

Course Outline

COURSE:	LAWS 3405A – Labour Law
TERM:	Winter 2009-10
PREREQUISITES:	LAWS 2000 or LAWS 2003 or LAWS 2005. Permission may be given to students in Business or Directed Interdisciplinary Studies who have completed LAWS 2301 or BUSI 2601
CLASS:	Day & Time: Wednesday – 1805-2055 Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Rosemary G. Morgan
CONTACT:	Office: D384 Loeb (Michael MacNeil's office) Office Hrs: Wednesday - 4:30-5:30; available as well for 30 minutes before and after class or by appointment Telephone: 613-863-3791 Email: rgmorganlaw@yahoo.com

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **March 12, 2010 for April examinations**.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

ACCESS & ACCOMMODATION

Students with disabilities requiring academic accommodations in this course are encouraged to contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary letters of accommodation. After registering with the PMS, please arrange with me to review the Letter requesting accommodation as soon as possible in order to ensure sufficient time to make the necessary arrangements.

Course Description (from University Calendar)

Role of law in industrial relations; effect of law on collective bargaining relationships; recognition of bargaining agent; regulation of bargaining; administration of the collective agreement; methods of conflict resolution.

COURSE OVERVIEW

This course explores how law regulates industrial relations in Canadian society. It will examine the legal regulation of employer-employee relations, attempting to identify some of the historical, economic and political influences. We will identify values that inform legislative, judicial, administrative, arbitral, contractual and informal rules and norms through which law regulates. You will be expected to gain an understanding of the rights and responsibilities of various actors in the industrial relations system, and of the legal and institutional relationships among the actors.

The course concentrates on the labour law applicable to the private sector, but will explore some of the law applicable to the public sector. The Ontario Labour Relations Act will be the main statute analyzed. Other related employment statutes include the Ontario Human Rights Code, the Employment Standards Act, Workers

Compensation, Occupational Health & Safety, as well as the role and influence of the *Canadian Charter of Rights and Freedoms*, and International Instruments. You will be expected to acquire knowledge of legal rules and apply it to concrete problems. You should be able to assess policy implications of various rules and proposals. It will be important to gain an understanding of the relationship between labour law and the economic, political and social conditions within which this legal system operates. Some of the questions to be considered may include:

- What was the historical context for emergence and spread of unionization in Canada (why do workers join unions)?
- Why do many employers resist unions?
- What is causing the decrease in rates of unionization?
- How does law encourage, facilitate or impede unionization?
- What are the goals of labour law?
- What limits are there on employer resistance to unions?
- What rules govern collective bargaining?
- How does law deal with industrial conflict?
- How are disputes under collective agreements settled?
- What is and what determines the scope of jurisdiction of arbitration?
- What general legal concepts and disciplines of law apply in the labour law context?
- How does the *Charter of Rights* protect workers?
- How are jurisdictional overlap and disputes over appropriate fora addressed?
- What competing facts, law, interests apply to assessing which is the better resource for resolving workplace human rights disputes – labour arbitrators, human rights boards or the courts?
- What are the limits, advantages, disadvantages of different dispute resolution approaches?

COURSE OBJECTIVES

- Gain an understanding of the social, political, economic and historical context for the legal regulation of employer-employee and union relations in Canada;
- Obtain a sound knowledge of the Ontario Labour Relations Act;
- Obtain some critical perspective on how and if the legislative approaches to labour law respond adequately to the competing interests of unions and employers, workers and employers, as well as broader societal interests;
- Learn about the role of legislatures, labour relations boards, arbitrators and courts in the labour law system;
- Gain an understanding of the limits of labour legislation, the *Charter* and other legal instruments and boards to *equalize* the power of the players: employers and employees and/or their bargaining agents;
- Develop a sound knowledge of the concept of the duty of fair representation.
- Identify the limits of the various dispute resolution models;
- Obtain an understanding of the grievance arbitration process;
- Attain more than an elementary capacity in applying legal (boards, courts) decisions, and legislative instruments to particular fact situations
- Become familiar with some of the scholarly literature about labour law in Canada;
- Develop a capacity to engage in research of primary and secondary materials relating to Canadian labour law;
- Enhance written and verbal communication skills;

