

York University
School of Human Resource Management
HRM 3422 3.0

INDUSTRIAL RELATIONS
Summer 2011

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OFFICE: Room 268, Atkinson Building
OFFICE HOURS: By Appointment

Course website: <http://www.yorku.ca/ddoorey/hrm3422/blog/>

Professor's Blog: Students should frequent my main blog called "Doorey's Workplace Law Blog". This blog will have a link to the course website and will include regular posts that relate course material to current news events. The URL link is:

<http://www.yorku.ca/ddoorey/lawblog/>

COURSE TIME AND LOCATION:

Mon & Wed, 12:30 – 3:30 p.m., Room ACE 009.

PREREQUISITE:

COURSE DESCRIPTION/OBJECTIVE:

This course works in tandem with HRM 3420 (Employment Law), which focuses on the common law of employment and employment regulation largely in the non-union workplace. HRM 3422 emphasizes the third regime of workplace governance: Collective Bargaining. The course will introduce the student to the complexities of the labour management relationship and explore various techniques for successfully managing this critical area of business. The course is multi-disciplinary, and examines issues of business, economics, history, and sociology. However, this section of HRM 3422 will be presented largely through the lens of law and public policy. We will examine the relationship between the private actions of workers and employers and the role of the state in trying to influence those relationships through legal rules that at times encourage a collective model of employment relationships and at other times discourage and restrict the collective model.

Students will be challenged to think critically about how we govern the employment relationship in Canada and whether our policies are ultimately successful.

After completing this course, students will have a strong foundation in the key elements and philosophies that underpin the Canadian approach to the collective model of employment relationship. Students will be better equipped to assess and critique how legal regulation interacts with other social and economic tensions in the pursuit of public policy objectives. The knowledge acquired in this course will be beneficial to all students interested in business, law, human resource management, and labour relations. It will benefit students interested in employment as HR managers and industrial relations professionals, as well as students interested in further higher education in law, HRM, industrial relations, and business.

TEXT AND SUPPLEMENTAL READINGS

Peirce, Jon & Bentham, Karen, Canadian Industrial Relations, Third edition, Prentice-Hall, Canada, 2006, ISBN - 0 -13 - 094581 - 1.

There are **supplemental readings** available in a Course Kit. I will also occasionally post additional materials and blog entries on the course blog. The **blog entries** are not required reading, but it is highly recommended that you read them (they are short) because they will provide you with greater insight into the issues we are discussing in class.

BLOGS AND TECHNOLOGY

I use various technologies in this class, including BLOGS and virtual simulations. These technologies are intended to enhance your learning experience and not to be a source of stress. I recommend you use the BLOGS regularly early in the term so that you are comfortable with them.

There are Two BLOGS used in this course:

1. *Doorey's Workplace Law BLOG: (<http://www.yorku.ca/ddoorey/lawblog/>)*

This blog is updated regularly with posting relating to labour and employment law and industrial relations issues. I recommend you read the blog daily as the material will often relate directly to the course content. Feel free to raise any issue or ask any question relating to a posting.

2. *Dedicated Course BLOG: (<http://www.yorku.ca/ddoorey/hrm3422/blog/>)*

This blog is specifically dedicated to HRM 3422. On it you will find information such as the outline, lecture notes, handouts, and other course specific information you will find useful. You can ask questions about the course content on the blog by using the Comment feature. I will attempt to respond to comments regularly. You should check this blog regularly.

TESTS AND ASSIGNMENTS

The midterm test will be held in class during the regular scheduled lecture time. The final exam will be held in the exam period. The University will set the date at which time you will be informed. You are expected to be available for the midterm and the entire exam period, so please arrange your schedule accordingly.

The final exam is cumulative, but weighted heavily on material after the midterm.

There is an OPTIONAL essay assignment. If you elect to do the essay option, the grading scheme will change as noted below. You can decide whether to do the essay option after you see your midterm grade. The essay will be 5 double-spaced pages and will require you to respond to an assigned question. The assignment will be distributed after the midterm. It will be due at the beginning of the last class. **Late submissions will not be accepted.** If you do not submit an essay, you will be assessed according to Option Two below.

METHOD OF EVALUATION:

Option One: With Optional Assignment

Mid Term Test.....	30%
Optional Essay Assignment	15%
Final Exam (in exam period).....	<u>55%</u>
TOTAL	100%

Option Two: Without Essay

Mid Term Test	45%
Final Exam.....	<u>55%</u>
TOTAL	100%

The date to drop a course without a grade being entered is **May 27th**. **You will receive your midterm mark before that date.**

IMPORTANT: Missed Tests and Late Assignments

There will be no make-up test for students who miss the mid-term. Students who present a proper medical authorization form as per the University's policy (see the link at: <http://www.atkinson.yorku.ca/Council/Students/physicianStatement.pdf>) explaining that they could not write the mid-term due to medical reasons will be required to write the written assignment, and will be assessed according to the following scheme:

Assignment	25%
Final Exam	75%

All final grades will be reviewed by the School of Human Resource Management, and the School reserves the right to modify them in order to maintain high standards.

