The Employment Law Review

Seventh Edition

Editor
Erika C Collins

Law Business Research

The Employment Law Review

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EDITOR'S PREFACE

Every year around this time when we update and publish *The Employment Law Review*, I read the Preface that I wrote for the first edition back in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. This continues to hold true today, and this seventh edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see *The Employment Law Review* grow and develop over the past six years to satisfy the initial purpose of this text: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up to date reference guide.

Our first general interest chapter continues to track the variety of employment-related issues that arise during cross-border merger and acquisition transactions. After a brief decline following the global financial crisis, mergers and acquisitions remain active. This chapter, along with the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2015 in nations across the globe, and is the topic of the second general interest chapter. In 2015, many countries in Asia and Europe, as well as North and South America, enhanced their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation to ensure that all employees, regardless of sex, sexual orientation or gender identity, among other factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where homosexuality is a crime, and multinational companies have many challenges still with promoting their diversity programmes.

The third general interest chapter focuses on another ever-increasing employment law trend in which companies revise, or consider revising, social media and mobile device management policies. Because companies continue to implement 'bring your own device' programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy. 'Bring your own device' issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

Our fourth and newest general interest chapter discusses the interplay between religion and employment law. Religion has a significant status in societies throughout the world, and this chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to such beliefs. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

In addition to these four general interest chapters, this seventh edition of *The Employment Law Review* includes 46 country-specific chapters that detail the legal environment and developments of certain international jurisdictions. This edition has once again been the product of excellent collaboration. I wish to thank our publisher, in particular Gideon Roberton and Sophie Arkell, for their hard work and continued support. I also wish to thank all of our contributors and my associates, Michelle Gyves and Ryan Hutzler, for their efforts to bring this edition to fruition.

Erika C Collins
Proskauer Rose LLP
New York
February 2016

Chapter 8

CANADA

Erin R Kuzz and Patrick M R Groom[1]

I INTRODUCTION

Canada is a federal state comprised of a central federal government, 10 provincial governments (Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan) and three northern territories (Northwest Territories, Nunavut and Yukon). The federal government has legislative jurisdiction over matters affecting the country as a whole (i.e., immigration, criminal law, international trade, aeronautics, etc.), while the provinces hold legislative jurisdiction over matters such as property, contracts, natural resources, education and health care. The territories exercise powers delegated by the parliament of Canada and have jurisdiction over some of the same matters as the provinces.

Employment and labour relations for the majority of private enterprises in Canada fall under the authority of the respective provincial or territorial governments. In each province, territory and at the federal level there are numerous statutes governing employment and labour relations. In addition, all jurisdictions other than Quebec are subject to the common law or judge-made law. Quebec is Canada's only civil law jurisdiction and it applies the Civil Code of Quebec.[2]

i Federal legislation

The Canada Labour Code[3] applies to federal works and undertakings (which include inter-provincial transportation, telecommunications, postal services, banking and federal government services), as well as enterprises that are 'integral' to a federal work

1 Erin R Kuzz is a founding partner and Patrick M R Groom is an associate at Sherrard Kuzz LLP.

2 LRQ, Chapter C-1991.

3 RSC 1985, Chapter L-2.

or undertaking. The Canada Labour Code addresses, *inter alia*, employment standards (hours of work, vacation, holidays, leave, termination, lay-off, dismissal, wages, pay and deductions), harassment, labour relations, and health and safety. The Canadian Human Rights Act[4] governs issues relating to human rights and discrimination. The Employment Equity Act,[5] which applies to federally regulated enterprises that employ 100 or more workers, addresses systemic barriers faced by historically disadvantaged groups.

In addition, some federal legislation applies regardless of whether an enterprise is federally or provincially regulated, such as the Canada Pension Plan[6] (provides qualified individuals with pension benefits upon retirement) and the Employment Insurance Act[7] (provides income to qualified individuals during periods of unemployment).

ii Provincial and territorial legislation

Each province and territory has its own legislation setting minimum standards regarding wages, hours of work, and notice entitlements upon termination, occupational health and safety (including workplace violence and harassment),[8] workplace safety and insurance, human rights and discrimination,[9] the process of unionisation and the administration of collective bargaining agreements in unionised workplaces.[10]

In several jurisdictions there is also pay equity legislation intended to address systemic gender discrimination that results in jobs typically performed by females being lower paid than comparable jobs typically performed by males.

The Accessibility for Ontarians with Disabilities Act, 2005[11] was enacted in 2005 with the goal of making Ontario fully accessible to persons with disabilities by 2025. This legislation phases-in certain accessibility requirements for provincially regulated employers with respect to the provision of goods, services, and facilities. Organisations providing goods and services to the public are already subject to the Customer Service Standards and private sector organisations with one or more employees will be subject to Employment Standards as of either 1 January 2016 (if the organisation employs more than 50 employees) or 1 January 2017 (if the organisation employs between one

4 RSC 1985, Chapter H-6.

5 SC 1995, Chapter 44.

6 RSC 1985, Chapter C-8. Quebec employers deduct Quebec Pension Plan contributions instead of CPP contributions.

7 SC 1996, Chapter 23.

8 Jurisdictions with specific workplace violence-prevention legislation are the federal jurisdiction, Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan.

9 Every jurisdiction has human rights legislation prohibiting discrimination in employment on prescribed grounds, including but not limited to age, religion, gender, sexual orientation and disability, which includes drug and alcohol addiction. Sexual harassment is considered prohibited discrimination.

10 Labour relations in the territories are governed by the legislation for the federal sector: the Canada Labour Code, RSC 1985, Chapter L-2.

11 2005, SO 2005, Chapter 11.

and 49 employees). Obligations for an employer under these Employment Standards include developing policies and procedures related to accessibility and accommodation, and ensuring recruitment and hiring practices are accessible to persons with disabilities. Manitoba is the only other province to have enacted similar accessibility legislation. The Accessibility for Manitobans with Disabilities Act[12] (AMA) came into force on 5 December 2013, and closely mirrors Ontario's legislation in both structure and content. The first standard came into effect on 1 November 2015, and requires all of Manitoba's public, private and non-profit organisations with one or more employees to establish and implement measures, policies and practices to remove barriers to customer service. British Columbia and Nova Scotia are in the process of consulting and drafting similar legislation.

iii Ministries and departments

Each jurisdiction in Canada has a government ministry or department tasked with administering workplace laws.[13] These ministries and departments oversee adjudicative boards and tribunals created to enforce and address non-compliance with employment and labour statutes. Many workplace disputes are therefore addressed outside the court system.

