

Rethinking the Foundations of Work Law

June 10-12, 2022

Toronto, Ontario, Canada

A Sustained Initial Inquiry in Two Connected Workshops

Taken together, the growth and concentration of labour market risk of workers, declining access to representation and voice, pressures on control over time, rising income inequality and declining social mobility, and persistent levels of non-compliance within a context of increasing competitive pressure on employers pose fundamental challenges for workplace law and policy in Canada, as in many other industrialized states. They call into question its capacity to achieve the understood goals of dignity, access to justice, and equitable distributions of income and opportunity for social mobility. They deepen the inequalities faced by historically disadvantaged groups. They raise basic questions about whether foundational structures of law and policy that are anchored in workplaces remain fit for purpose, and whether better alternatives are possible.

To begin to answer such questions, it is necessary to be clear about what purposes matter today, and what specific challenges and opportunities economic and technological change pose for them.

This set of two workshops will bring together legal scholars, social scientists and philosophers to identify and examine how those changes stand to affect workers and employers, and what this means for workplace policy and law.

This will be done on the basis of a focused examination of available and new information. While the focus of enquiry will be on Canada, the Canadian experience is similar to that of other industrialized countries and interconnected with that of states and economies around the world. Comparative analysis will make an important contribution. The goal is to “go deep” – to think hard about the purposes of work law and policy and to identify specific implications of economic and technological change for the reach and capacity of law to pursue fundamental goals. From there we will ask whether the foundational structures of work law and policy in Canada – the employment relationship, the common law contract of employment or employer/workplace-level collective agreement, and a floor of basic legislated standards – can meet those goals, or whether they need to be recast.

This workshop is a contribution by the Queen’s Centre for Law in the Contemporary Workplace to the CRIMT Partnership on Institutional Experimentation for Better Work: <https://www.crimt.net/en/a-propos-2/>.

Workshop 1: What is Happening to Workplaces and to Collective Capacity to Respond, and Why?

Friday, June 10, 2022

8.30 – 9.00 am Registration

8:55 – 9:00 am	<p>Welcome Remarks</p> <p>Kevin Banks, Associate Professor, Director, Centre for Law in the Contemporary Workplace, Faculty of Law, Queen’s University Richard Chaykowski, Professor and Director, Employment Relations Programs, Queen’s University</p>
9.00 – 10:30 am	<p>Setting the Scene - What is the Likely Scale of Workplace Changes and What is Happening to Collective Capacities to Respond?</p> <p>What is the likely scale of the challenges facing workplace policy and law today? What changes in the political, social and cultural environment influence the capacity of Canadian social actors to respond in an organized and deliberative fashion to the impacts of economic and technological change for workers and employers? What do all of these changes, including their impacts on racial, ethnic and class lines, mean for the capacity of Canadian society, including worker organizations, and Canadian politics to formulate, deliberate upon, negotiate or enact legal or policy responses to their consequences? What do they mean for the role and ambitions of scholarship on workplace policy and law? What can we learn from experience in similar industrial democracies?</p> <p>Presenter: Harry Arthurs, Professor and Dean Emeritus, Osgoode Hall Law School, York University</p> <p>Discussants: Kate Andrias, Professor of Law, Columbia Law School Richard Freeman, Herbert Ascherman Professor of Economics, Harvard University Kevin Banks, Associate Professor, Director, Centre for Law in the Contemporary Workplace, Faculty of Law, Queen’s University</p>
10.30 – 10.45	Break
10.45 – 12.15pm	<p>Unpacking What is Happening in the Workplace</p> <p>What are the dominant and emerging models for production and organization structures (e.g., fissured structures and platform work)? What are the implications of the re-organization of production for Canadian and other industrialized economy workers and employers?</p> <p>Presenters: Bruce Curran, Assistant Professor, Faculty of Law, University of Manitoba Urwana Coiquaud, Associate Professor, Department of Human Resources Management, HEC Montréal and Isabelle Martin (jointly), Associate Professor, Faculty of Arts and Science, School of Industrial Relations, Université de Montréal</p> <p>Discussants: Valerio de Stefano, Associate Professor, Osgoode Hall Law School Kathy Stone, Distinguished Arjay and Frances Fearing Miller Professor Emerita, UCLA School of Law</p>
12.15 – 1.30 pm	Lunch
1.30 – 2.45 pm	<p>What are the implications of regional and international economic integration workers and employers, in Canada and comparable states?</p> <p>Presenters: Rafael Gomez, Professor, Faculty of Arts & Science, University of Toronto (paper co-authored with Morley Gunderson, Professor Emeritus; CIBC Chair in Youth Employment, University of Toronto) Samuel Dahan, Assistant Professor, Faculty of Law, Queen’s University</p>

