

Section 7: The Law and the Rights of Workers

Overview

In this section, you will learn:

- to identify and distinguish between those individual rights enjoyed by Canadians that are protected by constitutional law, human rights legislation, and other statute law
- the degree of protection enjoyed by rights that are protected by constitutional law, human rights legislation, and other statute law
- the legal source and nature of the specific rights or protections enjoyed by workers
- how to determine the specific rights and protections enjoyed by workers in your province
- the meaning of the following terms: constitutional rights, human rights legislation, rights, statute law

What are the rights of workers?

All Canadians enjoy the **constitutional rights** that are defined in the Charter of Rights and Freedoms. The Charter is part of the Constitution Act of 1982, which limits the power the government has over its citizens. A constitutional amendment is required to change these rights. The courts have the power to disallow a law if it unfairly limits the individual's rights and freedoms. The Charter identifies categories of **rights** including:

- fundamental freedoms such as freedom of speech, assembly, and association;
- democratic rights such as the right to vote;
- mobility rights, which include the right to pursue the gaining of a livelihood in any province;
- legal rights such as the right not to be arbitrarily detained or imprisoned; and
- equality rights, which guarantee every individual has the right to equal protection and benefit of the law without discrimination.

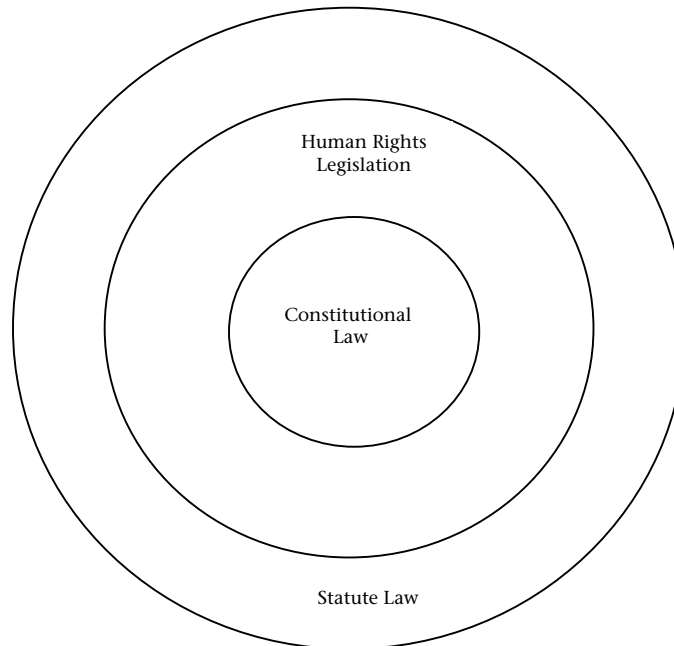
There is no specific category within Canada's constitution or Charter that guarantees separate rights to workers, though Section 23 of the United Nations Universal Declaration of Human Rights states:

- everyone has the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment;
- everyone, without any discrimination, has the right to equal pay for equal work;
- everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection; and
- everyone has the right to form and to join trade unions for the protection of his interests.

Canada is a member of the United Nations and has signed the Declaration. But the U.N. has no power to compel it to enforce these rights. Canadian governments, guided by the Charter of Rights and Freedoms, have, however, passed laws that grant Canadian workers some of these rights such as to receive equal pay for equal work and employment insurance payments when unemployed. These benefits may, however, be changed or even eliminated by the passage of new amendments or laws. They are not guaranteed and should not be taken for granted.

Rights and the law

There are three different types of law that relate to the “rights” of workers: constitutional law, **human rights legislation**, and **statute law**. Think of them as three concentric circles. Each type of law must conform to the standards set by other types that are closer to the centre of the circle. Laws furthest from the centre are the easiest to change and most subject to political and ideological pressures.



	Constitutional Law	Human Rights Legislation	Statute Law
What it establishes	fundamental rights and freedoms	anti-discrimination laws	other laws of general application
Source of law	Constitution Act 1982 (Charter of Rights and Freedoms)	federal and provincial legislation	federal and provincial legislation
Ease of amendment	most difficult	less difficult	least difficult
Application to unions	e.g., freedom of speech protects union's right to distribute leaflets	e.g., discriminatory conditions of work prohibited	e.g., collective bargaining, right to strike

Constitutional rights are a matter of constitutional law. They are intended to check the power of government and are difficult to change. Human rights legislation is a matter of federal and provincial statute law. It is intended to protect the individual from other individuals (or the employee from the employer and vice versa). Human rights statutes have what is called “primacy” over other statute law passed by legislatures. That is, if there is a conflict between the human rights statute and any other statute, the human rights statute prevails.



Activity 7.1

Identify which of the following are individual rights protected by constitutional law, and indicate whether each right you have chosen is an example of a fundamental, legal, political, or equality right.