II YEAR IN REVIEW

i Bullying and sexual harassment, in and outside of work, remains at centre stage

Incidents of alleged bullying and harassment involving high-profile individuals and incidents remained at the forefront of the Canadian labour and employment landscape. Allegations concerning the actions of Canadian Broadcast Corporation (CBC) personality Jian Ghomeshi continued to mount throughout 2015 with a total of 16 complainants. The report[14] from an internal investigation launched by the CBC found that Mr Ghomeshi 'consistently breached the behavioural standard... of CBC by yelling at, belittling and humiliating others' and referred to the 'sexualized conduct and comments of Mr Ghomeshi' in the workplace. The report also stated '[m]anagement knew or ought

12 CCSM Chapter A1.7.

13 Employment and Social Development Canada; Alberta Ministry of Human Services; British Columbia Ministry of Jobs, Tourism, and Skills Training and Responsible for Labour; Manitoba Ministry of Labour and Immigration; New Brunswick Ministry of Post-Secondary Education, Training and Labour; Newfoundland Labour Relations Agency; Northwest Territories Department of Education, Culture and Employment; Nova Scotia Ministry of Labour and Advanced Education; Ontario Ministry of Labour; PEI Department of Environment, Labour and Justice; Québec Commission des normes du travail; Saskatchewan Ministry of Labour Relations and Workplace Safety; Yukon Department of Community Services.

14 A copy of the report can be found at www.cbc.radio-canada.ca/_files/cbcrc/documents/press/report-april-2015-en.pdf.

to have known of this behaviour and conduct and failed to take steps required of it in accordance with its own policies to ensure that the workplace was free from disrespectful and abusive conduct' and found that CBC management had condoned his behaviour because of his popularity and high profile. Several CBC executives and managers had their employment terminated. Mr Ghomeshi's criminal trial is expected to commence in early 2016 and the termination grievance filed by his union remains adjourned pending the outcome of his criminal trial.

The majority of Canadian jurisdictions now have legislation prohibiting harassment beyond that which is based on grounds protected by various human rights legislation (gender, age, sexual orientation, etc.) which it colloquially refers to as 'anti-bullying' legislation. The recognition of the impact of such behaviour on co-workers, and workplaces as a whole, combined with situations garnering international attention, suggest that 'bullying' workplace conduct will continue to be an increased focus of attention over the next several years.

Another widely publicised event involved Shawn Simoes, a unionised engineer with the Ontario Power Generation (OPG), a government-controlled utility company. Mr Simoes' friends heckled a female television reporter who was filming a segment by shouting an extremely lewd phrase at her. When she confronted Mr Simoes and his friends, Mr Simoes, while drunk, then insulted her further by defending and endorsing the lewd heckling, swearing at her further, and then making additional lewd comments about using sex toys with the reporter. The video of Mr Simoes' conduct was widely publicised, leading to his identification as an OPG employee. His employment was subsequently terminated for this off-duty conduct. Mr Simoes later apologised publicly and was reinstated during the arbitration of his union's termination grievance (a decision was not issued). Mr Simoes' conduct raises the issue of the nexus between off-duty conduct and employment to prove just cause for termination. Controversy remains about whether such drunken, offensive, and lewd conduct associated with a high-profile employer by the media has a sufficient nexus with employment as an 'assistant network management engineer' or another technical or low-profile occupation to justify termination.

ii Increasing minimum hourly wage

The majority of Canadian provinces saw increases to the minimum hourly wage in 2015 with the province of Ontario, home to Canada's largest provincial workforce, raising its minimum hourly wage to C$11.25 from C$10.25 in 2013 and C$11 in 2014. Ontario compels further annual increases tied to the provincial consumer price index (i.e., local inflation), a policy which is also law in the province of Nova Scotia and the Yukon Territory. At C$12.50 per hour, the Northwest Territory's minimum hourly wage is the highest in Canada. At the conclusion of 2015, the average of Canada's provincial and territorial hourly minimum wages sat at C$10.86.

III SIGNIFICANT CASES

i No masking the flu

A decision was issued in September 2015, which held that health-care workers in a hospital who were not vaccinated against the flu cannot be required to wear surgical masks when interacting with employees during the flu season.

In *Sault Area Hospital v. Ontario Nurses Association* a 'Vaccinate or Mask' policy was challenged by a nurses' union. The policy required all health-care workers in the Sault Area Hospital to wear surgical masks when working during flu season if they had not received the flu vaccine. This applied to all workers (both union and non-union), students, and volunteers in the hospital whenever they had any interaction with patients, regardless of the frequency of contact with patients, and regardless of the individual patients' health or susceptibility to infection. A similar policy was found to be justifiable and upheld in 2013 in *Health Sciences Association v. Health Employers Assn of British Columbia.*[15]

The Ontario Nurses Association grieved the policy as an unreasonable exercise of management rights and a breach of employee privacy rights. The hospital defended the policy as a valid patient safety measure that reasonably balanced the interests of protecting against a potentially deadly and infectious disease, with employee personal autonomy and privacy, and that a very similar policy had been upheld in British Columbia. ONA argued that the scientific evidence suggested the use of masks was 'negligible in the combat of influenza transmission by or to health-care workers and patients.' The arbitrator heard the same evidence from the same experts who testified in *Health Employers Assn of British Columbia* in addition to several additional experts retained by ONA that did not testify in the previous case.

The arbitrator agreed with ONA and found that there was 'scant scientific evidence' that masks are effective in reducing the transmission of the flu virus. Consequently, the arbitrator determined that the policy was unreasonable because wearing a mask did not constitute a justifiable patient safety purpose to warrant requiring unvaccinated workers to wear masks for six months of the year. The arbitrator also found the policy operated to coerce immunisation and undermined the right of unvaccinated workers (as well as students and volunteers) to refuse vaccination. Had there been a justifiable patient safety purpose, the decision may have been different.

