

# Industrial Relations HRM 3422 Midterm

## Chapter 1

### **The Three Regimes of Work Law**

1. The common law regime
2. The regulatory regime
3. The collective bargaining regime

### **The Common Law Regime**

Comprised of both:

- **Law of contracts**
  - The cornerstone of the common law regime is the contract, and in particular, the employment contract between employers and individual (non-union) employees
  - **Contract** – A legally binding agreement consisting of reciprocal promises between two or more parties
  - **Common Law** – A system of judge-made rules originating in England around the 12<sup>th</sup> century, and inherited by Canada as a British colony, that uses a precedent based approach to case law. Earlier decisions dealing with similar facts or legal issues guide later decisions in an attempt to create legal predictability. However, common law rules can and often do evolve as social values change.
  - **Employment Contract** – A contract between an employer and an individual employee that defines the conditions under which the employee will provide labour to the employer in exchange for a monetary benefit (wages, salary), and sometimes other benefits (e.g., health benefits). An employment contract may be written or oral
  - **Breach of contract** – occurs when a party to a contract violates one or more terms of a legally binding contract
  - **Remedy** – the means by which a court or tribunal enforces its decision, such as ordering the guilty party to pay monetary damages or take such further action the court deems appropriate to compensate victims for loss or deter future wrongful conduct.
  - **Distinguish** – to explain how a prior legal decision dealt with facts or legal issues that are different from the facts or issues in the current case
  - **Precedent** – an earlier decision made by a judge that dealt with the same, or very similar, facts and legal issues as those before a judge in the current case
  - **Stare Decisis** – a Latin term meaning “to stand by a previous decision”. It is a guiding principle in common law regime
  - **Jurisdiction** – the scope of authority over which a government, court, or expert administrative power has the power to govern
  - **Binding Precedent (or binding decision)**: An earlier decision by a court of higher ranking dealing with the same legal issue in a case that comes before a lower

## Industrial Pluralist

- **Industrial Pluralist** – a view of the law of work that emphasizes the inequality of bargaining power between employers and employees and advocates for collective bargaining and unions as a means of empowering workers so that they can bargain fairer employment outcomes.
- Industrial pluralists believe that an inherent imbalance of power exists between employees and employers.
- This imbalance is problematic for both social and economic reasons.
- This perspective believes that unions have a role to play in negotiating that relationship between workers and managers
- Think of 'pluralist' as meaning 'multiple' and in this case the multiple actors include not just employers and/or governments, but also unions
- **Gini Coefficient** – a statistical measure of economic inequality that measures the extent to which income distribution among individuals or households within a population deviates from a perfectly equal distribution. The higher the number over 0, the higher the inequality. In a population with a Gini score of 0.0, everyone earns the same amount. In a population with a score of 1.0, one person earns all the income.
  - Industrial pluralism was the dominant perspective in Canadian politics from the late 1940s until the late 1980s, with all the major political parties supporting collective bargaining. Unions represented almost 40% of Canadian workers in the mid-1980's before union density began a decline to its current (2018) rate of about 28.1 overall
  - What is significant about this time period?
  - Other perspectives that were dominant in Canada's early years:
    - Liberal Voluntarism (1850-1900)
    - Industrial Voluntarism (1900-1948)
    - (Also referred to as "regimes of industrial legality")
    - Fudge and Tucker (2004) suggest Industrial Pluralism is still the current regime of industrial legality – do you agree? (I've posted an excerpt/summary as 'supplemental reading' this week on eClass)

## Critical Reformist Perspective

- **Critical Reformist** – a view of the law of work that supports both collective bargaining and regulatory standards, but emphasizes how both have tended to fail the most vulnerable workers. This perspective focuses on how laws can be reformed to better protect these workers.
- The critical reformist perspective has much in common with the industrial pluralist perspective.
- It is more critical of the outcomes that are actually produced by collective bargaining in Canada.

- Participate as a candidate or voter in union steward elections
  - A union steward administers and defends the collective agreement on behalf of union members and carries forward complaints and grievances from members
- Participate as a candidate or voter in elections for union executive
  - The exec manages the day-to-day affairs of the local

### **Union involvement**

- Active vs. inactive
  - A lot of members do not actively participate
    - If you are a union member, have you attended a membership meeting? Some members have not even read their collective agreements
  - When are they more likely to participate?
    - When a big issue that affects them is on the table (e.g. the possibility of a strike)
  - Why do they choose not to participate?
    - The idea of a 'service model' of unionism; figure the union will help them when they need it, and otherwise keep them informed of whatever they need to know
  - What are some of the potential problems we face because of inactive involvement?
    - Passive, non-mobilized, underprepared to join in solidarity when it's needed. Like not ever exercising, but then suddenly needing to run a race

**Union business representative** – an employee of a union whose job includes assisting local unions in the negotiation of collective agreements and administration and enforcement of collective agreements

**Union steward** – a representative of a union in a workplace, often elected by employees in that workplace, who is responsible for representing employees in day-to-day concerns about working conditions and collective agreements

**Grievance procedure** – a provision of the collective agreement that explains when and how a grievance alleging a breach of the agreement can be filed and what process will be used to mediate the grievance, and if not resolved, to refer the grievance to binding labour arbitration. A grievance procedure usually includes several "steps", with the final step being referral to arbitration

**Canadian labour congress (CLC)** – the largest federal confederation of unions in Canada, representing 3 million Canadians. Its main roles are to lobby governments, provide leadership on key issues, and provide training and education resources for its member unions. It holds national convention every three years