PREPERATION FOR CLASS

You should read all of the required readings prior to watching the lecture. I will post lecture summaries on the course blog, but these will be skeleton notes. Be sure to pay attention to the lecture, and then make summaries based on your own observations, notes, and my lecture notes.

Detailed Reading List and Summary of Classes

PART I: INTRODUCTION TO PERSPECTIVES AND THEMES IN INDUSTRIAL RELATIONS

Lecture 1 (May 2): Introduction: The Three Regimes of Workplace Governance

Why do we regulate the employment relationship, and should we? What was employment like before we had modern employment laws? In class, I will ask you whether profit is a good thing?

Readings: Text, Chapter 1, 1-8 (Introduction to IR)

- S1: D. Doorey, “Employee Rights and Discipline” in M. Belcourt, et al., *Managing Human Resources*, 6th Ed., pp. 512-521 (quick overview of the three regimes of workplace law)
- S2 J. Rinehart, *The Tyranny of Work*, 2nd Ed., pp. 32-40 (describing working conditions under early Canadian capitalism)
- S3 B. Kaufmann, “Labour Market & Employment Regulation: The View of the “Old” Institutionalists” in B. Kaufman, ed., *Government Regulation of the Employment Relationship*. Madison, WI: Industrial Relations Research Association), p. 15-17

Blog Entry: *Would You Work for \$2.50 an Hour?*

When Did Having No Job Security Become a Virtue?

Lecture 2 (May 4): Perspectives on Industrial Relations, Markets, and Regulation

Few doubt that workers (usually) have relatively little bargaining power in their relationship with the employer. However, the implications of this power imbalance has

influenced a long-standing, often heated, and ongoing debate about how best to “govern” the employment relationship. Will the free market protect workers from abuse? Will HR managers? Or are employees better off with unions and collective bargaining?

Readings: Text, Chapter 1, Pages 14-18 (Perspectives on IR)

S4 J. Budd & D. Bhave, “The Employment Relationship”, in *Sage Handbook of Human Resource Management*, (A. Wilkinson, et al, Eds), excerpts, p. 55-65 (examining the Perspectives on IR)

Note terminology. In text:

<i>Neoclassical</i>	=	<i>in Budd & Bhave:</i>	<i>Egoist Perspective</i>
<i>Managerialist</i>	=	<i>in B&B:</i>	<i>Unitarist</i>
<i>Institutionalist</i>	=	<i>in B&B:</i>	<i>Pluralist</i>
<i>Reformist & Radical</i>	=	<i>in B&B</i>	<i>Critical</i>

S5 R. Reich, “Why We Need Stronger Unions and How to Get Them” (an Institutional/Pluralist comment)

S6 S. Deakin & F. Wilkinson, “The Law and Economics of the Minimum Wage” (1992), 19 J. Law & Soc. (Excerpt) (discussing and critiquing neo-classical perspective)

S7 N. Meltz, J. Budd, R. Gomez, “Why a Balance is Best: The Pluralist Industrial Relations Paradigm of Balancing Competing Interests”, pp. 197-199, 207-209

Blog:

HRPA Offers Credit for Union Avoidance Education

Capitalism Needs Strong Government Regulation, Says 75% of Canadians

B.C. Raises Minimum Wage: Cue the Battling Economists

Films: Milton Friedman, On the Minimum Wage
Friedrich Hayek, On the Trouble with Unions
Barrack Obama, “I Want to Talk About Unions”
Mary Cornish, On the Need for Pay Equity
James Gross, On Why HRM is “insidious”

Lecture 3 (May 9): The Origins of the Canadian Labour Law Model

The current model of labour relations in Canada has its origins in laws passed during World War II. Although laws passed during that period gave workers new legal rights to engage in collective bargaining and to strike, advancing workers' rights was not the principal objective; the main purpose was to control labour unrest and militancy. However, after the War, Western governments adopted a more favourable view of unions and collective bargaining as a means of distributing wealth, giving workers a voice, and securing peace. That general support for collective bargaining began to deteriorate in the U.S. by the 1980s and by the 1990s in Canada, when conservative governments adopted a more antagonistic view of collective bargaining, perceiving it as a barrier to investment and productivity growth. In other words, the classical economic model gained credence in political circles, and state support for unions dissipated. We we learn about how the model evolved in recent years later in the course. Today's class looks at the development of the model in the mid-19th century.