This decision discusses, weighs, and reviews extensive expert evidence from epidemiologists, infection control specialists and industrial hygienists, as well as 'over 100 academic articles, reports, and commentaries from medical and scientific journals many containing complex statistical material designed to be understood by experts and professionals in the fields of their respective inquiries' on flu transmission. This decision's review of current medical evidence and conclusions may have an impact on the development of workplace health and safety policies in any workplace where flu is a concern. Employers should consider focusing policies on specific risks rather than using blanket policies and procedures. Questions remain about what circumstances would

15 (2013), 237 LAC (4th) 1 (Diebolt).

constitute a 'justifiable safety purpose'; for example, would senior citizens in a long-term care facility who are susceptible to the flu create a patient safety risk that justifies the need for a mask for unvaccinated workers during flu season? What about daycare centres? Canada may have to survive another flu season or two before we have definitive answers.

ii Supreme Court Clarifies Test for Constructive Dismissal

In a recent decision, *Potter v. New Brunswick (Legal Aid Services)*, the Supreme Court of Canada clarified the test for constructive dismissal, offering important lessons for employers about the significance of open communication with employees, and the propriety of a workplace suspension.

David Potter was the executive director of the Legal Aid Services Commission of New Brunswick (the Commission). Four years into his seven-year appointment, Potter commenced a leave for medical reasons. Prior to his leave, the employment relationship had deteriorated resulting in negotiations for a buyout of the balance of his contract. Unbeknownst to Potter, the Commission had also sent a letter to the Minister of Justice recommending Potter be dismissed for cause. As he was about to return to work, Potter was told not to do so 'until further direction', although he continued to be paid his regular wages. Eight weeks later, Potter commenced an action for constructive dismissal.

At the trial of first instance, the New Brunswick Court of Queen's Bench held against Potter, concluding that the Commission had the discretion to supervise Potter in his role as executive director, including the power to suspend Potter with pay while continuing buyout negotiations. The Court held that the Commission had not done anything that could have led an objective observer to conclude Potter had been removed from his position permanently, so as to constitute a constructive dismissal. On the other hand, by taking the 'dramatic move' to sue for constructive dismissal, Potter essentially destroyed any chance of a productive working relationship between the parties, which amounted to a resignation.

On appeal, the New Brunswick Court of Appeal found there had not been a 'fundamental or substantial change to [his] contract of employment'. While his suspension was indefinite, there were no other *indicia* of constructive dismissal: no one was appointed to replace Potter, he was not asked to return his cell phone, laptop or other belongings, and he continued to be paid his regular salary.

The Supreme Court of Canada overturned the decisions of the lower courts, and laid out a two-part test for constructive dismissal:

a Part 1: an express or implied term of the employment contract has been breached; and

b Part 2: the breach is sufficiently serious to constitute constructive dismissal.

The Supreme Court found:

a Potter's suspension breached the employment contract because the Commission lacked authority under the Legal Aid Act to suspend him with pay; and

b because the Commission had not been forthright with Potter about the reasons for his suspension, this led him to reasonably conclude he had been constructively dismissed.

In this case, the Supreme Court applied the 'duty of honest performance' it created in *Bhasin v. Hrynew* (2014)[16] to the employment context. In *Bhasin*, a financial company led one of its dealers to believe that their long-standing service contract would be automatically renewed for a fourth term, but instead the financial company cancelled the contract with the least amount of notice possible. This ruined the dealer's business and forced him to take a lesser position with a former competitor. The Supreme Court held:

> *[P]arties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of [a] contract. This does not impose a duty of loyalty or of disclosure or require a party to forego advantages flowing from the contract; it is a simple requirement not to lie or mislead the other party about one's contractual performance.*[17]

In *Potter*, the Commission's dishonesty about the reasons for suspending Potter and its communications with the Minister of Justice breaches the 'simple requirement not to lie or mislead the other party about one's contractual performance.' This emphasises and reinforces the importance of maintaining lines of communication with employees and providing honest reasons for decisions made.

iii Superior Court debate on bonus entitlements during period of reasonable notice

While the language of a bonus provision is important, a court will be influenced by the perceived fairness of the result to the employee. In *Lin v. Ontario Teachers' Pension Plan Board*,[18] the Ontario Superior Court of Justice awarded a dismissed investment professional a substantial bonus calculated on

a a period prior to dismissal (retrospective bonus); and
b the period of reasonable notice subsequent to dismissal (prospective bonus).

This award was based on the significance of the bonus to Mr Lin's annual compensation and on a lack of specific limits to the bonus calculation and payment in his employment contract. However, the decision in *Kielb v. National Money Mart Company*,[19] which was released less than two weeks after *Lin*, affirms the principle that an employer can limit bonus entitlement on termination by using clear, unambiguous contractual language (perhaps with examples), even when the amount is a significant component of compensation.

16 2014 SCC 71 (CanLII).

17 Id. para 73.

18 2015 ONSC 3494.

19 *Kielb v. National Money Mart Company*, 2015 ONSC 3790.

Lin v. Ontario Teachers' Pension Plan Board

Mr Lin had worked for the Ontario Teachers' Pension Plan Board (OTPPB) and was dismissed for cause. The Court determined the allegation of cause was not supported and, in the absence of a contractual termination provision, awarded Mr Lin reasonable notice of 15 months.

During his employment, Mr Lin was entitled to two types of bonus – a short-term annual incentive plan (AIP) and a long-term incentive plan (LTIP). The AIP comprised more than half of Mr Lin's annual income. The fiscal year for the employer was the calendar year and bonus amounts were typically paid out in April after the end of the calendar year.

Mr Lin was terminated in March of 2011, before the bonus for 2010 was paid out but after fiscal year 2010 was completed. He sought an award in respect of the AIP and the LTIP for three distinct periods: January to December 2010; January to December 2011, which would have been paid in April 2012 (inside the 15-month notice period); and January 2012 to June 2012, a stub period reflecting the balance of the notice period, to be paid out in April 2013 (outside the notice period).

A year prior to Mr Lin's dismissal, the OTPPB implemented a change to the language of the bonus plans, introducing a requirement that to be eligible for payment an employee had to be actively employed at the time the bonus is paid out. This was a material change to Mr Lin's employment agreement to which he refused to consent (together with other colleagues), and for which the OTPPB did not continue to pursue its request for written agreement. Under the strict terms of the amended language Mr Lin would not be entitled to a bonus for 2010 or any period thereafter.

