

Write Your Exam Code Here: _____

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

THIS EXAMINATION CONSISTS OF 4 PAGES INCLUDING THIS PAGE

PLEASE CHECK THAT YOU HAVE A COMPLETE PAPER

**THE UNIVERSITY OF BRITISH COLUMBIA
PETER A ALLARD SCHOOL OF LAW**

FINAL EXAMINATION – APRIL 2019

**LAW 416
Section 001**

LABOUR LAW

Professor J. Benedet

**TIME ALLOWED: 3 HOURS
TOTAL MARKS: 200**

Note:

Students may bring any non-electronic materials into the examination room. This is an open book examination. Students should have a copy of the relevant provisions of the *British Columbia Labour Relations Code*.

Part A: Answer ALL of the questions in Part A. This Part is worth 135 marks and the recommended time for this part is 125 minutes.

Campus Chaos

The University of Chilliwack (the “University”) is a small private university with 1500 students. The non-management employees at the University of Chilliwack fall into the following four categories:

Faculty - The university faculty are represented by the University of Chilliwack Faculty Association (UCFA). The UCFA was certified as the bargaining representative of faculty members a year ago. A 3-year first collective agreement was ratified 6 months ago and is currently in force. It contains a Rand formula for the payment of union dues by everyone in the unit, and a provision prohibiting dismissal except for just cause.

Administrative Staff – The administrative staff are represented by the Canadian Workers Union (CWU,) a large national union. Their collective agreement with the University will expire in one month.

Teaching assistants - Graduate students employed as teaching assistants are not currently unionized.

Custodial and Tradespeople – The Trade Labour Alliance (TLA) is newly certified to represent these workers. The TLA is bargaining with the University to reach a first collective agreement.

The CWU wants to displace the UCFA as the bargaining representative for faculty members. Faculty members who support the CWU believe that the UCFA is employer-dominated and not sufficiently looking out for their interests. Faculty who support the CWU “raid” set up tables in the hallways outside faculty offices and in the faculty lounge and hand out literature about the campaign. Heated arguments among faculty have occurred, leading to shouting and name-calling. In one of these confrontations, Rex, a UCFA supporter and member, aggressively corners Queenie, a CWU supporter who has not joined UCFA, calling her a “Commie cow”. She spits in his face.

The UCFA applies to the BC Labour Relations Board to have the graduate teaching assistants included in its bargaining unit. These teaching assistants hold tutorials, office hours and grade tests while completing their graduate degrees. They complain that they are being exploited with long hours and cannot complain since they are at the mercy of their faculty supervisors for their own grades and reference letters.

The CWU serves the employer with notice to bargain in relation to the administrative staff. During negotiations, the employer does not inform the CWU that it is considering contracting out its payroll services to an outside company. This will result in the layoffs of six bargaining unit members. One of the union’s proposals raises the possibility of a “no contracting out” clause, but the employer rejects this and the union does not pursue

it. The CWU focuses its bargaining proposals on wage and pension increases. Ultimately, it recommends an agreement to its members that does not contain any protection against contracting out, and the agreement is ratified.

Bargaining with the TLA has reached an impasse, with several issues unresolved. The TLA's bargaining updates to its membership tell them to be prepared for a lengthy strike, and suggest that a strike vote is imminent. The UCFA and CWU inform their members that if the TLA goes on strike, they must not cross the TLA picket lines.

Answer ALL of the following questions. If you need additional facts to answer the question, identify what those facts would be and why they are important.

A1. You have just been hired by Chilliwack University as its in-house counsel with the responsibility of dealing with its labour law issues. The University President wants your advice on the following matters:

- (a) Whether it can end the CWU raid activity on its premises; **(15 marks)**
- (b) What the University should consider in deciding whether to fire Rex and/or Queenie; **(15 marks)**
- (c) Whether the University can prevent teaching assistants from joining the Faculty bargaining unit; **(15 marks)**
- (d) What the University can do in response to the strike threat by the TLA; **(15 marks)**
- (e) Whether, if a strike occurs, it can discipline employees from other units who refuse to cross the picket line; and **(15 marks)**
- (f) Whether, if a strike occurs, the University can continue the work done by TLA members by: having managers do it, hiring temporary replacement workers or paying an outside contractor to do the work at their premises. **(20 marks)**

(95 marks in total)

A2. Assume that both Rex and Queenie are dismissed and that they seek to grieve their dismissals. The UCFA grievance committee considers these requests and ultimately decides to proceed with Rex's grievance, but not Queenie's. Is there any way for Queenie to challenge this decision? On what grounds? **(20 marks)**

A3. You are a union-side labour lawyer who has been retained by the CWU. They want to know if they have any grounds to file a bad faith bargaining complaint against the University. What do you tell them? **(20 marks)**

Part B: Answer 2 of the 3 questions in Part B. Each question is worth 32 marks and the recommended time for Part B is 54 minutes. DO NOT ANSWER ALL 3 QUESTIONS. (64 marks in total)

B1. Should British Columbia repeal its provisions on picketing in the *Labour Relations Code* and treat picketing as governed by the common law? What are the advantages and disadvantages of this approach?

B2. Should unions be permitted to spend union dues on social causes or political advocacy? What, if anything, should be done about those who object to the causes or positions that the union might be taking?

B3. Should British Columbia return to a system of card certification for unions with 60% support of employees in the unit, and do away with the secret ballot vote?

Part C: Answer the 1 Question in Part C. Put your answer in your answer paper and not on the question booklet. (1 mark)(1 minute)



*"First, we'll play a little game of hide-and-seek.
I'll be the child labor inspector."*

Which of the following is INCORRECT: Laws against child labour:

- (a) Are found in the *Employment Standards Act*
- (b) Contain special rules for children working in the Entertainment industry
- (c) Are found in international conventions to which Canada is a party
- (d) Can fairly be invoked by Professor Benedet's children as a reason for not emptying the dishwasher.

END OF EXAMINATION