ss. 53(3)(a)(ii) and s. 79.

- (a) Trade Union Structures: CB sections 11:200. Omit page 630-639.
- (b) Protection of Union Membership Rights: CB sections 11:300 to 11:310 and 11:600
- (c) Union Security Clauses: CB sections 11:400-11:410  
*McCarthy and Rice and IBEW, Local 625, (NSLRB) – Supp L-1*
- (d) Union Security, the Socio-Political Role of Unions and the Charter:  
CB section 11:500  
*Safire – Supp L-2*

**Session XXIII – December 4 - LABOUR LAW IN THE FISSURED GLOBAL ECONOMY: INTERNATIONAL REGULATION?**

- (a) International and Transnational Labour Law – CB section 2:100 and 2:200-2:240 (skim)
- (b) The ILO, Regional and Bi-lateral Labour Arrangements:  
CB sections 2:300-2:312
- (c) Other Global Regulatory Initiatives - CB sections 2:320, 2:340, 2:350 and 2:400

**SESSION XXIV – Wednesday, December 12 - REVIEW SESSION (2 pm)**

- Labour Law Exam December 2017 – Handout/Brightspace

**EXAMINATION: Thursday, December 13, 2018 – 9:30 a.m.**

## ***Additional Mandatory Notices:***

### **1. On-line Course Materials**

The materials required for this course are available on-line through Dalhousie's on-line course management software (often referred to as Brightspace or OWL). For more detailed instructions, please see the file entitled "Instructions for accessing OWL" available from Geordie Lounsbury. You may access these materials by opening a web browser and navigate to <https://dal.brightspace.com>. We strongly recommend that you do not use Internet Explorer as there are issues that arise from this program; Firefox, Safari and Chrome are all much more compatible. Login using your Dalhousie username and password. On the next screen you will be able to choose from the different courses in which you are enrolled, click on the course title to be taken to the site for that course. If you have any questions regarding on-line course materials please contact Geordie Lounsbury in the Information Media Centre.

### **2. Plagiarism**

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

### **3. Students with Special Needs/Requests for Accommodation**

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require documentation.

Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit [www.dal.ca/access](http://www.dal.ca/access) for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at (902) 494-2836.

## **APPENDIX A – Christie Lecture and Symposium Agenda (Special Session VII)**

# **2018/19 Innis Christie Lecture & Symposium in Labour and Employment Law**



9<sup>th</sup> Innis Christie Lecture in Labour and Employment Law

## ***Company Law and the Promotion of Social Policies***

**Professor Paul L. Davies, Q.C.**

Allen & Overy Professor of Corporate Law Emeritus  
Harris Manchester College, Oxford  
Innis Christie Visiting Professors 2018/19

**Thursday, September 27, 2018**

Room 104, Weldon Law Building  
4:30 pm – 6:00 pm

**Reception to follow in the Atrium**

# 5<sup>th</sup> Innis Christie Symposium in Labour and Employment Law

Friday, September 28, 2018  
University Hall, Macdonald Building

## Business Organization and Labour Market Regulation

8:45 am Introduction, Professor Bruce Archibald, Q.C., Schulich School of Law, Dalhousie University

### Employment Law and Changing Forms of Production

9:00 am-10:15 am **Session I** – *Employment and Contracting in Global Supply Chains*

Chair: Professor Claire Mummé (University of Windsor)  
Panelists: Mr. Rob Healy (National Legal Counsel, United Steelworkers)  
Mr. Mark Tector (Stewart McKelvey)  
Commentator: Professor Paul Davies, Innis Christie Visiting Professor

10:15 am-10:30 am *Health Break*

### Changing Legal Contexts in Unionized Labour Relations

10:30 am-12:00 pm **Session II** – *Canadian Labour Law and the Right to Engage in “Concerted Activities”*

Chair: Professor David Doorey (Osgoode Hall Law School)  
Panelists: Jason Edwards (Pink Larkin)  
Commentator: Professor Paul Davies, Innis Christie Visiting Professor

12:00 pm-1:30 pm *Lunch*

1:30 pm-2:45 pm **Session III** – *A “Race to the Top” in Economic Prosperity and Labour Market Regulation?*

Chair: Mr. Sunil Johal (Policy Director, Mowat Centre)  
Panelists: Ms. Laurel Broton (CEO, Nova Scotia Business Inc.)  
Commentator: Professor Paul Davies, Innis Christie Visiting Professor

2:45 pm-3:00 pm **Closing Remarks**