

# Agenda

## EMPLOYMENT LAW CONFERENCE 2018 (10135618)

Thursday, May 3 and Friday, May 4, 2018 – Coast Coal Harbour Hotel, 1180 W. Hastings St., Vancouver

Course Chair(s):	<b>Matthew Cooperwilliams</b> – Harris & Company LLP, Vancouver <b>Simon Kent</b> – Kent Employment Law, Vancouver
Planning Committee:	<b>Gwendoline Allison</b> – Foy Allison Law Group, Vancouver <b>Laurel Courtenay</b> – Ministry of Attorney General, Vancouver <b>Kimberly D. Darling</b> – Former Director, Academic Operations, University of BC, Kelowna <b>Nicole R. Howell</b> – HHBG Employment Lawyers, Vancouver <b>James D. Kondopulos</b> – Roper Greyell LLP – Employment and Labour Lawyers, Vancouver <b>David D. McWhinnie</b> – Tevlin Gleadle Curtis Employment Law Strategies, Vancouver <b>Sean T. Pihl, QC</b> – Pihl Law Corporation, Kelowna <b>Donovan G. Plomp</b> – McCarthy Tétrault LLP, Vancouver <b>Professor Kenneth Thornicroft</b> – Peter B. Gustavson School of Business, UVic, Victoria
CLEBC Program Lawyer:	<b>Genevieve Chang</b>

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### Day 1: Thursday, May 3, 2018

9:00 – 9:15	WELCOME AND INTRODUCTION <b>Matthew Cooperwilliams</b> – Harris & Company LLP, Vancouver OR <b>Simon Kent</b> – Kent Employment Law, Vancouver
9:15 – 10:05	IMPLEMENTATION OF NEW EMPLOYMENT CONTRACTS WITH EXISTING EMPLOYEES <ul style="list-style-type: none"><li>• a review of what courts have considered fresh consideration</li><li>• reasonable notice, implementation of a bonus scheme or incentive pay, increased remuneration, more vacation pay, or greater responsibilities</li><li>• best practices</li></ul> <b>Sean T. Pihl, QC</b> – Pihl Law Corporation, Kelowna <b>Adrienne N. Staley</b> – Pihl Law Corporation, Kelowna
10:05 – 10:20	BREAK
10:20 – 11:10	EMPLOYMENT INJUNCTIONS <ul style="list-style-type: none"><li>• the applicable threshold test: serious question v. strong prima facie case</li><li>• what is irreparable harm in employment cases</li><li>• important balance of convenience factors</li><li>• practical tips on bringing and defending injunctions, including preparation of affidavits</li></ul> <b>Andrew Nathan</b> – Borden Ladner Gervais LLP, Vancouver <b>Steve M. Winder</b> – Borden Ladner Gervais LLP, Vancouver

- 11:10 – 12:00 **#WHATDIDYOUJUSTSAY: THE USES AND ABUSES OF SOCIAL MEDIA IN EMPLOYMENT LAW**
- introduction of Facebook, LinkedIn, Twitter, and blogs in the employment law context
  - uses of social media: recruitment, screening, #metoo, monitoring and privacy issues
  - abuses of social media: employee abuses – discipline and just cause termination; employer abuses – expectations of privacy
  - what can you do about it? Responsibilities of employers and mitigation of risks - defamation and other liability risks, policies & enforcement, third party involvement
- Adrienne Atherton** – Civic Legal LLP, Vancouver  
**Courtenay Mercier** – Reed Pope Law Corporation, Victoria
- 12:00 – 1:30 LUNCH (PROVIDED) WITH FEATURED SPEAKERS:  
THE SHARING ECONOMY AND IMPLICATIONS FOR EMPLOYMENT LAW  
(12:30 – 1:15pm)
- Geoff Mason** – Kent Employment Law, Vancouver  
**Professor Kenneth Thornicroft** – Peter B. Gustavson School of Business, UVic, Victoria
- 1:30 – 2:40 INVESTIGATING SEXUAL MISCONDUCT IN WORKPLACES:  
**#DEVELOPINGBESTPRACTICES**
- sexual misconduct in workplaces and #metoo – the new context
  - employer obligations: when and why to investigate
  - investigation best practices including
    - o who should conduct the investigation and how to protect privilege
    - o terms of Reference/retainer for an investigation
    - o after the investigation – communication, privacy, and remedial measures
    - o safeguarding procedural fairness and addressing confidentiality, and the role of counsel in the investigation process
    - o trauma informed investigation practices
    - o thorny issues that arise in sexual misconduct investigations (anonymous complaints, uncooperative parties, similar fact evidence)
  - legal pitfalls and flawed investigations
  - the broader context – Canadian experience and a comparative approach to other jurisdictions
- Valerie S. Dixon** – Miller Thomson LLP, Vancouver  
**Sandra F. Guarascio** – Roper Greyell LLP – Employment and Labour Lawyers, Vancouver  
**Martin Sheard** – Tevlin Gleadle Curtis Employment Law Strategies, Vancouver
- 2:40 – 2:55 BREAK

