

Employment Law in Canada

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Employment Law in Canada

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*To Jeanne
and to Sandra*

Preface

This book is intended for use by lawyers and others professionally concerned with employment law. By “employment law” I mean the legal structure of the individual employment relationship, the non-collective aspect of what standard English texts refer to as labour law. In Canada “labour law” is generally understood to be the law governing the collective bargaining relationship. Labour lawyers on both sides in Canada are well served by texts and a relatively extensive periodical literature on various aspects of their specialty, but increasingly they must deal with questions of “employment law” as it affects their clients. The general practitioner, too, faces employment law questions with increasing frequency as do union officers, personnel people and government officials charged with administering the ever increasing statutory regulations of the employment relationship. Law students will be less concerned with the details of statute and case law which burden this book, but I hope it will serve the purposes of anyone attempting to gain a broad sense of the law and legal process as it affects what is, after all, one of the most important human relationships.

The broad sweep of “employment law” as I have defined it has had to be limited somewhat arbitrarily for packaging between the covers of one book. Those limits are defined in Chapter 1, where the structure of this work is explained, and will not be repeated here, except to say that omission of any systematic coverage of Quebec law is a matter of particular regret. On a different plane, the scanty treatment of occupational health and safety regulation is also to be regretted, particularly because it is at last gaining the public attention it deserves.

Because this is intended to be a reference work there is a detailed table of contents, an index and a table of cases in the standard style of a legal text. Much of the text and a great many of the footnotes are concerned with statute law so economy of space has dictated less than full statutory citations, but full citations of all statutes referred to, with amendments, are provided in the Table of Statutes. That Table does not list the pages at which all references to each statute or section thereof can be found. However the detailed Table of Contents and the Index should provide adequate access to the many statutory references in the text.

In the real world of employment law legislation looms very large indeed, and that legislation, particularly the labour standards legislation which sets the floor of employee rights and employer obligations in each jurisdiction, has been changing very rapidly. No decision of any consequence, therefore,

should be taken nor, it goes without saying, should any legal opinion be given without an updating reference to the statutes and regulations themselves. Case law is developing rapidly as well, but for the purposes of writing a book somewhere the process must stop! While a few last minute changes were made where possible, in this book the last systematic updating that could be done on both statute and case law was to January 1, 1979.

This is a book which, as my friends and acquaintances are prone to remind me, has been some years in the making. Over these years I have enjoyed the support, in various forms, of many people who richly deserve my thanks.

My former graduate student and colleague, Brent Cotter, is the author of Chapter 8, on the very important and hitherto uncharted topic of Recovery of Unpaid Wages. At my suggestion and under my supervision he did his LL.M. thesis on that topic, and when he had finished agreed, to my vast relief, to rewrite it in a form appropriate to constitute Chapter 8. His unhesitating co-operation in the final stages of this project has had a great deal to do with ensuring its completion.

For over five years students in my seminar in Employment Law at Dalhousie have contributed through classroom debate and discussion, critical evaluation of parts of this material and their own researches to this work, and I have been faithfully, sometimes brilliantly, served by a succession of summer research assistants, association with whom has been the most enriching part of this work. I must thank particularly Jim Dorsey, who helped me get started, and Joel Fichaud, who not only did a truly amazing amount of research but also assisted greatly in clarifying my thinking on the whole field of law covered by this book, and Mike McNeil and Elizabeth Bigelow who saw it through the end stages with good judgment and great patience. My warmest thanks as well to Rod Snow, Della Risley, Sharon White and Beth McLeod for a no lesser degree of service in the middle stages.

My thanks too to the members of the secretarial pool at Dalhousie who were involved in typing the many drafts through which this material has gone. Fannie Scott (sadly now deceased) gave it a good start; Jeanne Arsenault, Natalie Thomas and Marie Brown worked willingly and well to keep things going and Mary Moriarty saw it to a finish with her usual efficiency and good humour.

I gratefully acknowledge the financing for one summer research assistant that was provided by the Federal Department of Justice under its program to aid summer research in law schools. Support for the other research assistants and typing was provided directly out of Dalhousie Law School funds, for which I am very grateful to Dean Ronald St.J. Macdonald and Dean W. H. Charles.

From start to finish Butterworths, in the persons of David Godden, Peter Horowitz and James Michaud, has been unfailingly patient and

encouraging and in the final stages my editor, Anne Butler, has done a wonderful job in turning this very difficult typescript into a finished product.

For any errors that remain and for any larger shortcomings in this book I, of course, accept full responsibility, except for Chapter 8, for which all credit, and full responsibility, belongs to Brent Cotter.

I will also take this opportunity to thank two men I have never met and one whom I knew only slightly some years ago. As will be obvious to anyone who reads this book, I owe a considerable intellectual debt to the authors of *Heppell and O'Higgins on Employment Law*, an English text which stresses the importance of legislation in today's law of employment, and to M. R. Freedland, the author of *The Contract of Employment* (1976), for his acute analysis of the contractual elements of the employment relationship, which are common to the law of England and Canada.

Finally, I owe my deepest gratitude to my wife Jeanne for taking on the extra burdens involved in my commitment to this work, for accepting summers spent on "the book" and for encouragement through the bad times.

Innis Christie

Halifax, Nova Scotia
April, 1980.

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