- (a) to vote
- (b) to worship as one wishes
- (c) to drive a car
- (d) to be secure against unreasonable search or seizure
- (e) to be free from unlawful discrimination by government
- (f) to legally consume alcohol
- (g) to be considered innocent until proven guilty
- (h) to be free from unlawful discrimination by an employer or landlord
- (i) freedom of speech



Activity 7.2 – Human Rights Case Studies

How well do you know your rights? Read the following situations and answer the questions by checking Yes, No, or Maybe.

1. Anthony, who is 18 years old, has applied for a job as a clerk in a sporting goods store. The store manager is impressed with Anthony's maturity and ability and says that he would like to hire him, subject to reference checks. Later, the manager calls Anthony to say that he will not be hired. On checking his references with a former employer, the manager found out that Anthony was convicted of reckless driving several times when he was younger. Has the store manager violated Anthony's human rights by refusing to hire him?
Yes _____ No _____ Maybe _____
2. A local optician's office has an opening for a part-time receptionist. The position requires excellent communication skills as the person will answer customers' telephone calls and receive patients who enter the clinic. Michelle, who was born and raised in Quebec City, has applied for the job. The owner does not hire her because she feels customers may not understand Michelle because of her accent. Has the owner violated Michelle's human rights?
Yes _____ No _____ Maybe _____

Most of the protection that workers enjoy comes from human rights legislation and other statute law. Though based on the historical traditions of the common law, these types of law are constantly evolving and can change quickly. Statute law applies to all workers whether they are union members or not. The only legislation that applies exclusively to organized labour is the federal and provincial Labour Relations Acts that establish the rules of collective bargaining.

The April 1999 newsletter of the Centre for Research on Work and Society at York University identified the following worker “rights” as a basic guide. Worker rights in most provinces are similar in principle, though they may differ in detail.

Know Your Rights: A Basic Guide to Ontario's Workplace

Did you know that?

- the *general minimum wage* in Ontario is \$6.85?
- *overtime* must be paid for working over 44 hours in a week?
- you are entitled to a one-half-hour *unpaid meal break* for every 5 hours worked?
- you are entitled to a 2-week annual *vacation*?
- retail sector employees have the *right to refuse to work on Sundays*?
- employees are allowed a 17-week *pregnancy leave* and an 18-week *parental leave*?
- you have a right to join, support, and/or participate in *union activities*?
- your employer must take every reasonable precaution to ensure for the *health and safety* of your workplace?
- you have the right to *refuse unsafe* work?
- your employer must try to make every *reasonable effort* to accommodate any disability?

Source: *CRWS News*, April 1999, Issue #19. Centre for Research on Work and Society, York University, Toronto. (<http://www.yorku.ca/crws/april1999.html>).



Activity 7.3

Statute law, which establishes the minimum acceptable standards of employment, is primarily the responsibility of provincial governments. One exception is federal civil servants whose standards are set by the federal government. Although the details of the legislation will vary from province to province, there are many similarities. This activity is designed to help you understand the minimum standards of employment in your province/territory. The information is readily available either from provincial labour departments in print form or on the department's web site.

1. Obtain the relevant information about each of the statutes below and find out what the standards are in your province for each of the listed items.
2. Briefly describe what the items in each Act refer to.
3. Record what the standards are in your province.

Employment Standards Act:

- minimum age
- minimum wage
- overtime pay

- hours of work
- leaves
- holidays
- vacation pay
- termination of employment
- severance pay

Occupational Health and Safety:

- right to know
- workplace hazards
- unsafe work
- responsibilities
- health and safety committees
- duties of employers
- compensation for injuries

Human Rights (in the workplace):

Discrimination with respect to:

- employment advertisements
- wages
- employment
- unions
- employment equity
- pay equity
- harassment



Activity 7.4: You Be the Judge

Now that you know something about how the law protects workers, apply what you have learned to each of the following cases.

Case Study 1: Darlene

As part of a government program, Darlene, a grade 12 graduate, obtained a job with a local garden nursery. She was to assist Mr. M., the owner, in tending plants and shrubs, placing orders and serving customers. Mr. M.'s first review of Darlene's work showed that Darlene was performing all duties of her job exceedingly well. It was obvious that Darlene liked the work.

Over the next three months, Mr. M.'s behaviour toward Darlene began to change. As they worked, he would often put his hands on her shoulders and hips or lean over closer to her. At these times, she would quickly draw away from him. He then began to make offhand remarks about how he was sick of his wife and that he needed "satisfaction" from another woman. Darlene did not encourage the comments or actions, nor did she say

anything against them; however, she was becoming increasingly uncomfortable with the situation and tried to avoid the owner as much as possible.

