*LW1210 - Labour and Employment Law*

With Paul Tilley

*UNIT 1 - Part 1 of 3 - Introduction Review*

**1.0 The Canadian System of Labour and Employment Law**

Law is the body of rules that can be enforced by the courts or by other government agencies.

Law does not define ethical behaviour, instead it establishes rules that can be enforced.

**1.1 Differentiate between labour and employment law**

Employment Law is a specific aspect of law that relates to the set of rules and regulations that govern the relationship between Individual and their employers.

Labour law refers to a system of rules that govern the relations amongst management, trade unions and their members, and the other institutions that are involved in Labor relations.

**1.2 Explain the legislative powers of the federal and provincial governments**

The Federal (national) Parliament is the level of government that governs the affairs of Canada. This level of government has power “to make laws for the peace, order and good government of Canada.”

In Canada’s constitution the federal government retails the power over all matters that are not specifically designated to the provincial legislatures. Provincial legislatures have power over direct taxation in the province for provincial purposes, natural resources, prisons (except penitentiaries), charitable institutions, hospitals (except marine hospitals), municipal institutions, licences for provincial and municipal revenue purposes, local works and undertakings (with certain exceptions), incorporation of provincial companies, solemnization of marriage, property and civil rights in the province, the creation of courts and the administration of justice, fines and penalties for breaking provincial laws, matters of a merely local or private nature in the province, and education.

**The Canadian Constitution & Charter of Rights and Freedoms**

A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed. The Constitution of Canada is the supreme law in Canada, and among other things, it defines the powers and limits of powers that can be exercised by the different levels and branches of government.

The Charter of Rights and Freedoms is part of Canada’s constitution. The Charter spells out the specific Rights and Freedoms of all Canadians. Its guarantee of rights and freedoms takes precedence over other legislation because it is “entrenched” in the Constitution, the supreme law of Canada. It applies to the provincial legislatures as well as to Parliament. This means that when an individual who believes that Parliament or a legislature has violated guaranteed rights asks the courts for help, the courts may declare the law invalid as far as it conflicts with the Charter. In addition, courts may provide other appropriate remedies to individuals whose rights have been violated or infringed.

The Charter of Rights and Freedoms also recognizes that even in a democracy rights and freedoms are not absolute. For instance, freedom of expression is guaranteed, but no one is free to yell “fire” in a crowded theatre, to slander someone, or to spread hate propaganda. Therefore, Parliament or a provincial legislature can limit fundamental rights, but only if that government can show that the limit is reasonable, is prescribed by law, and can be justified in a free and democratic society. The interests of society must be balanced against the interests of individuals to see if limits on individual rights can be justified.

**Sources of law in Canada: Bills to Laws**

An idea to make a new law or to change an existing law starts out as a "bill." Each bill goes through several stages to become law. At first reading, the bill is considered read for the first time and is printed. There is no debate. At second reading, Members debate the principle of a bill — is the idea behind it sound? Does it meet people's needs? If a bill passes at second reading, it goes to a committee of the House.

Committee members study the bill carefully and hold hearings to gather information. They can ask for government officials and experts to come and answer questions. The committee can propose amendments, or changes, to the bill.

When a committee has finished its study, it reports the bill back to the House. The entire House can then debate it. During report stage debate, Members can suggest other amendments to the bill.

Once report stage is over, the bill is called for third reading debate. Members who voted for the bill at second reading may sometimes change their minds at third reading after seeing what amendments have or have not been made to the bill. After a bill has passed third reading in the House of Commons, it goes through a similar process in the Senate. Once both Chambers pass the bill in the same form, it is given Royal Assent and becomes law.