In 1999, the Ontario Court of Appeal held in *Schumacher*[20] that where a bonus is an integral part of an employee's remuneration[21] and the employee is terminated without cause, he or she is entitled to the bonus he or she would have earned during the period of reasonable notice, and any requirement to be 'actively employed' at the time of payout is unfair. In applying *Schumacher* to *Lin*, the Court gave significant weight to the fact the AIP was more than 50 per cent of his annual income, and to the employer's past practice of paying out the AIP amounts in other terminations. This created Mr Lin's entitlement to both retroactive and prospective bonus payments.

The Court also determined that the limitation language that the OTPPB tried to implement was not valid because it constituted a significant change to the bonus plan and Mr Lin had refused to consent. Further, as the OTPPB did not pursue its request for written agreement to the change, this 'abandonment' was 'reasonably interpreted by Mr Lin as a decision by [the OTPPB] not to pursue these changes.' The Court also held that even if it was wrong in this respect, it considered the limiting language to be an

20 *Schumacher v. Toronto Dominion Bank* (1999), 147 DLR (4th) 128 (Ont Gen Div), aff'm [1999] 120 OAC 303 (CA).

21 In *Schumacher* the bonus varied, but was generally two or three times the plaintiff's base salary.

unenforceable 'penalty clause' that would have amounted to an unjust enrichment for the OTPPB by denying a payment to Mr Lin that he would have otherwise received had he worked through his notice period.

Kielb v. National Money Mart Company

Mr Kielb was a lawyer working in-house for National Money Mart Company and was terminated without cause. An issue was Mr Kielb's entitlement to a key management bonus (KMB). The fiscal year for Money Mart was 1 July to 30 June and Mr Kielb was terminated in April 2010. Money Mart's KMB had clear language stating the bonus was 'discretionary', 'did not accrue' and 'is only earned and payable at the time it is provided to you by the Company'. The language also included examples of timing to illustrate that an employee was not entitled to any bonus amount if not employed at the time of payment, even if he or she had been employed at the end of the relevant period.

The KMB for 2010 (1 July 2009 to 30 June 2010) would have been paid in September 2010 at 59.4 per cent of salary. Mr Kielb's employment was terminated in April 2010, before the end of the fiscal year and before the time of payment. Even considering Mr Kielb's contractual notice entitlement of eight weeks, he would not have reached the end of the fiscal year or the time of payment.

Despite concluding that the KMB was an integral component of Mr Kielb's compensation, and a key negotiating point prior to his accepting the position, the Court upheld the limiting language and did not award Mr Kielb any damages for the KMB. To this end, the Court considered the following factors to be significant:

a the limiting language in *Kielb* was far clearer than the language from earlier cases where termination payment limitations were found to be void;

b Mr Kielb's contractual termination entitlement still would not have taken him to the end of the fiscal period or the qualifying date;

c Mr Kielb was a lawyer and the employment contract had been negotiated back and forth on several items;

d Mr Kielb knew the impact of the limiting language and nevertheless signed the contract; and

e there was no public policy reason to disregard the clear wording of the limitation language.

This decision is a positive one for employers. The Court found and affirmed that clear language requiring active employment on the relevant payment date for a bonus is valid. It is likely that, but for the lack of Mr Lin's consent to change his employment contract, the revised bonus terms in *Lin* would have met the clear language test applied in *Kielb* and previous decisions[22] to overcome the requirement to pay a prospective bonus based on the notice period set out in *Schumacher*. Mr Kielb has indicated in the media he intends to appeal to the Court of Appeal.

22 See *Duynstee v. Sobeys Inc* 2013 ONSC 2050; *Love v. Acuity Investment Management Inc*, 2011 ONCA 130; *Kieran v. Ingram Micro Inc* (2004), 189 OAC 58 (CA).

IV BASICS OF ENTERING AN EMPLOYMENT RELATIONSHIP

i Employment relationship

In Canada a written employment contract is not a requirement of law and absent a written employment contract certain employment terms will be deemed to be the parties' contractual obligations to one another (e.g., common law reasonable notice). A properly crafted and implemented employment contract (including the appropriate consideration or exchange of something of value) can significantly limit an employer's employment-related liabilities.

Terms typically found in an employment contract include term of employment, wages, hours of work, duties and responsibilities, confidentiality, and rights and obligations upon termination. Employment standards legislation in each Canadian jurisdiction prescribes certain employment 'minimums' out of which the parties may not contract. A contract that provides less than an employee's minimum entitlements under employment standards legislation will generally be found to be unenforceable.

An employment contract can be for a fixed or indefinite term. In a fixed-term contract, the employment relationship is intended to last for a defined period of time or until a specified task or project is completed. At the end of the term, the employment relationship ends without any obligation on the part of the employer to provide the employee with notice of termination or pay in lieu. In determining whether an employment contract is for a fixed or indefinite term a court will look at the language of the contract as well as the nature of the employment relationship. In some circumstances courts have held an employee whose employment relationship was governed by a series of consecutive fixed-term contracts was actually in an employment relationship of an indefinite term.[23]

In a unionised workplace, an employee's terms and conditions of employment are set out in a collective agreement negotiated between the union representing the employee (together with other employees in the bargaining unit) and the employer.

ii Probationary period

A probationary period is permissible in Canada. However, unless the employment contract clearly sets out the existence of the probation period and specifies what, if any, period of notice is required in the event of the employee's termination, a probationary period does not automatically supplant the employer's common law notice obligations to the employee.

A collective agreement may similarly provide for a probationary period.

23 For example, see *Ceccol v. Ontario Gymnastic Federation* (2001) where the Court of Appeal for Ontario held that an employee who had been employed on a series of one-year contracts for more than 15 years was actually in a contract of employment of indefinite duration, entitling the employee to common law notice of termination.

iii Establishing a presence

A foreign enterprise may enter into an employment relationship with an individual in Canada without officially registering to carry on business in Canada. However, if a foreign enterprise hires an employee to work in Canada the employment relationship will generally be subject to the employment and labour laws of the Canadian jurisdiction in which the employee works. Taxes are deducted at source in Canada so an enterprise must withhold taxes from an employee's pay cheque and remit them as required to the appropriate tax authority.

V RESTRICTIVE COVENANTS

Canadian courts have severely limited the circumstances in which a restrictive covenant, such as a non-competition or non-solicitation language, is enforceable. Courts consider these provisions to be a restraint on trade. Restrictive covenants must be reasonable, both as between the parties themselves and with respect to the broader public interest in not limiting trade. A court will only enforce a restrictive covenant if it represents the minimal degree of restriction required to protect an employer's legitimate business interests.