REQUIRED TEXT

Labour & Employment Law: Cases, Materials and Commentary, 7th ed., Irwin Law, 2004 (check out used text book stores in town for the 7th ed. as this has been used in previous years, and this may be the last year of use for this edition)

On-line resources

CanLII for all legislation in Canada including the Ontario *Labour Relations Act*; arbitration decisions:

<http://www.canlii.org/en/>

Ontario labour relations board decisions at:

<http://www.canlii.org/en/on/onlrb/index.html>

alternative site for Ontario legislation:

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_95l01_e.htm

Ontario Labour Relations Board, including recent decisions of interest, legislation, rules of practice etc.:

<http://www.olrb.gov.on.ca/english/sitemap.htm>

Compendium of on-line labour law resources:

<http://www.labourrelations.org/LabourLawOntario/LabourLawOntario.html>

Additional readings may be assigned throughout the term, and will primarily be available on the web with links posted on WebCT.

Unless otherwise stated, students are expected to read assigned material before coming to class. Analysis of any assigned material will take the form of classroom discussion. Problems may be assigned from time to time for review in class.

WEBCT

WebCT will be used in this course. Links to assigned readings will be posted along with course notes, commentary, and assignments. It will facilitate the electronic submission of assignments and to provide you with access to your grades. It also contains a discussion group facility, the ability for students to create their own webpages and webpages for group presentations. All students are required to check the WebCT site for this course.

EVALUATION

	%	Due Date
Response to 'Discussion Board' (also to be delivered 'in class') Question	20%	Feb. 10/2010
Take Home Case Analysis	40%	Mar. 17/2010
Final Exam	40%	TBD

As a minimum, in order to obtain a passing grade in this course, all assignments must be submitted and the Final Exam must be written.

ASSIGNMENTS

There will be two assignments plus a final exam in this course.

- 1) A question will be posted on the course WebCT discussion board (and will also be handed out in class) on Jan. 27; students must submit their responses no later than 6:05 pm (start of class) Feb. 10/2010 (20%)
- 2) An individual case analysis will be distributed through WebCT on Feb. 3/2010 before class and will be due on Mar. 17/10. You will be given a hypothetical case fact situation, and will be asked to write a memorandum or decision which analyzes the policy and/or legal issues arising from the facts. This may require some minimal research that goes beyond assigned readings. Expected length: 800-1000 words. (40%) (Due Mar. 17).

Take Home assignments must be submitted on due date stipulated. Failure to do so will result in the imposition of a penalty of one letter grade for each day the assignment is late. Requests for accommodation must be made in a timely manner.

Final Exam

The final exam will be a three hour exam during the formally scheduled final examination period. It is worth 40% of the final grade. It will contain a section with shorter questions which can be answered in point form or full-sentences; and a section of longer essay-type questions requiring essay-style responses. More precise details as to format will be discussed later in term during class. Final exams are retained by me, and are not returned to students. You may contact me if you wish to have an individual review.

GENERAL GUIDELINES ON ASSIGNMENTS FOR THIS COURSE**Written Assignment Format**

All work must be provided in word-processed (preferably Word) format, double-spaced, 12pt Times New Roman or Arial font with standard 1" margins. Work must include a title page, your name or names of all members of your group, the course code, the assignment title, date due, my name. Assignments should also contain a bibliography. Title pages, bibliographies and extensive footnotes are not counted in determining an assignment's page or word length.

Late policy

Assignments are considered late if submitted after 6:05 pm (18:05 h) on the due date. Take home assignments may be submitted by WebCT and/or a hard copy 'in class'. An electronic copy is always preferred, but not mandatory.