***See:***

***How a Bill Is Made (in Ontario – Jingle) - https://www.youtube.com/watch?v=yzflLqk0ksM***

***Making Canada’s Laws - http://www.parl.gc.ca/About/Parliament/GuideToHoC/making-e.htm***

**Sources of law in Canada: *Common Law***

***Common Law***

The common law, also referred to as case law, is a vast body of law that judges create, case by case, as they make rulings and as they determine the precise meaning of a law or regulation. Common law originated in Great Britain and the Commonwealth and it has been adopted by Canada’s English-speaking provinces and the territories. Judges review the rulings of other judges in search of legal principles that can be applied to the dispute that comes before them. Judges may add refinements of their own pertaining to the specific facts before them, as the common law grows and evolves. Judges are obligated to follow a precedent set by a higher court in their jurisdiction, under a principle known as stare decisis - a Latin term meaning standing by former decisions. The common law originated centuries ago in Britain and enhances the predictability and fairness of our system of justice. It ensures that cases that raise similar legal issues will be resolved in a similar fashion. The common law and legislation are intertwined. Judges' interpretations of legislation become part of the common law, and legislators often enact laws that incorporate or refine common law principles.

**The Civil Code**

Quebec is different from the rest of Canada in that it inherited its own form of law from France rather than Great Britain. This is the Civil Code which is a codification (the writing down) of the various common law principals that we are accustomed to in the common law provinces (i.e. the rest of Canada). The Code is based upon the old Civil Code of France, which in turn was based originally on Roman law. It has, of course, been updated from time to time with the most recent revision taking place in 1993. The Quebec approach is different from the rest of Canada in that one first looks to the Code for a legal solution. In practice, a judge may first look to the Code, and, if no answer is found, will apply the general principles as enunciated in the Civil Code.

While the doctrine of precedent is not followed in Quebec, in practice, judges will review the decisions of other judges in arriving at their own interpretation of the Code. There is, however, no requirement that the judges follow the decisions of previous judges.

Codification of the law is not limited to Quebec. In many other parts of Canada, common law principles have been written down and codified. The Statute of Frauds and the Sale of Goods Acts (provincial statutes) as well as the Bankruptcy & Insolvency Act and the Bills of Exchange Act (federal) are examples of common law principles that have been codified.

**Administrative Law**

In the strict sense of the word, administrative law is not a source of law that we consider the common law or the statute. It is a growing area of importance as regulatory decisions are rendered that have impact upon business. Many commercial activities are regulated by administrative tribunals such as radio and television broadcasting, land use planning, labour relations, employment standards and the sale of securities.

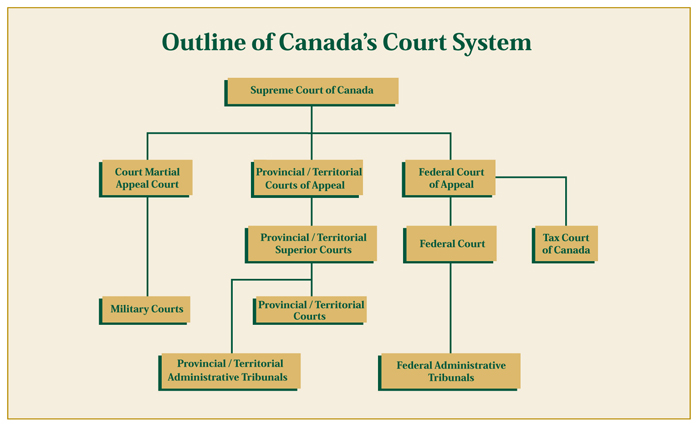
**The Law Reports**

The common law consists of the recorded judgments of the courts. Each time a judge hands down a new decision, the decision becomes a part of the body of the common law. These decisions have been published for centuries - at first in Great Britain and later in her colonies including Canada**.**

You can find law reposts online at[**https://www.canlii.org/**](https://www.canlii.org/)

**The Court System in Canada**

There are four levels of court in Canada. First there are provincial/territorial courts, which handle the great majority of cases that come into the system. Second are the provincial/territorial superior courts. These courts deal with more serious crimes and also take appeals from provincial/territorial court judgments. On the same level, but responsible for different issues, is the Federal Court. At the next level are the provincial/territorial courts of appeal and the Federal Court of Appeal, while the highest level is occupied by the Supreme Court of Canada.



Each province and territory, (except Nunavut), has a **provincial/territorial court**. These courts hear cases involving either federal or provincial/territorial laws.

