

**OUTLINE OF CANADIAN
LABOUR ADMINISTRATION AND JUDICIAL ORGANIZATION**

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Introduction

- With a federal government, 10 provinces and 3 territories, Canada has many different labour law jurisdictions.
- There are two legal systems. Quebec has a civil law system with a legislated civil code and other jurisdictions have the common law system with constitutions, statutes and regulations coexisting with judge-made common law.

Sources of Labour Law

- Most important Canadian labour rights are set out in statutes with federal and provincial/territorial labour laws which set out general rules and requirements. The law is developed through case decisions where administrative tribunals and courts interpret the law to apply to the specific case before them. Case law establishes the guidelines for the parties, (the unions, employers and employees), tribunals and courts.

The Legislature

- Subject to Canada's *Charter of Rights and Freedoms*, the federal government and provincial and territorial legislatures can decide what their labour law should be. While they all share common principles, they all have special characteristics. For review of industrial legislation in Canada see http://labour.hrdc-drhc.gc.ca/psait_spila/lmric_irlc/index.cfm/doc. Canada's *Charter* guarantees right to freedom of association, freedom of expression and right of peaceful assembly and applies to government action only. Starting in the mid-1940's, the federal government and most provinces adopted collective bargaining statutes to define and prohibit unfair labour practices and to provide a legal framework for collective bargaining. The Federal Government's laws are contained in the *Canada Labour Code*.

The Courts

- The Superior Courts in jurisdictions are appointed by the Federal Government. Decisions of

higher courts bind lower courts and tribunals within the same jurisdiction with the Supreme Court of Canada as the final arbiter of all legal disputes. It has the discretion to accept appeals from lower courts.

- Each province has an appellate court, the Court of Appeal which decisions are final unless appealed to the SCC. The Superior Court deal with lawsuits involving individual employment contracts, the enforcement of the union constitution and claims for damages arising out of industrial actions. Small claims courts can be used to enforce claims for wages.
- Decisions of labour tribunals are subject to court judicial review. Judicial review is limited to questions of conformity with the mandate conferred on the tribunal by the legislature and adherence to fair procedures.
- The Courts are not normally involved in the collective agreement disputes and they are decided by arbitrators. However, an arbitral award is subject to judicial review on limited grounds, that is exceeding mandate given by collective agreement language or procedural unfairness.

The Executive

Cabinet

- The cabinet composed of the Ministers of the governing party decide on proposed labour policy and legislation. Subject to cabinet control, Government Ministries are charged with the origination and review of policies and their daily execution.

Ministries of Labour

- Ministries of Labour have the responsibility for collective bargaining policy although the administration and enforcement of the law is undertaken by an independent labour relations board. They are also responsible for occupational health and safety and employment standards laws regarding individual rather than collective bargaining rights.

Ministry of Justice or Attorney General

- The Chief legal minister is responsible for drafting the labour laws and for undertaking court proceedings on behalf of the Government. This minister is also generally responsible for the human rights legislation which provides that there shall be no discrimination in employment.

Labour Boards

- Each jurisdiction has a labour relations statute and an agency to administer it. Most are referred to as Labour Relations Boards. Some jurisdictions have separate boards for public and private sector employees. Most provincial boards have a tripartite structure with members representing workers and employer interests and a “neutral” chair. The Federal Government’s board is called the Canada Industrial Relations Board consisting of publicly-appointed officials with no labor or employer affiliation
- Labor Relations Boards are generally independent administrative tribunals and do not form

part of either the Federal or Provincial Ministries of Labour.