Readings:

- S8 R. Marsden, "Labour History and the Development of Modern Capitalism" in M. Gunderson & D. Taras, *Canadian Labour & Employment Relations* (6th Ed), excerpts, 56-72.

Handout Overview Sheet on Canadian Labour History (Doorey)

Film: Hard Times, High Hopes (1929-1945)

Supplemental Reading: Text, Chapter 3: The History of the Canadian Labour Movement

Lecture 4 (May 11): The Union Organizing Campaign, Certification & Decertification Process, and Unfair Labour Practices

As we saw in the history review, when left unregulated, employers often responded to attempts by their employees to unionize in a very hostile manner, which in turn provoked strikes and (sometimes) violence. The legal compromise was to provide workers and unions legal protections to organize and bargain, but those protections came with important limitations, including a requirement to obtain "majority support" and severe restrictions on the right to strike. How majority support is determined has become a issue of substantial controversy in Canada and the U.S. in recent years.

Readings: Text, Chapter 7, Collective Bargaining Legislation, pp. 174-195

- S9 *Labour and Employment Law: Cases Materials Commentary* (Excerpts, Employer Speech and Remedial Certification)

S11 D. Doorey, The Suspect Union Ballot (National Post, Comment)

Supplemental Reading:

S12 C. Riddell, “Union Certification Success Under Voting Versus Card-Check Procedures: Evidence from B.C.”, (2004), 57 Ind. & Lab. Rel. Rev. 493 (excerpt)

Legislation: **Labour Relations Act**, Sections 7-10 (application for certification), 11 (remedial certification), 63 (terminating union bargaining rights), 70, 72, 76 (unfair labour practices), 96 (reverse onus)

Blog: *Brofenbrenner on Employer Anti-Union Behavior*
Have York Deans Violated the Labour Relations Act?
Remedial Certification: Why Employer’s Shouldn’t Fire Union Organizers
Victoria Secret’s Union Free Pledge
New York Times Supports Move to Card-Check Certification

Lecture 5 (May 16): The Rules and Processes of Collective Bargaining

The collective bargaining regime fundamentally alters the common law model of individual bargaining. Whereas individual employees rarely “bargain” their employment terms, in the collective bargaining model terms of employment are bargained hard by professional union negotiators. Moreover, this bargaining takes place under the threat of a potential strike or lockout if a deal is not reached. This week we examine this model and the processes involved.

Readings: **Chapter 9, Collective Bargaining Structures**
(pp. 243-246, 251-265)

Legislation: **OLRA**, Section 16 (notice to bargain), 17 (duty to bargain in good faith), 18 (appointment of conciliation officer), 40 (voluntary arbitration), 42 (employer’s right to request a vote on its offer), 44 (mandatory ratification vote)

Blog: *York Transit Strike, and the Mandatory Ratification Vote*
Final Offer Vote Strategy Works at Colleges
Union Members Reject York’s Offer in Forced Ratification

Vote

Discussion and Preparation for Collective Bargaining Simulation

Film: **The Negotiator**

MIDTERM TEST: May 18 NORMAL CLASS TIME

[LAST DATE TO DROP COURSE WITHOUT RECEIVING A GRADE (MAY 27). MIDTERM GRADES WILL BE ANNOUNCED PRIOR TO THIS DATE.]

VICTORIA DAY (May 23): No Class

LECTURE 6 (May 25): Why Do People Join Unions? What Do Unions Do? What Do People Think About Unions?

[Note that I will be away this class due to a work-related conference overseas. This lecture will be posted as a video on the course blog. Therefore, you will not need to attend class, but you are expected to watch this video on a computer and prepare for the lecture as usual.]

Readings: **Text, Chapter 5:** Union Impacts, pages 133-144.

S12 L. Suffield, *Labour Relations: PH Series in HRM* (2d). pp. 104-108
[the workers' decision to join a union]

S13 A. Frost & D. Taras, "Understanding the Unionization Decision",
from *Canadian Labour & Employment Relations* (M. Gunderson
& D. Taras, 6th Ed.) excerpts, p. 45-52

S14 M. Lynk, "Labour Law and the New Inequality"

Blog: *Canada's Income Inequality Continues to Grow*

Don't Confuse Union Density with the Demand for Unionization

So, What About the "Bad" Employers?