Each province and territory also has **superior courts**. These courts are known by various names, including Superior Court of Justice, Supreme Court (not to be confused with the Supreme Court of Canada), and Court of Queen's Bench. The superior courts have "inherent jurisdiction," which means that they can hear cases in any area except those that are specifically limited to another level of court. The superior courts try the most serious criminal and civil cases, including divorce cases and cases that involve large amounts of money (the minimum is set by the province or territory in question). The superior courts also act as a court of first appeal for the underlying court system that provinces and territories maintain. Superior court judges are appointed and paid by the federal government.

Each province and territory also has a court of appeal or appellate division that hears appeals from decisions of the superior courts and provincial/territorial courts.

The **Federal Court** and **Federal Court of Appeal** are essentially superior courts with civil jurisdiction. However, since the Courts were created by an Act of Parliament, they can only deal with matters specified in federal statutes (laws). As well, only these Courts have jurisdiction to review decisions, orders and other administrative actions of federal boards, commissions and tribunals; these bodies may refer any question of law, jurisdiction or practice to one of the Courts at any stage of a proceeding.

The **Supreme Court of Canada** is the final court of appeal from all other Canadian courts. The Supreme Court has jurisdiction over disputes in all areas of the law, including constitutional law, administrative law, criminal law and civil law.

Before a case can reach the Supreme Court of Canada, it must have used up all available appeals at other levels of court. The Supreme Court of Canada also plays a special role as adviser to the federal government. The government may ask the Court to consider questions on any important matter of law or fact, especially concerning interpretation of the Constitution. It may also be asked questions on the interpretation of federal or provincial/territorial legislation or the powers of Parliament or the legislatures. (Provincial and territorial courts of appeal may also be asked to hear references from their respective governments.)

**The Courts and the Constitution**

In addition to dealing with the Common Law, The Supreme Court of Canada also plays a special role as adviser to the federal government. The government may ask the Court to consider questions on any important matter of law or fact, especially concerning interpretation of the Constitution.

**Quasi-Judicial Bodies in Canada**

Quasi-Judicial Bodies in Canada are known "tribunals". These bodies are like courts, but are not necessarily presided over by judges. Instead, the adjudicators may be experts of the very specific legal field handled by the tribunal (eg: immigration law, energy law, workers' compensation law, liquor licensing law, etc.)

Depending on its enabling legislation, a tribunal's decisions may be reviewed by a court through an appeal or a process called judicial review. The reviewing court may be required to show some deference to the tribunal if the tribunal possesses some highly specialized expertise or knowledge that the court does not have.

Appearing before some administrative tribunals may feel like appearing in court, but the tribunal's procedure is relatively less formal than that of a court, and more importantly, the rules of evidence are not as strictly observed, so that some evidence that would be inadmissible in a court hearing may be allowed in a tribunal hearing, if relevant to the proceeding. While relevant evidence is admissible, evidence which the adjudicator determines to have questionable reliability, or is otherwise questionable, is most likely to be afforded little or no weight.

Tribunals are created by statute, their adjudicators are usually appointed by government, and they focus on very particular and specialized areas of law. Because some subject matters (e.g., immigration) fall within federal jurisdiction while others (e.g., liquor licensing and workers' compensation) in provincial jurisdiction, some tribunals are created by federal law while others are created by provincial law. There are both federal and provincial tribunals for some subject matters such as unionized labour and human rights.

Most importantly, from a lawyer's perspective, is the fact that the principle of stare decisis does not apply to tribunals. In other words, a tribunal adjudicator could legally make a decision that differs from a past decision, on the same subject and issues, delivered by the highest court in the land. Because a tribunal is not bound by legal precedent, established by itself or by a reviewing court, a tribunal is not a court even though it performs an important adjudicative function and contributes to the development of law like a court would do.