Where a court finds a restrictive covenant is overly broad (temporally, geographically, or in the activity it purports to limit), ambiguous (such as identifying a geographic area that does not exist), or is overly restrictive, a court will strike down the restrictive covenant rather than read down its scope or amend or remove the offending provision. In other words, there is no 'blue pencilling' in Canada.

VI WAGES

i Working time

Employment standards legislation sets out the standard hours of work in a day and a week. In some jurisdictions, employment standards legislation sets out the maximum number of hours that can be worked in a week, a day, or both. In the Northwest Territories and Nunavut, this is 60 hours in a week and 10 hours in a day. In Ontario and federally, this is 48 hours in a week and eight hours in day. In Saskatchewan, this is 44 hours in a week. In Alberta, this is 12 hours in a day.[24] In Newfoundland and Labrador this is 16 hours in a day. Employees are also entitled to a meal break or rest period after working a prescribed number of hours.

Exceptions exist for some management and professional job categories.

24 In Ontario, Alberta, and Saskatchewan, as well as in the federal jurisdiction, an employee can agree to work a greater maximum number of hours in a day and in a week.

ii Overtime

Employment standards legislation in every jurisdiction requires an employee to be paid overtime when he or she works greater than a prescribed number of hours in a week. [25] Some jurisdictions also contemplate daily overtime.[26]

The overtime rate is 1.5 times the employee's regular wage rate, except in Newfoundland and Labrador, and New Brunswick where it is 1.5 times the minimum wage rate,[27] and in British Columbia where it is twice the employee's regular wage rate for hours worked in excess of 12 in day. In some jurisdictions, an employer and employee can agree to replace overtime earnings with 1.5 hours of paid time off work for each hour of overtime worked.

Certain jurisdictions also allow an employer and employee to enter into an 'averaging agreement' whereby an employee and employer average the number of hours worked over a certain number of weeks for the purposes of determining overtime pay entitlement.

Exceptions exist for some management and professional job categories, or for individuals who make a certain wage rate or have substantial control over their working hours.

VII FOREIGN WORKERS

An employer may bring a foreign national to work in Canada, and Canadian law distinguishes between workers who are required to apply for a work permit and those who are not.[28] The most common category of permit-exempt workers is 'business visitor': a foreign national who visits Canada temporarily to look for new business or advance existing business. For example, a worker supervising after-sale service or participating in an enterprise's training can enter Canada without engaging the permit process.

The majority of foreign nationals working in Canada require a work permit and a labour market impact assessment (LMIA). The LMIA, which replaces the former Labour Market Opinion, was introduced in 2014 as part of a comprehensive reform of the Temporary Foreign Worker Program, the purpose of which was to limit its use and crack

25 In Nova Scotia and Prince Edward Island, overtime rates must be paid for hours worked after 48 hours in a week, while in New Brunswick, Alberta, and Ontario, overtime rates must be paid for hours worked over 44 hours in a week. In Manitoba, federally, and in the Territories (Northwest Territories, Nunavut, and Yukon) overtime rates must be paid for hours worked over eight per day or 40 per week.

26 In British Columbia, Manitoba and Saskatchewan, an overtime rate of 1.5 times the employee's hourly rate must be paid for all hours worked in excess of eight or 10 per day and in British Columbia, an overtime rate of twice the employee's hourly rate for all hours worked in excess of 12 in a day.

27 In these provinces, if an employee's regular wage rate is greater than 1.5 times the minimum wage rate then the employee will not receive any extra pay for working overtime hours.

28 For a list of permit-exempt workers see Citizenship and Immigration Canada's website at www.cic.gc.ca/english/work/apply-who-nopermit.asp.

down on perceived incidents of its abuse. When applying for an LMIA an employer is required to confirm that: (1) there is no Canadian worker available to do the job; (2) there is a need for a foreign worker to fill the job in question; and (3) hiring a temporary foreign worker will not negatively impact the Canadian labour market. An employer must apply for the LMIA before hiring a foreign worker. A positive LMIA is dependent on the employer showing that among other things, it made efforts to hire a Canadian first, is offering wages consistent with comparable market wages and is offering working conditions that meet legislated standards. Some workers are exempt from the LMIA requirement including those from areas covered by certain free trade agreements, or with managerial or specialised skills in an intra-company transfer.[29]

VIII GLOBAL POLICIES

To ensure employee conduct does not breach an employer's statutory obligations an employer must govern workplace behaviour through policies.

For example, legislative regimes in every jurisdiction require an employer to maintain a safe and discrimination-free workplace.[30] Ontario's Occupational Health and Safety Act defines particular workplace behaviour as unsafe and an employer can face liability for the unsafe behaviour of a worker.[31] Likewise, Ontario's Human Rights Code[32] protects workers from discrimination in employment on prohibited grounds, and an employer can face liability for the discriminatory act of an employee.[33] To avoid liability in such situations, an employer is required to show it took reasonable precautions to prevent unsafe or discriminatory misconduct, including harassment and bullying. Such precautions may include communicating limits on workplace behaviour through a written policy, and enforcing that policy through disciplinary measures.

An employer is generally not required to file workplace rules with government authorities. However, some legislation allows for government inspection of the workplace, during which inspectors will expect to see required policies, training and notices in place.

An employer's enforcement mechanisms for workplace standards need not be spelled out directly in the employment contract but it is recommended that compliance with workplace policies is referenced in any written employment contract as a condition of employment.

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29 For a full list of employees exempt from LMOs, see Citizenship and Immigration Canada's website at: www.cic.gc.ca/english/work/apply-who-permit.asp and www.cic.gc.ca/english/work/special-business.asp.

30 Under Canadian human rights legislation, illegal discrimination is the act of treating someone differently based on an enumerated characteristic, such as age, religion, gender, sexual orientation or disability. In Canada, drug and alcohol addiction is considered a disability, and is thus a protected characteristic. Also, in Canada sexual harassment is considered discrimination.