Discussants: **Kevin Banks**, Associate Professor, Director, Centre for Law in the Contemporary Workplace, Faculty of Law, Queen's University
William Roelofs, Ph.D. Candidate, Department of Political Science, University of Toronto

2.45 – 3:00 pm Break

3.00 – 3.45 pm **What are the implications of financialization for workers and employers, in Canada and comparable states?**

Presenters: **Mathieu Dupuis**, Professor, Department of Industrial Relations, Laval University (paper co-authored with John Peters, Associated Professor/Research Fellow CRIMT, University of Montreal; and Phillippe Scrimger, Policy Analyst, Employment and Social Development Canada)

Discussant: **Sanford Jacoby**, Distinguished Research Professor, UCLA

3.45 – 4.00 pm Break

4.00 – 5.30 pm **What are the implications of AI and other emerging technologies for workers and employers, in Canada and comparable states?**

Presenters: **Richard Chaykowski**, Professor and Director, Employment Relations Programs, Queen's University
Cynthia Estlund, Catherine A. Rein Professor of Law, New York University
Richard Freeman, Herbert Ascherman Professor of Economics, Harvard University

Discussant: **Rosalie Wyonch**, C.D. Howe Institute

Saturday, June 11, 2022

9.00 – 10.00 am **How are workplace changes affecting income inequality, in Canada and comparable states?**

Presenter: **David Price**, Assistant Professor, Department of Economics, University of Toronto

Discussant: **Charles Beach**, Professor Emeritus, Department of Economics, Queen's University

Workshop 2: What Might All of This Mean for the Normative and Institutional Foundations of Work Law and Policy?

What is the nature of the policy problems posed by the changes identified in Workshop 1? How do those changes affect the at times inter-connected commitments of work law and policy to worker dignity and freedoms, non-domination or non-subordination, and equitable distribution of income and opportunity? Do they require new fundamental goals? How do they affect the basic institutional structures of what could constitute just and workable policy and legal responses? Specifically:

What are the (inter-connected) normative stakes?

10.15-11.30 am **What aspects of dignity at work do or should matter to public policy, and how might economic and technological changes affect them?**

Presenter: **Virginia Mantouvalou**, Professor of Human Rights and Labour Law, University College London

Pablo Gilabert, Professor, Department of Philosophy, Concordia University

Discussants: **Guy Davidov**, Elias Lieberman Chair in Labour Law, Hebrew University of Jerusalem

Robert Hickey, Associate Professor, Employment Relations Program, Queen's University

11.30 – 11.45 am Break

11:45 – 1.00 pm **What freedoms at work do or should matter to public policy and how might economic and technological changes affect them?**

Presenters: **Sabine Tsuruda**, Assistant Professor, Faculty of Law, Queen's University
Julian Jonker, Assistant Professor of Legal Studies and Business Ethics, Wharton School of Business

Discussant: **Hanoch Dagan**, Professor, Faculty of Law, Tel Aviv University
Jen Harmer, Ph.D. Candidate, Centre for Industrial Relations and Human Resources, University of Toronto

1.00 – 2:15 pm Lunch

2.15 – 3.15 pm **What notions of equity in the distribution of income from and opportunity at work do or should matter to public policy, and how might economic and technological changes affect them?**

Presenter(s): **Hugh Collins**, Cassel Chair of Commercial Law, LSE Law School
Discussant: **Brishen Rogers**, Professor of Law, Georgetown University Law School

3.15 – 3.30 pm Break

3.30 – 4.45 pm **What notions of non-domination or non-subordination at work do or should matter to public policy, and how might economic and technological changes affect them?**

Presenters: **Matt Dimick**, Professor, School of Law, University at Buffalo
Julia Tomassetti, Assistant Professor, School of Law, City University of Hong Kong

Discussant: **Judy Fudge**, LIUNA Enrico Henry Mancinelli Professor in Global Labour Issues, McMaster University

Sunday, June 12, 2022

9.30 – 10.45 am **Do the basic normative commitments of labour law and policy, or the legal institutions expressing them, or both, need to change?**

Presenters: **Brian Langille**, Professor, Faculty of Law, University of Toronto

Discussants: **Guy Davidov**, Elias Lieberman Chair in Labour Law, Hebrew University of Jerusalem

David Doorey, Associate Professor of Work Law, School of Human Resource Management, York University

10.45 – 11.00 am Break

Who can and should act on them?

11.00 – 12.15 pm **What systems of actors and institutions could workably act on such policy commitments and ensure access to justice?**

Presenter(s): **Rafael Gomez**, Professor, Faculty of Arts & Science, University of Toronto

Discussants: **Manoj Dias-Abey**, Lecturer in Law, University of Bristol Law School
Gregor Murray, Professor, School of Industrial Relations, University of Montreal