

Agenda

EMPLOYMENT LAW CONFERENCE 2017 (10135617)

Thursday, May 4 & Friday, May 5, 2017 – Vancouver Marriott Pinnacle Hotel

Course Chairs:	Matthew Cooperwilliams – Harris & Company LLP, Vancouver Simon Kent – Kent Employment Law, Vancouver
Planning Committee:	Adele J. Adamic – Legal Services, Ministry of Justice, Vancouver Gwendoline Allison – Foy Allison Law Group, West Vancouver Laurel Courtenay – Ministry of Justice, Legal Services Branch, Vancouver Kimberly D. Darling – University of British Columbia, Kelowna Peter Eastwood – Hamilton Howell Bain & Gould, Vancouver Christopher R. Forguson – Chris Forguson Employment Law, Vancouver Eleni Kassaris – Blake, Cassels & Graydon LLP, Vancouver James D. Kondopulos – Roper Greyell LLP, Vancouver Martin Sheard – Tevlin Gleadle Curtis Employment Law Strategies, Vancouver Kenneth Thornicroft – Peter B. Gustavson School of Business, University of Victoria, Victoria
CLEBC Program Lawyer:	Genevieve Chang

Day 1: Thursday, May 4, 2017

- 9:00 – 9:15 WELCOME AND INTRODUCTION
- 9:15 – 10:05 IMPLICATIONS OF THE DECISION OF THE SUPREME COURT OF CANADA IN *WILSON V. ATOMIC ENERGY OF CANADA LTD.*
- substantive review of the Supreme Court of Canada’s decision in *Wilson v. Atomic Energy*
 - employment law implications of *Wilson v. Atomic Energy*
 - practical considerations flowing from the decision
 - advice and recommendations for federally-regulated employers
- Lou Poskitt** – Miller Titerle + Company LLP, Vancouver
Jennifer D. Wiegele – Miller Titerle + Company LLP, Vancouver
- 10:05 – 10:20 BREAK
- 10:20 – 11:10 THE LAW OF EMPLOYMENT PROBATION: SUITABILITY, SEVERANCE AND THE STATUTE
- the meaning and history of the term “probation” in employment
 - considering “probation” in the context of reasonable notice
 - the decision in *Ly v. IHA*, points and counterpoints
 - the valid and invalid probationary terms in the case
 - the developing law on the implication of ESA notice on probation
 - the assessment of suitability and application to the facts of the case
 - notice periods for suitable but probationary employees
 - the expenses piece, relying on breached contracts
 - probationary employees, advice on attacking validity and assessments of

suitability

- employers contracting for probationary periods, advice on contracting and assessing suitability

Cameron R. Wardell – Mathews, Dinsdale & Clark LLP, Vancouver

Frederick Wynne –Hamilton Howell Bain & Gould, Vancouver

11:10 – 11:45

THE *NEVSUN CASE*: LITIGATION IN CANADA ALLEGING FORCED LABOUR IN OVERSEAS OPERATIONS

- review of BC lawsuit by Eritrean refugees against Vancouver-based Nevsun Resources alleging they were forced labourers at Nevsun's mine in Eritrea including:
 - claim of direct liability against Nevsun for its role in alleged forced labour deployed by contractors and the Eritrean military at the mine
 - traditional common law torts and claims for torts in violation of customary international law, including slavery, forced labour, torture, and crimes against humanity
 - applications by Nevsun to stay the BC case under the doctrine of *forum non conveniens* in favour of Eritrea, to dismiss the case under the act of state doctrine, and to strike the customary international law claims (which were denied and now under appeal)

Matt Eisenbrandt – Legal Director, Canadian Centre for International Justice, Victoria

11:45 – 12:45

LUNCH

12:45 – 1:45

MARIJUANA IN THE WORKPLACE

- medical marijuana:
 - what do you do if an employee comes to work with a prescription?
 - do you have to accommodate all medical marijuana users?
 - human rights/privacy vs. safety - which trumps?
- legalization of recreational marijuana in 2017
 - what are the implications for employers of recreational marijuana users?
 - is your workplace ready?
- case study - workplace marijuana possession/use
 - medical vss recreational?
 - what are you obligated to do?
 - what are you entitled to do?

Paul D. McLean – Mathews, Dinsdale & Clark LLP

David M.J. Brown – Kent Employment Law, Kelowna

1:45 – 2:55

THINGS EMPLOYERS AND EMPLOYMENT LAWYERS DON'T KNOW ABOUT FAMILY LAW (BUT PROBABLY SHOULD)

- financial issues that involve employers such as benefit division, pension division and RRSP division
- how the powers of the Family Maintenance Enforcement Program (FMEP) can effect business, directly or indirectly
- options available to employees going through a separation/divorce, including collaborative divorce, negotiation, mediation and litigation

- disclosure obligations of employees in the context of family law litigation, which can include statements of earnings, letters from employers, and (in the case of certain directors, officers, and shareholders) more detailed financial documents
- real-life scenarios in which the “personality” dimensions of family law intersect with the employment world including spouses contacting the employer; co-worker spouses going through a separation or divorce; and circumstances involving allegations of family violence between co-worker spouses