31 Occupational Health and Safety Act, RSO 1990, Chapter O.1 at Section 25 and Section 66.

32 Human Rights Code, RSO 1990, Chapter H.19.

33 Human Rights Code, RSO 1990, Chapter H.19 at Section 46.3.

IX TRANSLATION

Quebec is the only province with language legislation affecting private sector workplaces.[34] Written communications must be in French, including offers of employment, employment contracts, policies and publicly displayed signs. Additional translation is permitted and an employment contract may be written in English if both parties agree. A collective agreement must be written and filed with the province in French, though it may be translated into another language. Any enterprise with 50 or more employees must register with the government for a 'francisation' certificate and participate in a process of encouraging the use of French in the workplace.[35]

X EMPLOYEE REPRESENTATION

Each Canadian jurisdiction has legislation governing the relationship between employers and unions that permits most employees to join a trade union and participate in its lawful activities.

A union is either voluntarily recognised by the employer to represent the employee or it is certified by the appropriate authority. If sufficient support is demonstrated through collection of union cards or a representation vote[36] the union will be certified as a representative of a defined group of employees. Throughout this process an employer must refrain from action that may be found to intimidate, threaten or unduly influence an employee regarding his or her decision to join a union. In most jurisdictions an employer is permitted to express its view on unionisation so long as such communication does not offend these statutory restraints. In Manitoba an employer is obliged to remain neutral during the certification process.

Every Canadian jurisdiction imposes an obligation upon the employer and union to negotiate a collective agreement in good faith.[37] A collective agreement may not provide for rights and obligations that fall below statutory minimums set out in human

34 Charter of the French Language, RSQ, Chapter C-11.

35 Charter of the French Language, RSQ, Chapter C-11 at Section 139–140.

36 Jurisdictions allowing for certification based solely on signed union membership cards are the federal jurisdiction, Manitoba, New Brunswick, Prince Edward Island, Quebec, and Saskatchewan. In Ontario card-based certification may be awarded for bargaining units in the construction industry. Jurisdictions which require a vote among the members of a proposed bargaining unit before granting certification are Alberta, British Columbia, Newfoundland and Labrador, Nova Scotia, and Ontario.

37 Canada Labour Code, RSC 1985, Chapter L-2, Section 50(a); Labour Relations Code, RSA 2000, Chapter L-1, Section 60(1); Labour Relations Code, RSBC 1996, Chapter 244, Section 11(1) and Section 47; Labour Relations Act, CCSM Chapter L10, Section 62 and Section 63(1); Industrial Relations Act, RSNB 1973, Chapter I-4, Section 1(1), definition 'collective bargaining' and Section 32; Labour Relations Act, RSNL 1990, Chapter L-1, Section 71; Trade Union Act, RSNS 1989, Chapter 475, Section 35; Labour Relations Act,

rights, health and safety or employment standards legislation. A collective agreement will contain a mechanism for resolving disputes about its interpretation or administration through an adjudicative mechanism.

XI DATA PROTECTION

i Requirements for registration

In Canada there are only four jurisdictions that have legislation governing the collection, use or disclosure of 'personal information' concerning employees: federal,[38] British Columbia,[39] Alberta[40] and Quebec.[41] Manitoba has adopted privacy legislation, which is not yet in force at the time of writing.[42]

Personal information is any information about an identifiable individual and includes age, personal contact information, income, evaluations and credit records. Federal privacy legislation, as well as that in British Columbia, Alberta and Quebec, generally operates in the same manner to protect the privacy of personal information, requiring the disclosure of the purpose for the collection, and use and disclosure only as is consistent with that purpose. Personal information must be safeguarded with security appropriate to the sensitivity of that information, including appropriate policies, physical security, electronic barriers and employee training and employees must be given access to and the ability to correct inaccurate information.

Federal and provincial privacy legislation vary slightly with respect to the manner in which they address the protection of employee personal information. For example, in British Columbia and Alberta an employer does not require an employee's consent to the collection, use or disclosure of personal information required to establish, manager or terminate the employment relationship, but must receive consent for the collection, use and disclosure of personal information unrelated to the administration of the employment relationship.

ii Cross-border data transfer

The privacy regimes described above address transfer of personal information on an organisation-to-organisation basis rather than a state-to-state basis. An employer

1995, SO 1995, Chapter 1, Schedule A, Section 17; Labour Act, RSPEI 1988, Chapter L-1, Section 22; Labour Code, RSQ, Chapter C-27, Section 53; Trade Union Act, RSS 1978, Chapter T-17, Section 2(b).

38 Personal Information Protection and Electronic Documents Act, SC 2000, Chapter 5.

39 Personal Information Protection Act, SBC 2003, Chapter 63.

40 Personal Information Protection Act, SA 2003, Chapter P-6.5.

41 An Act respecting the Protection of personal information in the private sector, RSQ, Chapter P-39.1.

42 The Personal Information Protection and Identity Theft Prevention Act, CCSM Chapter P33.7 was adopted unanimously by Manitoba's legislature on 12 September 2013 and received Royal Assent on 13 September 2013. The date of its coming into force will be determined by proclamation at a later date.

is permitted to transfer (as distinct from 'disclose') personal information across an international or domestic border for processing (for example, processing payroll information through a third party) but responsibility for the security of information remains with the organisation that collected it.

iii Sensitive data

As described above, the Personal Information Protection and Electronic Documents Act (PIPEDA) and similar privacy legislation require that sensitive information be safeguarded with security appropriate to the sensitivity of that information. While the legislation itself generally does not enumerate categories of sensitive information, federal and provincial authorities have identified examples of sensitive information to include medical history, financial data, racial or ethnic origin, political opinions, religious beliefs, trade union membership and sexual orientation. When dealing with information that might, in the circumstances, be considered particularly sensitive, organisations are expected to take additional precautions to prevent use or disclosure outside the scope of the purposes consented to. Protections for sensitive information could include restricting access to a 'need to know' basis or using encryption to prevent theft, loss or accidental disclosure during electronic transfer.

Personal information of a medical nature, often called 'personal health information', is the subject of specialised privacy legislation in most jurisdictions. This legislation is distinct from PIPEDA and similar provincial privacy regimes, and in general does not apply to the employment relationship. Rather, this legislation addresses the special circumstances of information collection, use and disclosure encountered by organisations who would normally be in possession of personal health information in the course of medical treatment or in the administration of health-care systems.

iv Background checks

An employer is permitted to perform a background check on an employee or prospective employee. However, the information requested and obtained may engage privacy and human rights laws. Human rights legislation in several jurisdictions prohibits discrimination on the basis of information that might be revealed in a credit or criminal record check. For instance, a drug-related conviction may be argued to reveal an actual or perceived drug addiction, a protected ground under Canadian human rights law. In some jurisdictions, an employer may require employee consent to collect and use the information, and must safeguard the information appropriately.[43]

43 In British Columbia and Alberta an employer does not require consent for the collection of information reasonably required in establishing the employment relationship. However, an employer is required to provide a candidate with notice that such information will be collected, and to describe the purpose of that collection.

