

Chapter 2 – The Legal Environment

Chapter Objectives

By the end of this chapter, you will be able to discuss

- the basic elements of the Canadian model of union recognition and collective bargaining;
- collective agreement administration;
- the role of the Charter in industrial relations;
- the impact of international law on labour relations policy; and
- how employment law affects employee rights and conditions.

Chapter Summary

Chapter 2 outlines the legal context of industrial relations in Canada. It defines the rules and regulations of the union recognition and collective bargaining processes. The origin and evolution of these rules are examined in an international comparative perspective. Emphasis is placed on the variation across Canada in terms of ten provincial and the federal jurisdiction. Also introduced is the basic outline of collective agreement administration.

Several of the chapter elements can be delivered in three components:

1. **Lecture.** Use PowerPoints® to highlight key points of the legislation
2. **Class exercise** using the legislation of the home province. Distribute a copy of the home province labour legislation or, if the internet is available in class, direct students to an on-line copy. Ask students (either in groups or individually) to find the relevant sections of their home law discussed in the lecture.
3. **End of chapter cases and exercises.** These cases and exercises that compare laws between jurisdictions can be utilized at the end of the chapter to test the students on the chapter elements. They can be utilized as hand in assignments or in-class exercises.

Lecture Outline

COMMENTS	ACTIVITY
<p>A. History</p> <p>The origin of labour law should be reviewed. Historical context is important.</p>	<p>Present Learning Objectives in PPT Slide 2-2.</p> <p>On board or using slides outline historical developments.</p>
<p>Briefly Review history</p> <ul style="list-style-type: none">• Great depression, intro of U.S. New Deal & Wagner Act• Role of scientific management and rise of industrial unionism• In Canada PC 1003• Snider case – labour as a provincial responsibility	<p>Present PPT Slides 2-3, 2-4, 2-5, and 2-6.</p> <p>Can refer to YouTube video(s) on Wagner act legislative history such as, http://www.youtube.com/user/danieljbmitchell#p/search/0/_xjosM-KEvk</p>
<p>B. Union Recognition & Collective Bargaining</p>	<p>Present PPT Slide 2-7</p>
<p>Labour Board</p>	<p>Present PPT Slides 2-8, 2-9</p> <p>Obtain a copy of your home province’s labour legislation. Using this law and the information in Table 2.1, ask students to find the definition of a labour board. Ask for the composition of the board and its functions. Also ask them to identify the relevant sections on union recognition and certification.</p>
<p>Certification</p> <ul style="list-style-type: none">• bargaining unit• unfair labour practices (ULPs)	<p>Bargaining unit –what are the key questions in determining an appropriate unit? This is not in the legislation so show this in a slide. Present PPT Slide 2-10.</p> <p>Unfair labour practices – what are they? How do they differ from grievances? See the P.E.I. excerpt. Find the ULP section in your labour act.</p>
<p>Collective bargaining</p> <ul style="list-style-type: none">• bargaining in good faith• dispute resolution• duty of fair representation	<p>Present PPT Slide 2-11.</p> <p>Ask students to find their provinces exact dispute resolution procedures in Table 2.2.</p>

COMMENTS	ACTIVITY
F. International Law <ul style="list-style-type: none">• Conventions, 87, 98 and 1998 declaration• core labour standards	Present PPT Slide 2-20 . Discuss ILO conventions and core labour standards.

End of Chapter Materials

Suggested answers (or teaching points) are in **bold**.

Discussion Questions

1. Using Table 2.1, determine which provinces provide for certification without a formal vote and under which circumstances.
See the Federal, New Brunswick, P.E.I., Quebec, and Manitoba provisions and the table for the exact conditions.
2. What has been the impact of the *Snider* decision on the development of Canadian labour legislation?
Labour matters in Canada are the purview of the provinces.
3. How do labour boards determine which persons should be eligible for inclusion in a bargaining unit?
Where a community of interests exists.
Which employees are not eligible?
Managers where a conflict of interest exists or there is access to confidential labour relations information.
4. What are the steps in a typical organizing drive?
See Case 2: A USWA Organizing Drive at Canada Metals, Winnipeg.
5. What is an unfair labour practice? Give examples.
A violation of the labour law. Management fires a person for lawful union activities.
What is the duty of fair representation?
Unions must represent employees in a non-discriminatory manner.
Give examples.
A union refuses to take a grievance to arbitration because the grievor did not support the local president in the last election.
6. How does public policy play a role in arbitration during the term of a collective agreement?
Unions cannot strike during the term of a collective agreement. Arbitration is the mandatory strike substitute.

7. What is the case for a new pro-labour direction of the Supreme Court?
See the BC health decision that constitutionalized collective bargaining as part of freedom of association.
8. Discuss how any three laws covering conditions of employment vary across Canada.
Pay equity is covered in Table 2.3. For other issues students will have to research the issues.
9. Discuss the proposition that there is a new individual rights regime in Canada.
See the summary at the end of the chapter
There are two problems, however, with the argument that a new individual-rights regime has replaced the old one based on collective rights.
 - 1). **The argument advanced by Piore and Safford (2006) is more relevant in the U.S. case, because union decline is so much more pervasive there. Moreover, the idea that employment laws are a substitute for unionization has less resonance when placed in international comparative perspective. As the Canadian case shows, stronger employment laws are associated with more powerful labour movements not vice versa.**
 - 2). **The Supreme Court of Canada strengthened collective rights in the more recent decisions affecting labour discussed above.**

Using the Internet

1. Why does each province have its own human rights commission?
The *Snider* decision and the Canadian Constitution give the Provinces jurisdiction of all labour and employment matters.
2. Use the web links here to find a typical human rights commission or tribunal. What are the functions of the tribunal?
To hear complaints from individuals over alleged discrimination.
3. Find a website that provides links to labour legislation in Canada.
Hint try the Human Resources and Skills Development website
<http://www.hrsdc.gc.ca/eng/labour/index.shtml>
Find the *Manitoba Labour Relations Act*. Have you found a current version of the legislation?
The instructor could modify this to any labour law.

Exercises

1. Using the web links provided in this chapter, find the labour relations act of any of the provinces. Summarize the sections of the act that define the jurisdiction of the labour board and its duties.
Again, try the HRSD website. <http://www.hrsdc.gc.ca/eng/labour/index.shtml>
2. Select any two provinces and obtain the minimum wage law and human rights code.

Case Questions

Case 1: Recognition Under the *Canada Labour Code*

1. If union or management fails to bargain in good faith, what recourse does an affected party have under the *Code*?
An unfair labour practice complaint to the labour board.
2. What restrictions are there on the right to strike?
Strikes are illegal during the term of the agreement and before conciliation has been completed.
Why do you think these restrictions exist?
The former provides labour peace during the term of the contract and the latter offers cooling off period before a strike can occur.
3. What are the functions of the Canada Industrial Relations Board?
Certification, bargaining unit, and union's membership support.
4. What action may I take under the *Code* if I want to become unionized?
May join an existing union or form a new one. Then, either achieve voluntary recognition or certification through the labour board.

Case 2: A USWA Organizing Drive at Canada Metals, Winnipeg

1. How would the procedure differ if the province was Ontario, British Columbia, or your province? (*Hint: See Table 2.1.*)
The answers are in the table.