**References for Unit 1**

How a Bill Is Made (in Ontario – Jingle) - <https://www.youtube.com/watch?v=yzflLqk0ksM>

Making Canada’s Laws - <http://www.parl.gc.ca/About/Parliament/GuideToHoC/making-e.htm>

Common law Vs Statutory Law & Common law Vs Civil law : Differences <http://youtu.be/iUCepIy2UUI>

Rick Mercer Explains Canada: <https://www.youtube.com/watch?v=yi1yhp-_x7A>

The Canadian Constitution: <http://www.justice.gc.ca/eng/csj-sjc/just/05.html>

The Charter of Rights and Freedoms: <http://www.justice.gc.ca/eng/csj-sjc/just/06.html>

The Canadian Court System: About Canada’s System of Justice: <http://www.justice.gc.ca/eng/csj-sjc/just/>

Newfoundland and Labrador Employment Legislation <http://www.gov.nl.ca/lra/agency/legislation.html>

**2.0 Employment Law**

2.1 Discuss the applicability of common law to the employment relationship

2.1.1 Identify employees to whom common law does not apply© College of the North Atlantic LW1210 Page 4 of 8

2.1.2 Describe those types of employment relationships that have to be given special status under common law and statute law

2.1.2.1 Describe the dependent and independent contractor tests

2.1.3 Explain how the courts determine who is and who is not an employee

2.1.4 Distinguish between contract of service and contract for service

2.1.5 Discuss the legal status of probationary employees

2.1.6 Define minimum standards legislation

2.1.7 Describe the statutory limitations on the employment of minors

2.1.8 Describe the special employment laws dealing with foreign nationals working in Canada

2.2 Define and explain issue estoppel

2.3 Describe employment contracts

2.3.1 Define contract of employment

2.3.2 Describe the requirements of writing in employment contracts

2.3.3 Explain the purpose of employment contracts

2.3.4 Describe the statutory requirement for fairness in employment contracts under human rights codes and acts

2.3.5 Explain negligent hiring

2.3.6 Describe the source/roots of the rights and duties of the parties to employment contracts/relationships

2.3.7 Explain the concept of explicit, implicit and statutory terms of an employment contract

2.3.8 Explain the effect of the sale of a business on an employment contract

2.4 Describe employment equity requirements in Canada

2.5 Explain pay equity

2.5.1 Explain the mechanism of remedy for complaints of pay inequity

2.6 Discuss the duties, and obligations of the employer

2.6.1 Explain the duty of pay remuneration

2.6.1.1 Explain the principle of quantum meruit

2.6.1.2 Explain how quantum meruit is determined when pay is due

2.6.1.3 Describe the effects of illness on pay

2.6.1.4 Describe when illness becomes grounds to terminate the employment contract due to frustration

2.6.2 Describe the forms of remuneration

2.6.2.1 Explain the statutory requirements for remuneration

2.6.2.2 Describe the impact of pay equity statutes

2.6.2.3 Discuss the variation in remuneration across jurisdictions for part time workers

2.6.3 Explain the employer’s duty to provide work

2.6.4 Discuss the employer’s responsibility for employee conduct© College of the North Atlantic LW1210 Page 5 of 8

2.6.4.1 Explain the theory of vicarious liability

2.6.5 Explain the employer’s duty to provide a safe workplace

2.7 Explain the duties and obligations of employees

2.7.1 Explain how the duties and obligations of the employee may be entered into in an employment contract

2.7.2 Explain and discuss the duty of fidelity, the duty to obey, the duty of skill and care, and the fiduciary duty

2.7.3 Discuss restrictive covenants

2.8 Discuss termination of the employment contract

2.8.1 Explain a repudiatory breech

2.8.2 Explain expiry as a specific term

2.8.3 Discuss performance standards

2.8.4 Explain termination due to frustration

2.8.5 Describe the effect of death of a party on the employment contract

2.8.6 Discuss termination through dissolution of a partnership

2.8.7 Explain termination by notice

2.8.7.1 Discuss the purpose of notice as stated by the courts

2.8.7.2 Discuss group termination notice requirements under statute law

2.8.7.3 Discuss the statutory requirements for severance pay

2.8.8 Explain termination for cause

2.8.8.1 List the main elements of just cause

2.8.8.2 Explain the role of progressive discipline in termination for cause

2.8.9 Discuss employer remedies for breach of employment contract

2.8.9.1 Explain summary dismissal

2.8.9.1.1 Describe wrongful resignation and the employer

remedy for wrongful resignation

2.8.9.2 Explain when and how an employer may seek damages

2.8.9.3 Discuss injunction for specific performance

2.8.10 Discuss employee remedy for breach of employment contract

3.0 Labour Law

3.1 Discuss labour union status

3.1.1 Define labour union

3.1.2 Describe the legal status of unions under common law and statute law

3.1.3 Discuss the legal status and democratic rule in trade unions

3.1.4 Explain the legal relationship between local and parent unions

3.1.5 Explain the constitutional right of all persons in Canada to belong to a

trade union and to participate in trade union activities© College of the North Atlantic LW1210 Page 6 of 8