One day Mr. M. asked her for a kiss. When she refused, he said "I know what's wrong with you. You're scared you're going to like it." A few days later, Mr. M. suggested that she come to his apartment to have sex with him. Darlene firmly refused, saying that she was seriously involved with her boyfriend.

On several other occasions, the owner tried to get Darlene to come to his apartment. In June, Mr. M. terminated Darlene's employment, saying he had no work for her, even though June is the busiest month of the year for the nursery.

1. Did the nursery owner violate the *Ontario Human Rights Code*? If so, how?
2. When Darlene first became uncomfortable with the nursery owner's behaviour, why wouldn't she have said something?
3. In this situation, would Darlene have had to say anything to the nursery owner for him to know that he might be violating the Code?
4. Is Darlene's termination a factor when assessing whether her rights were violated?

Case Study 2: Dan

After months of searching for a weekend job, Dan, who is a black person, finally got an interview with the owner of a busy car wash and gas station. The owner seemed reluctant to hire him, but Dan managed to win him over. The owner gave him the job, saying that he would be working on a weekend shift with seven other young men, all students from the local area. The shift manager would train him on the car wash equipment.

On Dan's first day, the shift manager gave him only a few minutes of instruction on the equipment. Dan watched what the other men were doing, but when he asked questions, they were not very helpful.

Over the next few weekends, Dan concentrated on his work but because of certain events, he increasingly began to stay by himself. A few co-workers invited him to join their little group for lunch or breaks, but others consistently cracked ethnic and racial jokes, often within hearing of the shift manager.

One day Dan overheard the manager say that blacks were responsible for increased violence in the community. This statement encouraged some co-workers, who had previously eaten lunch with Dan, to tell a couple of jokes about black people. When they glanced at him as they told their jokes, he got up and walked away.

One busy Saturday afternoon, a whole section of the car wash equipment broke down because someone had allowed the system to become overheated. Dan had worked on that section until his break, when a co-worker took over. The system had broken down at some point after that.

The shift manager was furious and accused Dan of negligence. Dan replied that he believed the system was fine when he left for his break. Although Dan continued to insist that the equipment failure was not his fault, the shift manager fired him. Dan believed he

was discriminated against because he is a black person, while his co-workers and managers are white.

5. Did the shift manager have good reason for firing Dan? Why?
6. What factors would a human rights investigation take into consideration?

Case Study 3: Karen

Karen had joined a manufacturing company that sold goods such as styrofoam cups to retail and industrial customers. Hoping to build a career, she entered the company as a packer. After a time, Karen learned from female co-workers that when women joined the company, they were hired as "packers." Men were hired as "service persons" and earned more than the women.

Later she learned that if she wanted to advance in the company, she would have to become a "service person." This meant that, under the union rules, she would lose the seniority she gained while working as a packer. Because of her lost seniority she could be laid off before men who joined the company at the same time as she did and she would be recalled from any layoff after they were. The loss of seniority would also mean that she would fare less favourably than they did in competitions for higher-paying jobs.

In addition, the company required her to complete a mechanical aptitude test in order to become a service person or be promoted. She heard that at least a third of the test involved the use of different tools, none of which are actually used in the service position. Karen noted that only two women had advanced into the 40 higher positions available in the plant, despite the fact that there were an equal number of men and women working in the entry-level positions.

When Karen went to her supervisors to discuss her interest in advancement, they refused to help her. In the following weeks, they denied her overtime work and refused her request for a shift transfer. Her supervisor believed that women should stay at home and not work. He also tried to stop her from taking telephone calls from a boyfriend who worked on another shift, even though the calls were made on her breaks. Karen filed a complaint against the company for discrimination.

7. Did Karen face discrimination? If so, what type?
8. What factors would be taken into account to determine if there were other violations of the *Ontario Human Rights Code*?
9. What would need to be done to ensure that women had equal opportunity at this company?

Source: Ontario Human Rights Commission. *Teaching Human Rights in Ontario – Teacher's Package* © Queen's Printer for Ontario, 2001. Reproduced with permission.
(<http://www.ohrc.on.ca/english/education/teaching-teacher-package.shtml>)

Glossary

Constitutional rights: Freedoms and powers enjoyed by individuals and as defined by the Canadian Charter of Rights and Freedoms. They include fundamental freedoms and democratic, legal, mobility, and equality rights intended to limit the power of government. They are the most secure of all rights since they require a constitutional amendment to change.

Human rights legislation: A form of statute law that established specific rights that protect the individual from unlawful discrimination by other individuals such as employers. Both federal and provincial governments create such legislation.

Rights: That to which the individual is entitled by law. The certainty of the entitlement depends on the nature of the law (constitutional, human rights legislation, statute law) that ensures it.

Statute law: Law made and subject to constant revision by legislatures. Although it must respect constitutional and human rights legislation, it is most dependent on political and ideological pressures.