Academic Integrity

Academic integrity is a term that encompasses honesty, fair dealing with the ideas of others, and the right to be recognized for the work that you have done as a student. It also means that students will abide by the University's policy on academic offences which prohibits plagiarism, cheating and other acts.

Harassment

Harassment, bullying or discrimination on any ground by any participant in this class of any participant in this class, whether student, visitor or faculty member, will not be tolerated. All participants in this class are expected to treat every other participant with respect. Complaints may be brought to my attention or to the Chair of the Department of Law, to a CUSA representative or to Carleton Equity Services. Complaints may be brought forward by anyone (observer or affected party) whether or not they are the target of the harassment. False and/or malicious reports of harassment will equally not be tolerated.

For more information on what constitutes harassment, bullying or discrimination access the Carleton Equity Services web pages or visit them at Robertson Hall, Room 503.

COURSE OUTLINE (Topics & Readings)**Lecture 1**

Jan. 6:

Introduction

- Review of syllabus, outline, Q&A about goals and expectations
- why study labour law
- Review of social, legal, political, historical context of labour law;
- jurisdictional context & challenges

Readings: No Required Readings. Optional: Chapter 1

Lecture 2

Jan. 13:1)

Structure of the Ontario *Labour Relations Act* (OLRA)2) **The Right to Join a Union**

- a. Scope of the right
- b. Limitations on the Right
- c. Remedies for Interference with the Right to Organize

3) **Acquisition and Termination of Bargaining Rights**

- a. How to determine the appropriate bargaining unit
 - Who's in & who's out & why
 - Exclusions from the bargain – which category of employees can be or must be excluded and why?
 - Abuse of exclusion power by management

NOTE: Tonight we will review a sample case analysis as *practice* for second assignment

Readings: Chapters 5 & 6, pp: 323 – 325; 327-336; (See WebCT)
Ontario *Labour Relations Act* – available on line at CanLII

Lecture 3

Jan. 20

Continuation of Certification/Acquisition and Termination of Bargaining Rights

Note: Tonight there will be an in class practice case analysis (not for grading) to prepare for second assignment; discussion

Readings: See Web CT

Lecture 4

Jan. 27

The concept of “Equality” in Employment

- Scope & source of the right – public / private sector:
 - International law;
 - Canadian *Charter of Rights and Freedoms*, s. 15;
 - Anti-discrimination legislation: human rights codes, occupational health and safety legislation, employment standards legislation;
 - Role of unions (introduction)
- Application

Required Readings: *British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U. (the Meiorin case)* @ pp. 842-853; *Akerstrom & Moore* (see Web CT for link); Chapter 13, pp. 827-829; 854-856; 858-868 (and see Web CT for additional readings).

Assignment 1) will be posted on “discussion board” on WebCT earlier today but will also be distributed in class as a take home “question” – essay style – it will be based upon in-class discussion & readings; may require additional readings; 400-1000 word max. **Due: Feb. 10** class no later than 6:05 pm.

Lecture 5

Feb. 3:

Pay Equity – a human right? a bargaining right?

- What is it?
 - Difference between pay equity and equal pay for work of equal value
 - Historical antecedents
 - International instruments/obligations
- Ontario’s approach;
- Federal approach;
- Other Canadian jurisdictions;
- American approach (Title VII, “Comparable Worth”)

Guest Panel & discussion: A concept in practice

- Karen Jensen: Past Member of the Canadian Human Rights Tribunal
- Peter Engelmann: lawyer, union side labour & human rights (Sack, Goldblatt, Mitchell, Ottawa)
- Employer-side counsel (tba)
- Paul Durber, consultant, Past Director of Pay Equity, Canadian Human Rights Commission)

Required Readings: See Web CT for links to decisions & readings

US Court decision:

Ledbetter v. Goodyear Tire & Rubber Co. Inc.

http://www.evendon.net/PublicService/cgi-bin/HandOff-1_0.cgi?SC2006+05-1074_Ledbetter_v_Goodyear_Tire_Rubber_Co+0001#top