3.1.6 Discuss the right to remain in a trade union

3.1.6.1 Describe the interpretation by the courts of the right to remain in

a trade union

3.1.6.2 Explain the requirement of good faith by the union and the

requirement of due process

3.2 Discuss the duty of a union to provide fair representation

3.2.1 Explain the duty of a union to provide fair representation in negotiation of

collective agreements and in the handling of grievances

3.2.2 Describe the statutory requirement of fair representation

3.2.2.1 Describe what labour boards consider when dealing with a

complaint of failure to provide due and fair representation

3.3 Discuss the right to organize a union

3.3.1 Explain the legal protection of individual employees in organizing unions

3.3.2 Explain the legal protection of unions in organizing the workplace

3.3.3 Describe the employer’s legal rights in limiting access to information

3.3.4 Discuss the reconciliation of the rights of employees, unions and

employers in the administration of statute law

3.3.5 Discuss remedies for violations of the parties’ right to organize

3.3.6 Explain the legal recognition of collective bargaining rights

3.3.6.1 Explain the administrative duties of labour boards

3.3.6.2 Explain the requirements for certification

3.3.6.3 Describe the certification process

3.3.6.4 Describe categories of employees who are typically excluded

from specific unions

3.4 Discuss union bargaining rights

3.4.1 Describe what constitutes a union

3.4.2 Explain the collective bargaining purpose requirement to be considered a

union

3.4.3 Explain legitimate restrictions on memberships in unions

3.4.4 Explain how unions may acquire bargaining agent status

3.4.4.1 Describe the requirement of formality

3.4.4.2 Explain the use of petitions in seeking bargaining agent status

3.4.4.3 Review the legal requirements for certification votes

3.4.4.4 Explain timeliness of an application for certification

3.4.5 Explain how labour boards determine who the employer is

3.4.5.1 Explain the effect of sale or transfer of a business on a

bargaining unit

3.4.5.2 Explain the status of multi-employer bargaining

3.4.6 Discuss termination of bargaining rights of a bargaining agent

3.4.6.1 Describe the transfer of bargaining rights to another bargaining

agent© College of the North Atlantic LW1210 Page 7 of 8

3.4.6.2 Explain decertification and abandonment

3.5 Discuss collective bargaining

3.5.1 Explain the bargaining agent’s exclusive authority to bargain with an

employer

3.5.2 Discuss the prohibition on individual bargaining

3.5.3 Explain union security provisions in collective agreements

3.5.4 Explain statutory freeze

3.5.5 Describe conciliation and mediation requirements at law

3.5.6 Explain strike votes and describe the process of strike notice

3.5.7 Explain the requirements to commence bargaining

3.5.8 Explain the duty to bargain in good faith and the remedies for failure to

bargain in good faith

3.5.9 Explain the duty to meet, the duty to supply information, and the duty to

complete negotiation

3.5.10 Explain circumvention of the bargaining agent

3.5.11 Explain the requirement of full discussion

3.5.12 Discuss untimely economic sanction

3.5.13 Discuss the content of collective agreements at law

3.5.13.1 List compulsory provisions in a collective agreement

3.5.13.2 Explain the duration of the duty to bargain in good faith

4.0 Statute and Subordinate Legislation for Labour and Employment Law

4.1 Discuss and interpret the key provisions / sections of the Labour Standards Act

and Regulations of Newfoundland and Labrador

4.2 Discuss and explain the applicability of the Human Rights Code of Newfoundland

and Labrador

4.3 Describe and interpret key provisions / sections of the Canada Labour Code Parts

I and III and the Labour Relations Act and Regulations of Newfoundland and

Labrador

4.4 Discuss and explain the applicability of the Human Rights Act of Canada