

**LABOUR LAW I  
INTRODUCTORY MEMORANDUM /  
SYLLABUS**

**1. MATERIALS:**

A. Required:

*Labour and Employment Law : Cases, Materials and Commentary*,  
(7th edition), The Labour Law Casebook Group, Irwin Law,  
Toronto, 2004 (in Bookstore)

*Labour Law I: Supplementary Materials* - 2008/2009, B. Archibald  
(in Bookstore)

*Trade Union Act and Regulations* (Handout) (Materials Room)

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)

**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 50% or more of the final mark, with the remaining percentage acquired by submitting a maximum of 6 written assignments throughout the term. Each problem 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 50% of the mark for the course on the basis of the problems. The grade will be assigned on the basis of the best 5 or fewer out of 6 problems attempted, among the 8 possible problem assignments. Assignments must be submitted in writing BEFORE the start of the session for which the assignment is to be prepared.

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 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 materials.

### **3.ABBREVIATIONS:**

Casebook = CB [Note all **references** to paras. **are inclusive**]  
Supplementary Materials 2008/2009 = Supp  
Handed out in class and/or available in the materials room = Handout  
Nova Scotia Trade Union Act = TUA  
Regulations = Regs

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

#### **Session I - September 4 - INTRODUCTION: THE COURSE, THE TRADE UNION ACT AND COLLECTIVE BARGAINING**

- (a) Review syllabus, particularly "materials" and "evaluation alternatives" and approach.
- (b) Skim the Trade Union Act and prepare to discuss questions in "Overview of the Trade Union Act", Supp A- I. You should also read the materials in CB paras. 1: 100, 1:200, 1:300 and 1:400.

#### **Session II - September 9 – NORMATIVE FOUNDATIONS: VALUES AND ASSUMPTIONS**

- (a) Values and Assumptions: Please read at least Weiler p. 33, Friedman, p. 51, Macpherson, p. 54, Beatty p. 64, Weiler p. 68 and 69 and Beatty p. 70.
- (b) You may wish to skim the whole of CB 1:500 to 1:700 or simply read Adams, p. 169.

#### **Session III – September 11 – LABOUR LAW AND THE CONSTITUTION**

- (a) Division of Powers Issues: Read CB 1:800 and Supp B-1 and B-38 to B-52
- (b) The New Charter Approach: *B.C. Health Services Case* Supp. B-2 to B-37

#### **Session IV - September 16 - EMPLOYEE STATUS UNDER THE TRADE UNION ACT**

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

As the new Vice-Chair of the Nova Scotia Labour Relations 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 Law School, 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, plus (iii) three child-care diploma students each working full-time for 4 months as part of a Dalhousie co-op programme. (iv) 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 supervises the full-time 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 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. 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 Relations 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 are not employees.

TUA ss. 2(1)(k); 2(1)(l), (2)(2)(a) & (b); 4; 13(1); 16; 17; 18; 19(1)(a); 25(12).

Who is an employee for purposes of the Trade Union Act? CB paras. 2:200, 4:100-4:340 and Supp C-1 and C-2 and C-6 to C-9

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

TUA ss. 2(1)(w); 5(d); 13; 18(b); 19(1)(b); 19(1)(d); 19(1)(i); 20; 23(6); 25(15); 30(3); 32; 53(1) and (2); 76; 41; 79(1); 87; Regs. 9 & 10

(a) The Trade Union as an Organization: CB para 4:410

*I.M.P. Manufacturing* Supp. D-1

*Berry v. Pulley*, CB para 10:500 pp 725-731

(b) Restrictions on Membership:

