

## TOP LABOUR &amp; EMPLOYMENT BOUTIQUES

# CHALLENGES IN LABOUR LAW PRACTICE

**COVID-19 HAS** brought unprecedented change to the entire legal sector, but perhaps the practice area most affected is labour and employment law. While many of these changes had been percolating over the last several years, the pandemic caused an eruption of issues surrounding the nature of work. This year's top labour and employment boutiques rose to

the challenge, handling vastly increasing workloads and keeping their clients up to date.

Lisa Bolton, with Sherrard Kuzz LLP in Toronto, says that "the pace of change is unlike anything we've seen before, which makes it particularly challenging, but also satisfying, to stay on top of everything and help our clients operate their businesses."

## WORK FROM HOME VS. BACK TO THE OFFICE

What would you do if your employer demanded you return full time?

Roll with it and return full time



Go back to the office full time, but may start looking for a new job



Likely quit/look for another job right away



Not sure

17%

## METHODOLOGY

*Canadian Lawyer* asked lawyers, in-house counsel and clients from across Canada to vote for the top labour and employment boutiques. In the survey from November 1 to 26, 2021, respondents were asked to rank the top firms from a long list. They also had a chance to nominate a firm that was not on the list. Firms were required to have at least 80 per cent of their business in L&E law. A points system was used to determine the winners. The quantitative results were combined with feedback from respected senior members of the bar, in-house counsel and the results of the *Lexpert* peer survey where applicable.



6th

Top Labour & Employment Boutiques report



600+

survey votes received by *Canadian Lawyer*



20

winning law firms in three categories



Source: Angus Reid poll of 2040 randomized Canadians: August 2021

She says that lawyers have been transitioning their hearings, litigation, workplace investigations and other day-to-day legal services to a remote, digital environment. And management-side labour and employment law firms like hers “have also been at the forefront of helping employers navigate pandemic-related legislation and health and safety requirements.”

Tara Erskine, with coast-to-coast labour and employment law boutique Mathews, Dinsdale & Clark LLP, says that keeping up with COVID-related changes in all provinces and territories is challenging. “We put a lot of information out, like many firms do, for our clients,” she says, adding that traffic on the firm’s website has increased significantly since the pandemic began. Often, her firm deals with companies with operations across the country, with laws and regulations potentially being different from jurisdiction to jurisdiction. “Even municipalities might have brought in their own rules that you have to keep on top of.”

#### Navigating pandemic-related issues

Lindsie Thomson, managing partner at Harris & Company LLP, says that assisting employers in navigating the complexities of the changing legal landscape has become a big part of labour and employment lawyers’ day.

“We have worked with our clients to develop, update and occasion-



“The pace of change is unlike anything we’ve seen before, which makes it particularly challenging, but also satisfying”

Lisa Bolton, Sherrard Kuzz LLP

ally overhaul existing workplace policies and practices to ensure they are aligned with the evolving [public health] orders, related health and safety requirements and best practices,” she says. There has also been a lot of work dealing with mass or temporary layoffs in sectors that



**BOLD  
DEDICATED  
INNOVATIVE  
DETERMINED  
FOCUSED  
CREATIVE**



Those are characteristics of Sherrard Kuzz LLP clients.

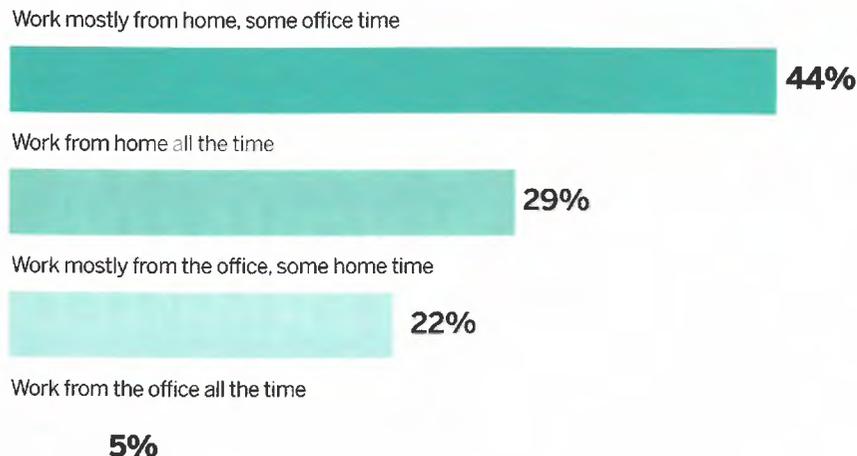
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250 Yonge St #3300, Toronto, ON M5B 2L7 | [www.sherrardkuzz.com](http://www.sherrardkuzz.com)  
416.603.0700 | 24 Hour 416.420.0738 | [@SherrardKuzz](https://twitter.com/SherrardKuzz)

## TOP LABOUR &amp; EMPLOYMENT BOUTIQUES

## REGARDLESS OF WHAT MIGHT HAPPEN, WHAT DO YOU PREFER?



Source: Angus Reid poll of 2040 randomized Canadians, August 2021



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Angela Rae, Rae, Christen Jeffries LLP

have been heavily affected by public health restrictions, she adds, as well as understanding and applying significant changes to employment standards legislation in relation to sick leave.

Thomson and other labour and employment lawyers also say they have seen a jump in the number of human rights complaints being filed — an overall increase and specific complaints related to the pandemic.

“We have been working with our clients to navigate the issues created by both the increase in these complaints and the delays related to the backlog,” she says. “As they relate to the pandemic, we have been working with clients on vaccination policies and addressing requests for accommodations from employees based on protected human rights grounds, most commonly medical or religious.”