XII DISCONTINUING EMPLOYMENT

i Dismissal

Canada's laws of dismissal are governed both by statute and the common law, and distinguish between a unionised and non-unionised workplace.

In a non-unionised workplace an employee can be dismissed without cause so long as dismissal is not a violation of human rights legislation or reprisal for exercising a workplace right and so long as the appropriate notice or pay in lieu is provided. However, there are exceptions. In Nova Scotia, an employee with more than 10 years of service may only be terminated for just cause. The same is true in Quebec for an employee with two or more years of service. In a federally regulated workplace, a non-managerial employee with at least 12 months of service who believes he or she was terminated without just cause may seek reinstatement or seek damages in lieu.

In a unionised workplace an employee cannot be dismissed without just cause.

ii Where no just cause: notice of termination

Employment standards legislation in each jurisdiction in Canada prescribes the minimum statutory notice required at the time of termination where there is not just cause to terminate employment. Notice under these statutory schemes generally ranges between one and eight weeks, depending on the employee's length of service. In addition, Ontario and the federal jurisdiction require provision of severance pay or an enhanced period of notice where certain conditions are satisfied.[44] In Ontario it is required that the employer continue benefit plan contributions throughout the period of notice the terminated employee would have been entitled to had he or she remained employed during the appropriate notice period.[45]

As noted above, unless there is in place a properly drafted and implemented employment contract limiting the employee's notice entitlement, the employer must provide reasonable or common law notice of termination (or pay in lieu). This includes and is not in addition to statutory notice requirements.

Common law or civil law reasonable notice is often substantially greater than a legislated minimum notice period and generally reaches a maximum of 24 months. As described earlier in this chapter, Canadian courts apply a highly individualised analysis to determining the appropriate notice period. In calculating damages where an employee

44 In the federal jurisdiction, Section 235 of the Canada Labour Code, RSC 1985, Chapter L-2 provides that an employee who has completed 12 consecutive months of employment is entitled, in addition to notice of termination or pay in lieu of notice, to either two days' wages for each completed year of employment or to a total of five days' wages, whichever is greater. In Ontario, Sections 63–65 of the Employment Standards Act, 2000, SO 2000, Chapter 41 provide that in addition to notice of termination or pay in lieu of notice, an employee with five years of service or more whose employment is terminated is entitled to severance pay if the employer meets certain criteria. The severance pay entitlement in Ontario is a week's wages for every year of service, to a maximum of 26 weeks.

45 Employment Standards Act, 2000, SO 2000, Chapter 41 at Section, 61(1)(b).

is terminated without appropriate notice, courts attempt to place the employee in the position he or she would have been in if allowed to work throughout the notice period. As a result, the payment required in lieu of notice may extend beyond base wages and benefits payments to include compensation for overtime, commissions, bonuses, stock options and fringe benefits such as cars and club memberships.

iii Just cause

Where an employer has 'just cause' to terminate a worker's employment, it may dismiss the employee without notice or pay in lieu, statutory or otherwise. This is a very high standard that will ordinarily only be met where an employee's conduct is so egregious that it is deemed to have violated an essential condition of the employment contract or violated the employer's trust, which is at the core of the employment relationship.

iv Constructive dismissal

Where an employer unilaterally changes a significant term or condition of employment an adjudicator may conclude that the employer's actions indicate that it no longer intends to be bound by the terms of the employment agreement and that, from a legal perspective, the employer has terminated the employment of the employee. Where an employee believes he or she has been constructively dismissed the employee may resign and bring an action for damages in lieu of reasonable notice.

Where an employee alleges constructive dismissal, he or she is obliged to take reasonable steps to mitigate any loss. This may include accepting continued employment with the employer where the employer offers similar remuneration and working conditions and where the employer has not created such a hostile or humiliating work environment such that no reasonable individual could be required to continue to attend work. However, following *Farwell v. Citair Inc,*[46] an employer seeking to minimise liability by arguing that an employee ought to have mitigated by continuing to work for the employer should notify the employee of such opportunity after the employee makes a claim of constructive dismissal.

v Government notification

Where a dismissed employee is eligible to participate in Canada's 'Employment Insurance' programme, the employer is required to provide to the federal government and employee a record of employment detailing the employee's insurable earnings and hours and the reason for the dismissal.

An employer must generally notify a union of the dismissal of an employee, though the requirement to provide, and manner of, this communication varies depending on the collective agreement.

46 2012 ONSC 6013 (CanLII), appeal dismissed 2014 ONCA 177 (CanLII).

vi Redundancies

Elimination of employees for lack of work is generally referred to as a 'lay-off', which may be either temporary or permanent. Where a lay-off is permanent it is deemed a termination and the relevant employer obligations arise.

In a unionised context, the lay-off procedure is determined by the collective agreement, including notice to be provided to employees and the union. A unionised employee generally retains the right to the position from which he or she was laid off for a period determined either by a collective agreement or legislation.

In a non-union context, employment standards legislation in most jurisdictions allows an employer to lay off an employee for a prescribed period of time without triggering termination entitlements. However, the common law in some provinces treats a temporary lay-off as a constructive dismissal entitling the employee to notice or pay in lieu, as the continued attendance of an employee at the place of work, for pay, is central to the employer–employee relationship. It is advisable to consider whether a term allowing for a lay-off should be included in the employment contract to avoid claims of constructive dismissal.

An employer may be obliged to notify a government agency in the event a group of employees is permanently laid off within a short period of time.[47]

XIII TRANSFER OF BUSINESS

Legislation and both the common and civil law provide for the survival of certain employment rights following the sale or transfer of a business. In a unionised context this means a new employer assumes the place of the former employer, administering the collective agreement and bargaining future agreements, and employees retain their rights

47 For example, in British Columbia Section 64 of the Employment Standards Act, RSBC 1996, Chapter 113 where 50 or more employees are terminated from a single location in any two-month period, the employer must provide written notice to all affected employees, their union (if any) and to the Minister.