*Gaymer and Oultram*, Supp D-2

*Oakville Trafalgar Memorial Hospital*, Supp D-3

(c) Employer Influence: CB para. 4:420

Canada Labour Code, ss. 25 & 29 , Supp D-5

*Royal Oak*, (Canada Labour Board) Supp D-8

(d) Union Successorships

## **Session VI - September 23 - EMPLOYER STATUS UNDER THE TRADE UNION ACT**

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

(a) Who Is the Employer? Contracting Out? CB 6:520

(b) Successor Employers? CB 6:510

*Tiger Electric* Supp D-19

(c) Related Employers? CB 6:530

*Centennial Villa* Supp D-8

*Fundy Drywall* Supp D-15

## **Session VII - September 25 - ACQUIRING BARGAINING RIGHTS – UNIT DETERMINATION 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; 41; 53(3)(g); 54(a); 54(b)

Regs: 9 to 16 and 21 and forms referred to therein

(a) Introduction: Exclusivity Principle - CB para 6:100

(b) Community of Interest: Full-Time v. Part-Time - CB paras. 6:200-6:230

*Heather Hotel* -Supp E-1

*Trade Centre* - Supp E-5

(c) An Appropriate Unit - Geographic and Other Factors: CB para 6:230

*I.M.P. Group* - Supp E-11

*Michelin Tire* (NSLRB, Certification Application) Supp E-11

*VON Nova Scotia* - Supp E-18

## **Session VIII: September 30 - ACQUIRING BARGAINING RIGHTS - UNIT Determination 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 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 Relations 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

Statutory Bargaining units

Regulations Respecting Craft Units (Regs. 15-16)

*Nova Scotia Nurses' Union and Board of Directors of the Highland View Regional Hospital (NSLRB) Supp - E-27*

*Highland View Regional Hospital v. Nova Scotia Nurses' Union and Labour Relations Board (Nova Scotia) (NSCA) Supp - E-29*

Hospital Bargaining Units, NSLRB Guidelines Supp - E-31

## **Session IX - October 2 - ACQUIRING AND LOSING BARGAINING RIGHTS - DETERMINING EMPLOYEE SUPPORT**

TUA and Regs., as for Sessions VII and VIII plus TUA ss. 23; 25; & 29 and Regs 17 to 19

- (a) Determining Employee Support - CB para. 6:300  
NSLRB Statement on Secret Ballots -Supp F-1  
*Amherst Fabricators* - Supp F-2  
*United Rubber Workers, Michelin Tire and Clifford Allen et al* Supp. F-4
- (b) Timeliness - CB para 6:400
- (c) Losing Bargaining Rights (Revocations)  
*IAM and Courtesy Chrysler #1 & #4* - Supp F-5ff  
*Employees of Kelly's Ambulance and CUPE & Kelly's Ambulance* Supp F-12  
*Smelter Workers and Royal Oak* - Supp F-16

## **Session X – October 7 - 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 Relations 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 Relations Board the following was said:

Union 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.

The Union 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 Relations 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; 25(9); 53(1) and (3) - espec. 53(3)(a)(vi); 54; 55; 56 - espec. 56(3); and 58

(a) Introduction CB para. 5:100

(b) Motive and Non-Motive Unfair Labour Practices - CB paras. 5:200 and 5:300  
*United Food & Commercial Workers Union & Moxon's Drug Store-Supp G-1*  
*Pratt and Whitney Canada Inc. – Supp G-4*  
*Amalgamated Transit Union and Zinck's Bus Company Limited - Supp G-11*

(c) Employer Speech - CB para. 5:500

TUA ss. 13; 53; 58

*Zinck's Bus* - supra

(d) Employer Manipulation Of Working Conditions - CB para. 5:400

TUA s. 23(7)

*Zinck's Bus* - supra

(e) Solicitation On Employer Property - CB para. 5:600

TUA s. 54(d)

Canada Labour Code - Supp G-34

*Zinck's Bus*

(f) Union Unfair Labour Practices -CB para: 5:700

TUA ss 25(10); 54(d);

## **Session XI - October 9 - 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 Relations Board. Assume that you have found unfair labour practices on the part of Earl Edwards' Interiors Limited. Write the decision of the Labour Relations 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); 53(1)(a); 54; 55; 56(1); 57(a); 57(b); 77 to 82; 83(1); 86; 89.