Optional Video: *Professor Michael Lynk discussing his paper "Labour Law and the New Inequality" [You won't be tested on this presentation, but it would help you better understand the paper, which you may be tested on]*

LECTURE 7 (May 30) Women, the Public Sector, and Collective Bargaining

This week explores two issues. The first is the plight of women under the collective bargaining model. We will look at how the PC 1003 model focused on unionization of large industrial workplaces where men worked, and not the jobs that women performed. We will then explore the distinct situation of public sector bargaining, where the rules and contexts are considerably different than under the private sector.

Readings: Text, Chapter 4 Union Membership, pp. 91-92
(Growing Unionization of Women)

Text, Chapter 8, Public Sector Collective Bargaining,
pp. 205-213, 221-236)

S15 A. Forrest, "Securing the Male Breadwinner: A Feminist Interpretation of PC 1003" (1997) 52 Relations Industrielles (excerpts)

S16 A. Forrest, "Organizing Eatons: Do the Old Laws Still Work?" (1988) Windsor Y.B. Access to Justice (Excerpts)

Legislation: *Toronto Transit Commission Labour Disputes Resolution Act, 2011 (will be reviewed in class)*

Blog: *Some Thoughts on Canadian Unionization Rates (note 2007 StatsCan study showing the percentage of women who are union members is now higher than the percentage of men who are union members)*

The Ongoing TTC Essential Services Debate

The TTC Strike Ban Legislation

Arbitrator says he won't be "minion of government", awards Toronto Profs a Raise

When Did Having No Job Security Become a Virtue?

Here's the Back to Work Legislation: York University

Lecture 8 (June 1): Strikes & Lockouts

Chapter 11, Strikes, Lockouts, and Dispute Resolution (pp. 295-309, 316-322)

Legislation: OLRA, section 46 (no strike/lockouts), 48 (mandatory arbitration), 79 (when a strike/lockout is lawful), s. 80

(rights of strikers)

Blog: *Locked Out Workers Take to You-Tube in Fight With Sears*
York Strike and the Rules of Picketing
The York Strike in Retrospect

Collective Bargaining Simulation (Groups of 3 or 4)

Lecture 9 (June 6): The Collective Agreement and Labour Arbitration

The collective agreement is the employment contract for unionized workers. Once a collective agreement is in force, all of the common law rules that applied to the individual employment contract, which we learned about in week 3, no longer apply. Unionized employees cannot sue their employer in a court. Rather, they are required to file a grievance under their collective agreement, go through a grievance procedure, and then, if the grievance is not resolved, it will be litigated before a labour arbitrator. We consider this model in this class.

Readings: Text, Chapter 12, Grievances: Function, Resolution, and Prevention, pp. 325-344.

S17 Sample Collective Agreement

S18 Smurfit-MBI & International Paper Workers (Arbitration Award, 2009)

S19 Bohay v. Image 1 Hair Team (567878 Sask Ltd.) (Wrongful Dismissal)

Legislation: OLRA, s. 48 (mandatory arbitration), s. 48(12) (powers of an arbitrator)

Blog: *Is Telling Your Boss to *%&# off Cause for Dismissal*

*Is Telling Your Boss to *%&# off Cause for Dismissal: Part Deux*

Can Mayor Ford Contract Out Garbage Collection?

Arbitration Simulation: Muskoka Bay Beer Company, Dismissal Grievance

Lecture 10 (June 8): The Charter of Rights and Freedoms and International Labour Law

There has been a lot of discussion in Canada recently about whether governments are permitted to pass laws that restrict workers' rights. For example, the Ontario government just passed a law banning TTC strikes, and it has long had laws denying rights to collective bargaining for a whole range of workers (agricultural workers, lawyers, managers, etc). It is the Charter of Rights and Freedoms that governs what a government can and cannot do. Section 2(d) of the Charter says that everyone has the right to "freedom of association". This class considers labour rights as constitutional and human rights. We then explore Canada's obligations under international law to protect freedom of association, and how poorly Canada has performed in this regard.

Readings:

- S20 D. Doorey, "The Charter of Rights and Freedoms and Workplace Law: A Guide for Beginners", pp. 1-17 only)
- S21 NUPGE, ILO, Backgrounder
- S22 Ontario and the ILO (excerpts describing Ontario's violations of ILO standards)

Video: NDP Leader, Andrea Horwath, on Ontario's Violation of ILO Standards (23 Nov. 2010)

Supplemental Reading:

ILO Case No. 2704, Finding that Ontario's exclusion of agricultural workers from protections in Labour Relations Act violates ILO FA (20 Nov. 2010)

Blog:

The Freedom of Association Transformation

The TTC Strike Ban Legislation

Roy Adams on the Fraser Case and the Recent ILO Decision Finding Ontario Violated ILO Law

Ontario violates International Human Rights Laws....Again

Ontario Pushes to Ban Fundamental Human Rights