

## Relations industrielles Industrial Relations



*Labour and Employment Law: Cases, Materials and Commentary, 8<sup>th</sup> ed.*, Compiled by the Labour Law Casebook Group, Toronto: Irwin Law, 2011, 978 pp., ISBN: 978-1-5522-1188-5.

Roy J. Adams

Volume 67, numéro 2, printemps 2012

URI : <https://id.erudit.org/iderudit/1009096ar>

DOI : <https://doi.org/10.7202/1009096ar>

[Aller au sommaire du numéro](#)

Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)

1703-8138 (numérique)

[Découvrir la revue](#)

Citer ce compte rendu

Adams, R. J. (2012). Compte rendu de [*Labour and Employment Law: Cases, Materials and Commentary, 8<sup>th</sup> ed.*, Compiled by the Labour Law Casebook Group, Toronto: Irwin Law, 2011, 978 pp., ISBN: 978-1-5522-1188-5.] *Relations industrielles / Industrial Relations*, 67(2), 335–336.  
<https://doi.org/10.7202/1009096ar>

Tous droits réservés © Département des relations industrielles de l'Université Laval, 2012

Ce document est protégé par la loi sur le droit d'auteur. L'utilisation des services d'Érudit (y compris la reproduction) est assujettie à sa politique d'utilisation que vous pouvez consulter en ligne.

<https://apropos.erudit.org/fr/usagers/politique-dutilisation/>

Érudit

Cet article est diffusé et préservé par Érudit.

Érudit est un consortium interuniversitaire sans but lucratif composé de l'Université de Montréal, l'Université Laval et l'Université du Québec à Montréal. Il a pour mission la promotion et la valorisation de la recherche.

<https://www.erudit.org/fr/>

tant volet théorique qui les précède; elles intègrent même généralement les concepts y développés, mettant ainsi en relief l'exigence de transdisciplinarité dans le traitement des problèmes abordés. Ces derniers animent à la fois prudence et audace, encore qu'ils peuvent laisser perplexes : comment, par exemple, « financieriser » la cohésion sociale, la qualité d'un « vivre ensemble », le progrès culturel ?

Enfin, et c'est là une note parfaitement réjouissante, cet ouvrage et ses lignes de pensée sont le fruit d'une collaboration fructueuse de l'académie et de l'entreprise, du chercheur et de l'entrepreneur, des secteurs public et privé français. Réunis sous le chapeau du « Club économie de la fonctionnalité et développement durable » (sous l'impulsion d'un séminaire organisé par la direction de la recherche de Gaz de France), ils y raffinent un modèle économique prometteur en ne se satisfaisant pas d'*a priori*. Chez le lecteur, praticien ou intellectuel, intéressé à la fois aux pôles environnemental et social du développement durable, cette contribution originale aux sciences sociales alimentera peut-être les réflexions les plus mûres.

**P. Martin Dumas**  
Université Laval

### **Labour and Employment Law: Cases, Materials and Commentary, 8<sup>th</sup> ed.**

Compiled by the Labour Law Casebook Group, Toronto: Irwin Law, 2011, 978 pp., ISBN: 978-1-5522-1188-5.

This book is the latest edition of the standard labour law casebook used by universities across Canada to introduce law students to labour law. As with other such books it makes heavy use of legal case decisions with generally minimalist commentary from the editors. The object is to elicit discussion about the principles that the case illustrates. There are also excerpts from various published articles, most (but certainly not all) of which were originally published in law journals.

The “author” of the volume is the Labour Law Casebook Group, an assemblage of (in this volume) 15 prominent teachers of Canadian labour law. Unlike some past volumes in which an elite group of three or four contributors was distinguished from the rest, in this volume, all of the contributors are listed alphabetically.

The case book group identifies three “regimes” of labour and employment law in Canada: the common law of employment, collective bargaining and direct statutory regulation. They state two major purposes for the volume. Firstly “to provide some familiarity with the legal regimes that purport to regulate workplace relations” along with the “normative foundations of those regimes.” Secondly, “to encourage reflection on whether changes in the organization of work, and changes in the capacity of governments to regulate employment relations in Canada and elsewhere, are outstripping labour and employment law as we know it and endangering its survival.” They assert that, historically, labour law’s central purpose was “to achieve justice in the contractual relationship known as employment.” That goal has been bedeviled by the persistence of discrimination which has resulted in some groups being tenaciously excluded from legal protection and collective bargaining. It is also being frustrated by the decline of collective bargaining that “cannot be relied on to provide as much protection as was once expected of it.” In addition, the “reality that labour law seeks to comprehend and address” is under considerable strain because of changes in technology and “in the social and economic organization of productive activity.” These changes have thrown into doubt the relevance of such basic concepts as “employee” and “employer” and of the conceptual and legal apparatus that hopes to make sense of and effectively regulate those actors.

Chapter one of the book provides an overview of the philosophical underpinnings of labour law, the historical development

of labour relations and the labour law that has regulated it, and contemporary issues and challenges. Subsequent chapters go into more detail about the contract of employment, Canada's collective bargaining system (at one time the central focus of Canadian labour law), statutory minimum standards, and equality and human rights in employment. A final section addresses labour and employment law in "the new economy" and various issues brought to the fore by globalization. There is considerable discussion of recent transnational efforts to achieve multinational labour standards through the International Labour Organization, the WTO and regional and bilateral agreements.

This volume is primarily intended for labour law students and teachers and, because of differences in teaching methods and traditions – quite aside from content – it is doubtful that many business school or labour studies instructors will want to assign it as a text. Nevertheless, it is an invaluable reference for non-law teachers and should be reviewed carefully by them if they have any hope of remaining current in the broad field of employment and its regulation. In addition, many may well want to assign portions of the volume to their students.

With such a distinguished cast of assemblers, the volume approaches comprehensiveness. But, in my view, it does have a few flaws. Although there is considerable discussion of the Supreme Court's dramatic *Health Services* decision of 2007, in which the Court overturned well established jurisprudence in order to provide constitutional protection to collective bargaining, there is no discussion of the more recent controversial *Fraser* decision which some saw as a setback for collective bargaining rights and others saw as an opening for a significant expansion of collective bargaining. The problem was one of timing. The book was already in production when the decision came down. While understandable, this omission is quite unfortunate.

For the next edition one would hope that the authors include material on collective bargaining as a human right. In its recent decisions the Supreme Court has made frequent reference to this aspect of collective bargaining but, in this volume, as in Canada generally, collective bargaining's human rights character is pretty much ignored. There is no intimation in the section on equality and human rights that collective bargaining is, on the world stage, as much a human right as is non-discrimination in employment.

Also in the next edition one would hope that some discussion of the recently completed "Ruggie Process" would be included. John Ruggie, Special Representative to the UN Secretary General, was asked to investigate and report on the human rights responsibilities of multinational business including their responsibilities for core labour rights. His investigation and report gained enormous global attention. In the view of at least some Canadian legal experts it will, in the long run, have a bigger impact on Canadian business than will the constitutionalization of collective bargaining. Labour law students should know about it and its concrete and potential ramifications.

On a broader scale, for the next edition the authors might want to consider whether or not labour law students should be instructed that the terms and conditions of Canadian workers are now strongly influenced by not three but rather four regimes: common law, statutorily-defined collective bargaining, other statutes and by international law. Should the Supreme Court continue to rely on international law to the extent that it has in *Dunmore*, *Health Services* and *Fraser*, it will be incumbent on all future labour lawyers, and serious students of employment relations generally, to be fully conversant not only with the first three regimes, but also the fourth – international law.

**Roy J. Adams**

McMaster University