(a) Remedies - CB para. 5:800

*Zinck's Bus Company* Supp G-11

Canada Labour Code - s. 109 - Supp G-34

*United Rubber Workers and Michelin Tire and Clifford Allen et al* 2<sup>nd</sup>  
certification application - Supp G-35

Courts and Administrative Reform Act (N.S.) and Regs -Supp G-38

(b) Professional Responsibility - CB para. 5:900

## **Session XII - October 14 - NEGOTIATING A COLLECTIVE AGREEMENT: PROCESS AND DISCLOSURE**

**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 county 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 Relations 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 Relations Board.

(a) Conciliation

TUA ss. 47, 2(1)(g); 2(1)(h); 2(1)(s); 33 - 40; 61 to 75

(b) Duty to Bargain - CB paras. 7:100; 7:200; 7:410 to 7:422

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 & #2* - Supp H-1 & H-4

### **Session XIII - October 16 - NEGOTIATING A COLLECTIVE AGREEMENT: REMEDIES, FREEZES AND NEW APPROACHES**

(a) Remedies - CB paras. 7:500

TUA ss. 36; 55(5); 78; 80; 82  
*IAM and Courtesy Chrysler #3*, Supp H-18

(b) The Freezes - CB para. 7:300

TUA ss 23(7); 35(b); 83  
*Kentville Hospital* - Supp H-27  
*Zinck's Bus* - Supp G-4  
*Paccar v. CAIMAW* - Supp H-30  
*AUFA and Acadia University* - Supp H-35

(c) New Approaches to Collective Bargaining - CB paras. 7:600 and 7:700

TUA s. 52A, 52AA, and 52B - 52G

## **Session XIV – October 21 - 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 16, 2008. The union executive voted to accept the conciliation officer's report, but the town rejected it out of hand. (Previously, on September 3, 2008 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 28, 2008 the NSMWA served a notice of strike on the Minister of Labour and on October 2, 2008 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 2, 2008 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 30 and October 1, 2008 respectively. On October 4, 2008 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 15.

The CUMW notice of strike was indeed served on the Minister of Labour on October 5, 2008. 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 police 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 14. 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)(o); 2(1)(v); 14; 19(1)(e); 19(1)(k); 47 to 52; 52A to 52F; 53 (esp. 53(3)(a)(vi); 53(3)(b); 53(3)(c)); 84; 85; 105; 106.

(a) Strikes - CB paras. 8:100-8:214

Pothier, *Twenty Years of the Charter* - Supp I-1

*NABET and CJCH 920/C100 FM/CHUM* - Supp I-16

Review *BC Health Services Case* – Supp B-2

(b) Lockouts - CB para. 8:220

## **Session XV - October 23 - INDUSTRIAL CONFLICT – LEGAL FORUMS FOR DISPUTE RESOLUTION**

TUA as for Session XIV

CB paras. 8:300 – 8:332

*N. S. Civil Procedure Rules*, Rule 5.09 "Representative Proceeding" - Supp I-20

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

Christie "Cease And Desist Orders" (unpublished) - Supp I-21

*NSNU and Halifax Infirmary*, Supp I-24

## **Session XVI - October 28 - INDUSTRIAL CONFLICT – THE REGULATION OF PICKETING**

**Problem #7.** Suppose the facts of *Brett Pontiac Buick GMC Ltd. v. NABET, Local 920 (NSSCTD) (Handout)* 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 recent decisions of the Supreme Court of Canada culminating in *Pepsi* and/or *B.C. Health Services*.