In Ontario, Section 58 of the Employment Standards Act, 2000, SO 2000, Chapter 41 provides where 50 or more employees are terminated at the employer's establishment within the same four-week period, the employer must provide the Director of Employment Standards with notice.

and status under the collective agreement.[48] In a non-unionised context an employee retains his or her statutory rights and service continues to be recognised for the purpose of statutory and common law reasonable notice.[49]

Whether a sale or transfer of a business has occurred typically depends on whether the essence of a functioning economic vehicle has been transferred and labour arbitrators and boards in Canada have developed tests to determine this.

XIV OUTLOOK

In recent years Canadian courts and tribunals have increasingly been called upon to address an employee's right to privacy in the workplace. In 2012, the Court of Appeal for Ontario released its decision in *Jones v. Tsige*[50], which established a new common law tort of invasion of privacy. In setting out this tort, the Court of Appeal specified that 'given the intangible nature of the interest protected, damages for intrusion upon seclusion will ordinarily be measured by a modest conventional sum.'[51] Since then, modest sums have been awarded ranging from C$1,250 to C$5,000 per claimant for searches of employee quarters at a mining camp for guns and drugs without reasonable cause,[52] inappropriate communications with a confidential employee assistance programme about an employee's psychological issues,[53] and for performing unjustified credit checks.[54] However, the principles of *Jones v. Tsige* may yet have a greater impact on the importance of privacy rights in weighing access to medical records, use of video evidence, and other accommodation-related issues in the future.

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48 See Canada Labour Code, RSC 1985, Chapter L-2, Sections 44–46; Labour Relations Code, RSA 2000, Chapter L-1, Section 46; Labour Relations Code, RSBC 1996, Chapter 244, Section 35; Labour Relations Act, RSM 1987, Chapter L10, Section 56(1); Industrial Relations Act, RSNB 1973, Chapter I-4, Section 60; Labour Relations Act, RSNL 1990, Chapter L-1, Section 93; Trade Union Act, RSNS 1989, Chapter 475, Section 31; Labour Relations Act, 1995, SO 1995, Chapter 1, Schedule. A, Section 69; Labour Act, RSPEI 1988, Chapter L-1, Section 39; Labour Code, RSQ, Chapter C-27, Sections 45–46; Trade Union Act, RSS 1978, Chapter T-17, Sections 37–37.2.

49 Legislation in all Canadian jurisdictions provides for continuity of employment after a sale of business for the purpose of statutory employment benefits. However, there are variations in how such continuity of employment provisions operate. Ontario's legislation also provides for continuity of employment for employees of an employer providing services such as cleaning, food services, parking or security to building owners.

50 2012 ONCA 32 (CanLII).

51 *Supra*, paragraph 71.

52 *Rio Tinto Alcan v. Unifor, Local 2301 (Kemano Grievance)* (2014) BCCAAA No. 165 (Sullivan).

53 *Edmonton (City) Police Service v. Edmonton Police Assn. (RB Grievance)* (2014) AGAA No. 54 (Sims).

54 *Alberta v. Alberta Union of Provincial Employees (Privacy Rights Grievance)*, (2012) 221 LAC (4th) 104 (Sims).

High-profile allegations have highlighted the issue of workplace harassment and will likely result in an increase in these types of claims both before courts and administrative boards and tribunals. Moreover, the prevalence of social media is adding a new dimension to traditional incidents of workplace harassment as more and more of these cases involve conduct allegedly perpetrated from behind the safety of the computer screen.

With respect to accessibility and accommodation for disabilities in the workplace, the phasing-in of the Accessibility for Ontarians with Disabilities Act in Ontario and the development of accessibility legislation in Manitoba is a sign that Canadian jurisdictions will focus on becoming more inclusive to persons with disabilities.

Ontario has amended its Employment Standards Act to make it easier for employees to enforce their rights without having to resort to formal court-based litigation. In particular the amendments remove the C$10,000 cap on damages that can be awarded as compensation to an employee in the event of a breach and the limitation period for filing a claim has been extended from six months to two years. These amendments are likely to result in an increase in employment standards claims as more employees may choose this more efficient and less expensive adjudication process over that offered by the courts.

On the labour front, union transparency legislation was back in the news in 2015. The new law, Bill C-377, forces unions to file a tax return disclosing certain expenses in excess of C$5,000. Bill C-377 received Royal Assent on 30 June 2015 and is scheduled to take effect on 1 January 2015. However, the Liberal Party was elected to Parliament in October, 2015 and has promised to repeal this law. C-377 stands as of the date of writing.

Appendix 1

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Erin Kuzz is a founding member of Sherrard Kuzz LLP, a law firm representing the interests of employers in all employment and labour matters. Having practised employment and labour law for her entire career, Erin has earned a reputation for practical, results-oriented advice. She has been recognised as a leading employment and labour lawyer by both *Lexpert* and *Chambers Global*. Sherrard Kuzz has also been named one of *Canadian Lawyer*'s 'Top Ten Canadian Labour and Employment Boutiques'.

Erin is a past chair of the labour and employment section of the Ontario Bar Association, has been a member of the board of directors of the Canadian Association of Counsel to Employers and is a member of the human resource committee for the Toronto 2015 Pan/Para Pan Am Games.

Widely published, Erin has written extensively about labour and employment issues. She is a frequent public speaker and national conference chair, and is contacted consistently by media for comments on current labour or employment matters. In addition to frequent guest lecturing, she has also taught at both York University and the University of Toronto. Her commitment to education has led the Law Society of Upper Canada to engage Erin to write the bar admission licensing examination study materials for labour law.

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With 20 years of labour relations experience in a wide variety of roles, Patrick brings a unique perspective and skill set to labour and employment litigation. In recognition of his expertise he has been designated a Certified Specialist (Labour Law) by the Law Society of Upper Canada.

His practice is dedicated to assisting management with all aspects of employment, labour law and human resources law, with emphasis on attendance management, civil

litigation, collective bargaining, employee relations, employment contracts, employment standards, human rights, management training, grievance arbitration, occupational health and safety, Ontario Labour Relations Board proceedings, and wrongful and constructive dismissal litigation. He regularly speaks to employers and employer associations on a variety of topics related to his practice.

He is a member of the Thomas Moore Lawyers' Guild, Ontario Bar Association (Labour and Employment, Constitutional, Civil Liberties and Human Rights, and Construction Law), Canadian Bar Association and Law Society of Upper Canada.

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