- Labour Board adjudicators are appointed by the government of each jurisdiction and hold office for a set term.
- Each labour agency is given the power to interpret its statute and make their own rules of procedure. Usually, consultation about these rules takes place with representatives of employer and employee groups. Labour Board regulations prescribe such things as forms or information requirements and are enacted by the jurisdiction's government.
- Labour Boards have exclusive jurisdiction over the certification process, the adjudication of unfair labour practices, and resolution of jurisdictional disputes between unions. Labour Boards has the power to determine at least initially whether the law it is interpreting violates the *Charter*
- Enforcement is generally complaint driven. A complaint is filed by the aggrieved party alleging a breach of the statute . Most boards have labour relations officers to investigate the complaints and attempt to settle the case prior to hearing. If not settled, the case is heard by the Board and a decision is issued. Most cases have oral hearings but some are doing in writing.
- Labour Boards have the power to subpoena evidence. Parties present evidence and arguments either orally or in writing. Hearings are open to the public. Decisions set the ruling including the facts and legal conclusions. Witnesses are protected from reprisals for participating in labour board proceedings.
- Canadian administrative law provides that due process protections must be observed by administrative law tribunals like Labour Board which can affect the rights and interests of parties. This includes the right to have an adjudication by an impartial adjudicator. They must have a combination of security of tenure, remuneration and administrative control sufficient to ensure independence. Government attempts to terminate an appointment prior to the expiry of its term are null and void. A decision which was found to have been influenced by outside pressure, will be null and void. A tribunal member may be disqualified if there is a reasonable apprehension of bias. Cases must be decided on the basis of the evidence presented and the law.
- Labour Board orders are enforced by the Courts. Property can be seized to satisfy court orders and refusal to comply can lead to contempt proceedings, an offense punishable by fine or imprisonment. Consent of the Board must be given to use the criminal courts.
- Many labour boards have the power to reconsider their decisions. As the Labour Boards are given exclusive jurisdiction to decide labour relations matters, their decisions are final. Boards are subject to a limited review by the Courts for breach of administrative fairness or natural justice; constitutional grounds; exceeding of the powers granted to the Boards by the legislature and patent unreasonableness of a decision made within the scope of a board's jurisdiction. Courts exercise restraint and normally defer to the specialized expertise of the labour boards.

Arbitration

- This is a process of independent third party adjudication which may be an adjudicator selected by the union and employer or in default by a government ministry or a tripartite board but including a partisan employer and union nominee. Some arbitrators are given the power to decide disputes under other employment-related statutes as well. Rights arbitration is the adjudication of disputes under the collective agreement. Interest arbitration is the adjudication of the terms of the collective agreement where the parties can't agree and this is required in certain key public sector areas such as health care.

Individual Employment Standards

- Governments have also passed laws to provide minimum employment standards. There are federal, provincial/territorial laws dealing with minimum age for employment, hours of work and overtime pay, equal pay, These laws are enforced through Ministry of Labour departmental staff with disputes being heard by neutral adjudicators. To review Canadian employment standards, see http://labour.hrdc-drhc.gc.ca/psait_spila/lmnec_eslc/index.cfm/doc.

Occupational Health and Safety

- Federal and provincial/territorial governments have laws setting down the obligations and rights of employers, unions and employees with regard to ensuring a safe workplace. Labour ministry officials are appointed to carry out inspections at workplaces and to make orders directed at employees and employers. Disputes are decided by neutral adjudicators: to review Canadian legislation, see http://labour.hrdc-drhc.gc.ca/psait_spila/lmsstc_ohslc/index.cfm/doc.

Pay and Employment Equity

- Various provinces have specialized pay equity legislation which requires public sector employers and in some jurisdictions private sector employers to establish equal pay for work of equal value for jobs performed primarily by women. Generally, these laws are administered by a separate agency. At the federal level, this law is part of the general human rights law administered by the Canadian Human Rights Commission.
- The Federal jurisdiction also has employment equity legislation which requires employers to develop employment equity plans to establish equitable terms of employment for women, aboriginal peoples, persons with disabilities and racial minorities. This law is also administered by the Canadian Human Rights Commission.

Human Rights Legislation

- All Canadian and provincial/territorial jurisdictions have human rights laws which provide among other things that discrimination in employment is unlawful. eg. *Canadian Human Rights Act*. These laws are administered by independent government agencies and tribunals. These laws govern employers, employees and unions.