Jessica Fairbairn – Harris & Company LLP, Vancouver

Richard D. Hart, C.Arb –ProActive ReSolutions Inc., Vancouver

Leisha Murphy - Connect Family Law, Vancouver

2:55 – 3:10 BREAK

3:10 – 4:10 STARTING RIGHT – EFFECTIVE DEMAND LETTERS FOR WRONGFUL DISMISSAL CLAIMS

- a practical look at what works and does not work from an employee and employer perspective:
 - did they really say that? – what makes an effective demand letter and an effective response– an employee and employer counsel’s perspective
 - how much do you offer without giving away the farm? – strategies for effective negotiations
 - how much detail do you need and how much do you want? – considering how much to include in an initial demand

Martin Sheard – Tevlin Gleadle Curtis Employment Law Strategies, Vancouver

Michael R. Howcroft –Blake, Cassels & Graydon LLP, Vancouver

4:10 – 4:15 CLOSING QUESTIONS AND COMMENTS

Day 2: Friday, May 5, 2017

9:00 – 9:05 WELCOME AND INTRODUCTION

9:05 – 9:55 FIXED-TERM CONTRACTS – LAW NOT AS FIXED AS WE ONCE THOUGHT: RECENT DEVELOPMENTS AND LEGAL AND PRACTICAL CONSIDERATIONS

- recent developments in the jurisprudence, including *Howard v. Benson Group Inc.*, 2016 ONCA 256, rev’g 2015 ONSC 2638.
- jurisdictional differences in the treatment of fixed-term contracts
- the formation and enforceability of fixed-term contracts, including termination clauses
- damages which might arise, including fixed liquidated damages, and the application of the duty to mitigate
- the future of fixed-term contracts

James D. Kondopulos - Roper Greyell LLP, Vancouver

Matthew Larsen – Roper Greyell LLP, Vancouver

9:55 – 10:30 POST-EMPLOYMENT DUTIES AND OBLIGATIONS: PROTECTING UNREGISTERED INTELLECTUAL PROPERTY

- who owns confidential information in the employment relationship
- contractual protection – restrictive covenants, confidentiality clauses, and

- assignments of rights
- a summary review of the relevant case law
- available remedies including pre-trial applications for injunctive relief

Veronica S.C. Rossos – Singleton Urquhart LLP, Vancouver

10:30 – 10:45 BREAK

10:45 – 11:25 UNDUE HARDSHIP: RECENT CASES EXPLORING THE PROCESS OF ACCOMMODATION AND MEETING THE THRESHOLD OF UNDUE HARDSHIP

- review of recent cases exploring the duty to accommodate, including:
 - the obligations of both parties involved in the accommodation process; and
 - how the process of accommodation will influence whether the threshold of undue hardship has been satisfied

Shanti P. Reda – Hamilton Howell Bain & Gould, Vancouver

Erin Brandt – Kent Employment Law, Vancouver

11:25 – 12:15 THE EVOLUTION OF THE “DEPENDENT” CONTRACTOR

- the continuum: employee – dependent contractor / intermediate status – independent contractor
- why do it?
- the tests for determining worker status
- Risks (for both EEs and ERs), such as CRA, common law, ESA, Human Rights, 3P liability, Worksafe
- Recent cases
- Practical tips for applying for CRA ruling on status, including 60 day notice provisions and indemnity clauses

Heather Hettiarachchi – Integritas Workplace Law, Vancouver

Nicole R. Howell – Hamilton Howell Bain & Gould, Vancouver

12:15 – 1:00 LUNCH

1:00 – 1:50 LAWYERS AS EMPLOYERS

- review of employment law cases involving law firms
- special considerations for restrictive covenants in lawyers’ employment contracts
- other unique features of law firm employment relationships
- professional obligations & practice tips for lawyers as employers

Sara Forte – Forte Law Corporation, Surrey

Steve M. Winder – Borden Ladner Gervais LLP, Vancouver

1:50 – 2:00 BREAK

2:00 – 2:50 SECTION 257 APPLICATIONS UNDER WCAT

- basics of and best practices for s. 257 applications
- review of recent s. 257 decisions of WCAT relating to claims for mental distress and other injuries suffered in the workplace
- the impact of a successful s. 257 application, according to the Court of Appeal’s

decision in Downs Construction Ltd. v. Workers' Compensation Appeal Tribunal
and decisions rendered since 2012

- the use of stay of proceedings applications in connection with s. 257 proceedings

Valerie S. Dixon – Miller Thomson LLP, Vancouver

Cory Sully – Norton Rose Fulbright, Vancouver

2:50 - 4:00

31 FLAVOURS OF DAMAGES

- aggravated and punitive damages – developments in the legal framework and recent application
- torts in employment law
- bonuses during the notice period

Ian Kennedy – Tevlin Gleadle Curtis Employment Law Strategies, Vancouver

Richard Truman – Harris & Company LLP, Vancouver

Gradin D. Tyler – Mathews, Dinsdale & Clark LLP, Vancouver

4:00 – 4:05

CLOSING QUESTIONS AND COMMENTS