TUA as for Session XIV

Regulation of Picketing - CB paras.8:400-8:420

Recall *Moxon's*, Session IX

Pothier, *Twenty Years of the Charter* – Supp I-1 and *B.C. Health Services*

Supp B-2

## **Session XVII – October 30 - INDUSTRIAL CONFLICT – RIGHTS AND OBLIGATIONS OF STRIKERS and ALTERNATIVES TO INDUSTRIAL CONFLICT**

TUA as for Session XIV plus TUA Sections 52A to 52F

- (a) Employee Status During a Strike - CB paras. 8500-8520  
*Kelly's Ambulance* - Supp F-12  
*Halifax Infirmary* Supp I-24
- (b) Alternatives To Conflict: CB paras. 8:600-8:630  
Abandoned N.S. Health Care Sector Amendments to TUA - Handout

## **Session XVIII - November 4 - COLLECTIVE AGREEMENTS AND MANDATORY RIGHTS ARBITRATION**

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

- (a) Introduction and Background: CB paras. 9:100-9:200
- (b) Substantive Issues- Discipline and Discharge: CB para. 9:300-9:320
- (c) Sources of Arbitral Reasoning and Arbitrators Powers: CB paras. 9:400-9:420 and 9:510-9:530

## **Session XIX - November 6 - ARBITRATION, OTHER FORA AND OTHER APPROACHES**

TUA as in Session XVII

- (a) Institutional Dimensions - Other Fora: 9:600-9:631; 13:350  
Note: Aftermath of *Russellsteel* -Supp J-1  
*Quebec Commission des Droits de la Personne etc.* Supp J-1  
*Arbitration Act (N.S)* -Supp J-15  
*Bisaillon v. Concordia University* – Supp J-17  
*Roberval Express* - Supp J- 36  
*IMP Group and CAW* - Supp J-39  
*HRM and IAFF Re Jesty*, Handout
- (b) Critiques of Arbitration and Alternatives - CB paras. 9:800- 9:824

## **Session XX - November 13 - JUDICIAL REVIEW OF LABOUR RELATIONS TRIBUNALS**

**Problem #8 due.** The Canadian Union of Pop Workers (CUPW) represents a unit of employees at the Fizzy Pop Ltd.. Fizzy has 8 separate permanent locations, plus an Oldtime Soda Fountain in downtown Halifax, 4 mobiles which park in various locations on different days, and 6 delivery trucks deliver to customers' homes. Fizzy is constantly moving pop within the system by the use of small vans. There used to be a separate job classification within the CUPW bargaining unit consisting

of a mobile category for the employees who were assigned to various locations on an as needed basis who also handled the van deliveries. In addition there was a more senior stationary job classification for employees who worked full-time at a particular permanent location and were not involved in the van deliveries. However, Fizzy found this system inefficient, and in the last round of collective bargaining secured a change in the collective agreement abolishing the two job classifications. CUPW reluctantly agreed to this change in order to avoid layoffs. In substitution the following clause was added to the collective agreement.

25. All employees must be capable of doing all aspects of bargaining unit work. The assignment of work shall be at the employer's absolute discretion.

Daniel Davis has been an employee of Fizzy in the CUPW mobile unit for ten years. He recently developed an eye condition that has substantially worsened his vision. He can no longer see well enough to drive but he is still capable of performing all other aspects of his job. Nonetheless, Fizzy has given him a termination notice, citing clause 25 of the collective agreement. CUPW grieved his termination under a standard “no dismissal without just cause” provision. The case proceeded before arbitrator Elaine Edwards, who is named under the collective agreement as the sole arbitrator for all disputes. The following is the full text of the arbitration decision, with the possibly contentious points numbered for your convenience.

My job is simply to interpret the collective agreement, [1] not to decide whether the collective agreement is fair. I derive my powers from the collective agreement and [2] I am bound to follow what it says, without any power to change it.

In the present circumstances the collective agreement is clear. An employee must be capable of performing all aspects of bargaining unit work, a stipulation which Daniel Davis no longer meets. Whether it is fair for him to lose his job for that reason is not for me to say. What is for me to say is that the employer was acting in full conformity with the collective agreement in terminating Daniel Davis.