Assignment 2) Take Home Case Analysis will be handed out at end of tonight’s class; Due March 17, 6:05 pm (40% of grade)

Lecture 6

Feb. 10

Constitutional issues in labour law

- *Charter* application to public/private employment relations & labour rights
 - Scope of Section 2(d) protection for workers
 - What is scope of “Freedom of Association”? Is it the right to organize, to join an employee association (union), to strike, to bargain collectively?
 - Scope of Section 2(b)

Readings: *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391

Dunmore v. Ontario (Attorney General), [2001] 3 S.C.R. 1016

See Web CT for links

Chapter 8 pp: 450-463

<Feb 15-19 Winter Break – No classes>

Lecture 7

Feb. 24:

Ontario Labour Relations Act & the Collective Agreement

- Focus on “the contract”
 - What inclusions are mandatory; what are *implied* by statute?
 - Wisdom of reliance on ‘implied’ rights
 - Past practice as guide to inclusions
 - Extraneous documents (parole evidence rule in collective agreement interpretation)
 - Scope of arbitral jurisdiction: *Weber* decision – impact and future directions
 - Overlapping, concurrent, and exclusive jurisdiction of arbitrators *Parry Sound* decision

Required Readings: Parry Sound P. 634-647 & one ff;

Lecture 8

Mar. 3

1) **Negotiating a Collective Agreement**

- The statutory timetable
- Duty to bargain in good faith
 - What constitutes “bad faith”
 - what is unfair labour practice by management?
 - Walmart decisions (see Web CT)
 - What is an unfair labour practice by a union?

Required Readings: Chapter 7, pp. 391-434; see WebCT

Guest Speakers & Panel discussion: Peter Simpson, (Assistant Executive Director, Canadian Association of University Teachers; collective bargaining advisor)

- Has the challenge in negotiating changed due to market changes?
- What is mutual gains bargaining – pro’s and con’s

2) **At the Labour Board**

- What happens when the parties reach an impasse?
 - Timelines
 - Remedies

Lecture 9

Mar. 10

1) **Rights Rights Rights**

- Management Rights (and obligations)
 - How far can the contract go to limit management rights?
 - What outside the contract limits management rights?
- Union Rights (and obligations)
- Employee Rights (and obligations)

Readings: Chapter 9 (pp. and other readings tba - see WebCT)

2) **Duty of fair representation**

- What is DFR?
 - History – common law; legislation
 - How applies in negotiation of collective agreement phase
 - How applies in administration of collective agreement phase

- Does the union owe a duty of fair representation to employees who have exercised their right not to be a “member of the union” (religious exemption)

Required Readings: Chapter 10: pp. 685-717

Lecture 10

Mar. 17:

Grievance Arbitration

- Differences between civil litigation & labour arbitration
 - Advantages, disadvantages to the arbitration model
 - Independence or dependence
 - Evolution of the model
- In class discussion and group redesign of the arbitration model

Readings tba.

Lecture 11

Mar. 24:

Issues in arbitration

- Remedial powers of arbitrators
 - Standard clauses limiting powers of arbitrators
 - Expanding the scope
 - Implied powers
 - Arbitration Act v. Labour Relations Act
 - Application of Human Rights Code remedies

Required Readings: TBA on Web CT

Lecture 12

Mar. 31:

Special Labour Relations Issues: Right to a workplace free of harassment

- Scope of the issue
- Evolution of the issue
- Challenge for management & unions
 - Harassment of a member by a member – what is the union’s role?
- Discriminatory harassment/personal harassment
- Statutory models
- Can it be prevented; once occurred, can it be resolved absent departure of victim or antagonist?

Required Readings: Chapter 13 pp. 827-829; 853-856; 858-877

Lecture 13

April 7:

Last class: Miscellany & Review for exam

Unions fought for workers’ rights; once upon a time they expanded workers’ rights; are they winning or losing the fight now? Tr