**Attention to workplace complaints**

While it might seem counterintuitive, with so many people working from home and not in the office, Mathews, Dinsdale & Clark partner Keith Murray says he has seen a “real increase in investigative work arising from workplace complaints of bullying and harassment.” This is in addition to the more “traditional” complaints of workplace sexual harassment and discrimination based on race or disability.

Part of this, Murray says, could relate to employees recognizing that bullying and harassment in a toxic work environment is a legitimate complaint to bring forward and the mental health issues this can cause. “There’s also less stigma attached to making these complaints, so people feel more comfortable bringing them forward.” He also notes that these can be complex cases to investigate as they can involve a lot of “he said, she said.”

James Knight, managing partner at Filion Wakely Thorup Angeletti LLP notes “the changing face of Canadian society has motivated many employers to become much more pro-active in practices related to recruiting, hiring, and promoting.” He adds that “employers are imposing high standards in terms of expectations of civility in the workplace, not to mention dealing with any complaints of harassment or violence.”

Related to this area of employment law, Thomson at Harris & Company says she has seen a significant increase in requests from clients for guidance as they consider issues relating to equity, diversity, and inclusion within the workplace.

Thomson says that as societal attitudes evolve and employees expect organizations to act on this important issue, there is a need to develop practical tools and policies to guide employers and “address cultural



and contractual barriers to equity, diversity and inclusion.”

### **Focus on immigration and diversity**

Immigration has become an integral part of employment law, says Halifax-based Nancy Barteaux of Barteaux Labour and Employment Lawyers, especially as employers look beyond national borders to meet the need for skilled workers. That’s why Barteaux has added an immigration practice to her already-thriving employment law practice.

“The immigration we do is to assist employers,” says Barteaux. “It’s not the personal immigration and refugee-type work that other immigration boutiques do. We focus on the business immigration side.”

She notes that among members of the international organization Employment Law Alliance, “most firms have immigration as part of their employment law practice.”

In addition to the issue of inclusion based on race and discrimination, Susan Ursel of Ursel Phillips Fellows Hopkinson

LLP in Toronto says that, as a union-side lawyer, she sees employers having to deal with the various needs of different generations of workers.

“Millennials, Gen X, Gen Y, Boomers — employers are dealing with these different groups — who all have different needs. Younger employees might have issues of onboarding and training; those closer to retirement are looking at things like pensions.”

She adds: “Not only are there more



multi-generational workplaces, but Canada and its biggest cities are incredibly diverse. So, we're seeing more issues related to how employers can be more inclusive and allow all employees to flourish."

Craig Neuman of Neuman Thompson in Edmonton notes how socio-cultural trends are impacting the firm's practice. He says: "The 'Me Too' movement, the 'Black Lives Matter' movement, the 'Truth and Reconciliation' movement — these welcome shifts in societal emphasis on issues of equality, inclu-

an end, permanently or temporarily. Even conditions for remote work came to the forefront, with questions on the expectations about coming into the office as just one example. However, the introduction of vaccine mandates and the refusal of some workers to be vaccinated became the most significant issue.

"I would say that nine out of ten, maybe more, employers, came out with some vaccine policy, given the rate of vaccination there are probably up to 10 per

It might not have reached the stage of the "Great Resignation" in the United States, where many people are leaving their jobs to find different employers, try something else, or simply just slow their lives down.

So it's no wonder, says Angela Rae of Rae Christen Jeffries LLP in Toronto, that employers might want to consider being more flexible when their staff — especially their best employees — ask for accommodations. These could include flexible work hours, hybrid home-office work, total remote work, or any other practices that have come to the forefront during the pandemic.

Rae says it appears to be the "beginning of a power dynamic shift in the workplace due to clients increasingly feeling the effects of competition for labour," she says, with employers taking a softer line on these requests than they might have in the past. It's also shone a spotlight on developing laws on "the right to disconnect," such as the recently passed Ontario law that comes into effect in June. It forces larger workplaces to develop policies on when and how employees can be contacted after work.

Graeme McFarlane, a partner at Roper Greyell LLP, says that while generally, employers understand the benefits of, for example, remote work for employees, many feel they are starting to see adverse effects.

"First, some jobs are just better done from home. More importantly, organizations are seeing a loss of culture and camaraderie that Zoom, Teams and phone calls can't replace. Some organizations, especially those in the service area, are all about culture," he says.

"And finally, it's more challenging to train and develop employees, and younger workers just starting are missing a big part of the learning experience and culture of a job."



## "Organizations are seeing a loss of culture and camaraderie that Zoom, Teams and phone calls can't replace"

Graeme McFarlane, Roper Greyell LLP

sion, diversity and social justice intersect with and have wide-ranging implications for workplaces and for workplace law."

### Dealing with dismissal

Daniel Lublin of Whitten & Lublin PC says that when the firm was founded in 2009, at the time of the Great Recession, he dealt with many issues related to layoffs and dismissals. "But we've never seen anything like what is happening now [when it comes to dismissal issues]. The past four months have been especially busy since the vaccine mandate policies were implemented and enforced."

During the first part of the pandemic, when businesses were closing down or cutting back on staff drastically, there were many issues relating to the terms of the employer-employee relationship coming to

cent of the workplace facing some sort of disciplinary action."

Lublin says he is speaking with people whose employers have told them to get vaccinated or face suspension with or without pay, and then potential termination. Therefore, he expects the caseload relating to vaccine mandates to keep him busy for another couple of years.

### A shift in the balance of power

The pandemic has brought workplace mental health considerations to the forefront, particularly for clients in the health-care and other essential service sectors where employers struggle to maintain staffing levels. But even those who have been working at home have realized the value of mental health and work-life balance.