The union has asked me to deal with arguments based on the Nova Scotia *Human Rights Act* and the *Canadian Charter of Rights and Freedoms*. [3] That I declined to do because it is beyond my expertise. Although I have twenty years experience as an arbitrator, and consider myself well versed regarding collective agreement interpretation, I am not a lawyer and am not well placed to decide *Human Rights Act* and *Charter* cases. [4] I assume there must be other avenues for dealing with those kinds of claims.

Based on my interpretation of the collective agreement, I dismiss the grievance.

CUPW has filed an application under the Nova Scotia *Arbitration Act* to set aside the award of Arbitrator Edwards. The union further seeks to have the case remitted to a different arbitrator. The employer argues that there is nothing that warrants the setting aside of the arbitration award, and furthermore submits that the Court has no jurisdiction to remit the case to anyone other than the arbitrator named in the collective agreement. Assume you are a judge of the Nova Scotia Supreme Court, and that both the union and the employer agree that you are properly seized of the union's application. Write the decision of the Court as to whether to set aside the award of arbitrator Edwards. Also deal with the question of whether another arbitrator could or should be designated to hear the case.

(a) Review of Arbitrators - CB 9:700

*Dunsmuir v. New Brunswick*, K-1

*ILA and Maritime Employers Assoc (Halifax)* – Supp K-38

(b) Review of Labour Relations Boards

*Canada (A.G.) and PSAC* - Supp K-41  
*Royal Oak Mines* -Supp K-45  
*City of Halifax and NSUPE* -Supp 64

**Session XXI - November 18 - THE INDIVIDUAL EMPLOYEE UNDER  
COLLECTIVE BARGAINING: DUTY OF FAIR REPRESENTATION**

TUA ss. 15; 25(15); 27; 30(3)(a); 41; 54; 54-A; 55; 56; 57; 59; 60; 78;  
New N.S. DFR Guidelines (Handout)

(a) The Primacy of the Collective Agreement - CB paras 10:100 - 10:230

(b) Duty of Fair Representation - CB paras: 10:300-10:340  
but omit *Centre Hospitalier Regina* and read in its place:  
*Noël v. Société d'énergie de la Baie James* - Supp L-1

*Romard v. CUPE and CUPE Local 3264* (SCNS) Supp L-7  
*Canada Labour Code and Ontario Labour Relations Act* - Supp L-12

**Session XXII -November 20 - THE INDIVIDUAL EMPLOYEE, THE UNION  
AND THE CHARTER: MEMBERSHIP AND FREEDOM OF  
ASSOCIATION**

TUA as for Session XXI and ss. 53(3)(a)(vi), 55, 56, 57, 58, 59 and 60.

(a) Union Security Clauses: CB paras: 10:400-10:500

(b) Protection of Union Membership Rights: CB para. 10:600

*McCarthy and Rice and IBEW, Local 625*, (NSLRB) – Supp L-12  
*Safire* – Supp L-16

**Session XXIII - November 25 - LABOUR LAW IN THE NEW  
INTERNATIONAL ECONOMY**

(a) The Crisis of International Relations and Labour Law - CB paras 1:600, 1:700  
14:100 (pp 913-924)

(b) New Responses - The ILO and NAFTA - CB 14:200 (pp 949-968; 972-986;  
988-994; and 996-1002)

**Session XXIV – November 27 – LABOUR RELATIONS, HUMAN CAPITAL  
INVESTMENT AND SOCIAL CAPACITY BUILDING**

(a) A New Paradigm? – CB pp 944-949 and 14:300

Langille, “New Platform, New Paradigm” – Supp M-1

Stone, “The New Psychological Contract” – Supp – M- 10

**SESSION XXV - December 2 - REVIEW (Extra Class – Optional)**

- Labour Law Exam December 2007 - Handout

**EXAMINATION: December 11, 2008 – 9:30 a.m.**