- 2:55 – 3:45      A REFERENCE POINT FOR REFERENCES AND REFERENCE LETTERS: RECENT DEVELOPMENTS AND LEGAL AND PRACTICAL CONSIDERATIONS
- review of law regarding the provision of references and reference letters
  - whether an employer has a legal obligation to provide a reference
  - whether liability may result out of giving a negative reference
  - claims of defamation arising out of references
  - effect of providing or refusing to provide a reference on an employee's entitlement to notice at common law, right to damages and duty to mitigate;
  - direction in which the law may be moving with respect to references and reference letters
  - role which references and reference letters can play in settlement negotiations and agreements
- James D. Kondopulos** – Roper Greyell LLP – Employment and Labour Lawyers, Vancouver  
**Matthew Larsen** – Fasken Martineau DuMoulin LLP, Vancouver
- 3:45 – 4:30      THE OVERTIME GAME - SELECT ISSUES IN WORKING PAST THE CLOCK
- legal overview of provincial, federal, and common law rules on overtime
  - specific issues with overtime (travel, cell phone use, and class actions)
  - best practices and issue spotting for plaintiff's counsel
  - best practices for defendant's counsel
- Richard E. Press** – DLA Piper (Canada) LLP, Vancouver  
**Melissa VanderHouwen** – Moore Edgar Lyster, Vancouver

**Day 2: Friday, May 4, 2018**

- 9:00 – 9:10      WELCOME
- Matthew Cooperwilliams** – Harris & Company LLP, Vancouver OR  
**Simon Kent** – Kent Employment Law, Vancouver
- 9:10 – 10:15      DEVELOPMENTS IN EMPLOYMENT LAW AGGRAVATED DAMAGES CLAIMS FOR PSYCHIATRIC DAMAGE
- review of *Saadati v. Moorhead*, 2017 SCC 28 and implications
  - cost vs. benefit of using medical experts in these claims
  - lay evidence required if no expert is utilized
  - practical reasons to plead or not plead aggravated damages claims
  - WCB-related issues
- Blair W. Curtis** – Tevlin Gleadle Curtis Employment Law Strategies, Vancouver  
**Christopher R. Forguson** – Chris Forguson Employment Law, Vancouver  
**Thomas A. Posyniak** – Harris & Company LLP, Vancouver
- 10:15 – 10:30      BREAK
- 10:30 – 11:20      ISSUES MITIGATION
- principles relating to mitigation in employment law
  - review of *Brake v. PJ-M2R Restaurant Inc.*, 2017 ONCA 402, which revisits the duty

to mitigate

- implications of these cases

**David D. McWhinnie** – Tevlin Gleadle Curtis Employment Law Strategies, Vancouver

**Nicole Toye** – Harris & Company LLP, Vancouver

11:20 – 12:10      **MONEY FOR NOTHING: LEGAL STRATEGIES TO MAKE SETTLEMENT DOLLARS GO FURTHER**

- effective strategies and the legalities behind structured settlements for income tax and employment insurance purposes, including:
  - retiring allowances
  - reimbursement of legal fees
  - reimbursement of mitigation expenses
  - general damages, aggravated damages and punitive damages – when are they appropriate and how are they viewed by Service Canada and the Canada Revenue Agency?
  - compensating the employee-shareholder and buying back shares in privately held corporations
  - employer contributions to RRSPs and other tax-deferred savings schemes
  - are contractors treated differently?
  - compensation in lieu of reinstatement (in human rights cases)
  - interest payments
  - can a claim be made for loss of a capital asset (for designated professionals)?

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

**Riley Burr** – Norton Rose Fulbright Canada LLP, Vancouver

12:10 – 1:10      **NETWORKING LUNCH (PROVIDED)**

1:10 – 1:50      **THE TRIALS AND TRIBULATIONS OF A VIRTUAL WORKPLACE**

- legal and practical issues of telecommuting
- lessons learned from the perspectives of both the employer and employee

**Sandra Carter** – Valkyrie Law Corporation, North Vancouver

**Emily McClendon** – Valkyrie Law Corporation, North Vancouver

1:50 – 2:40      **EMPLOYMENT STANDARDS UPDATE**

- organizational overview
- trends in employment standards across Canada
- BC data and facts, employment standards statistics
- little known facts about the *ESA*/Employment Standards Branch
- director's "tips" for employment law counsel and HR professionals

**William C. Boyte** – Executive Director, Ministry of Labour - Employment Standards Branch, Victoria

2:40 – 2:55      **BREAK**

2:55 – 3:45

#### FAMILY STATUS – THE STATUS OF THE FAMILY STATUS TEST

- review of the test set out in *Health Sciences Association of British Columbia v. Campbell River and North Island Transition Society*, 2004 BCCA 260 (“*Campbell River*”)
- how *Stewart v. Elk Valley Coal Corp*, 2017 SCC 30 impacts *Campbell River*
- how *Campbell River* has been treated before and after *Stewart v. Elk Valley Coal Corp*, 2017 SCC 30
- review of the test for family status in other jurisdictions
- how the test applies to employees’ obligations to their parents

**Erin Brandt** – Kent Employment Law, Vancouver

**Richard Savage** – Fasken Martineau DuMoulin LLP, Vancouver

3:45 – 4:25

#### JUST CAUSE, JUST ‘CUZ

- key cases
- analysis and trends
- effects on practice

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

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

4:25 – 4:30

#### CLOSING REMARKS

**Matthew Cooperwilliams** – Harris & Company LLP, Vancouver OR

**Simon Kent** – Kent Employment Law, Vancouver