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2020 Labour and Employment Conference: Ontario and Alberta

Friday, December 4, 2020

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2020 Labour and Employment Conference: Ontario and Alberta

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AGENDA

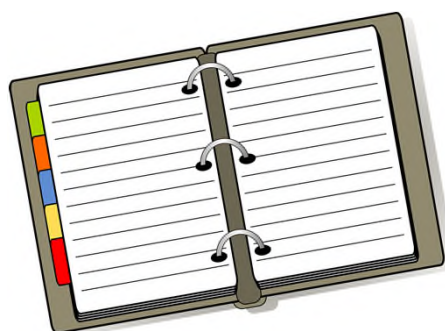
Time (ET)	Time (MT)	
11:00 a.m.	9:00 a.m.	Introduction
11:10 a.m.	9:10 a.m.	2020: A Year in Review – Legislative and case law updates from Alberta and Ontario <i>Ben Aberant, Danielle Douglas, Nicole Naglie, Patrick Pengelly, Ryan Plener, Justin Turc</i>
12:00 p.m.	10:00 a.m.	Privacy Breaches: What are they and how do we respond <i>Marco Fimiani, Kate McNeill-Keller, Shana Wolch</i>
12:20 p.m.	10:20 a.m.	Break
12:30 p.m.	10:30 a.m.	Class Actions: Highlighting recent examples of employment class actions and strategies to reduce the risk <i>Meghan Hillstrom, Nicole Naglie, Justin Turc</i>
12:50 p.m.	10:50 a.m.	Accommodations on family status and mental health issues in the time of COVID-19 <i>Carolyn Lee, Justine Lindner, Ben Ratelband, Simmy Sahdra</i>
1:10 p.m.	11:10 a.m.	Working from Home Arrangements: Best practices for addressing performance management issues and general best practices <i>Patrick Pengelly, Ryan Plener, Jessica Wuergler</i>
1:30 p.m.	11:30 a.m.	Closing Remarks

2020: A Year in Review – Legislative and Case Law Updates from Alberta and Ontario

**Danielle Douglas, Nicole
Naglie, Patrick Pengelly, Ryan
Plener and Justin Turc**

Agenda

- Introduction
- Legislative Updates
 - COVID-19 Related Updates
 - AODA Compliance Requirements
 - Alberta Bill 32
- Case Law Updates
 - Compensation Entitlements Upon Termination
 - Termination Clauses
 - Dependent Contractors
 - Just Cause Terminations



Introduction

— COVID-19



— Employment Contract Drafting



COVID-19 Infectious Disease Emergency Leave



— Job-protected leave of absence in Ontario

- 1) The employee is under individual medical investigation, supervision or treatment
- 2) The employee is following a COVID-19 related order
- 3) The employee is in quarantine, isolation (voluntary or involuntary), or is subject to a control measure,
- 4) The employee is under a direction given by his or her employer in response to the employer's concern that the employee might expose other individuals in the workplace to a designated infectious disease.
- 5) The employee is providing care or support to a designated list of individuals
- 6) The employee is directly affected by travel restrictions
- 7) The employee is subject to an order that relates to COVID-19 under the Reopening Ontario Act, 2020

— Applies to employees with reduced or eliminated hours

- **No** temporary layoffs
- **No** constructive dismissals

— COVID-19 Period runs until January 2, 2021

COVID-19 Ontario Businesses Re-Opening



- Staged Re-Opening
- New levels System
 - Green – Prevent (Standard Measures)
 - Yellow – Protect (Strengthened Measures)
 - Orange – Restrict (Intermediate Measures)
 - Red – Control (Stringent Measures)
 - Lockdown – (Maximum Measures)
- Government published guides for businesses



COVID-19 Ontario Regulation 364/20: Rules for Areas in Stage 3



- Business' and organizations must comply with the Ministry of Health screening recommendations
- Required screening for workers and essential visitors

Example Screening Tool

Ask:

1. Have you experienced any new or worsening symptoms or signs of COVID-19?
2. Have you travelled outside of Canada in the past 14 days?
3. Have you had close contact with a confirmed or probable case?

COVID-19

Bill 218: *Supporting Ontario's Recovery Act, 2020*



- Liability protection for organizations related to actions arising from COVID-19 exposure or infection
- Two conditions to be met:
 - Good faith effort to follow public health guidelines and laws related to COVID-19
 - The act or omission must not constitute gross negligence
- Good faith effort = honest effort

COVID-19

Job-protected Leaves of Absence (Alberta)



COVID-19 Leave

- Job-protected leave of absence in Alberta for employees who are in quarantine due to COVID-19
 - Employees are eligible for the leave regardless of their length of service
 - Medical note is not required
 - Employees can take this leave more than once
 - Employees may not be terminated or temporarily laid off for requesting a protected leave or being on the leave

Personal and Family Responsibility Leave

- Job-protected leave of absence in Alberta for a period of time that is necessary to meet the employee's family responsibilities, if they need to care for:
 - 1) Self-isolated family members
 - 2) Children who are unable to attend school or child care services as a result of any recommendations or directions of the Chief Medical Officer with respect to COVID-19
 - Employees are eligible for the leave regardless of their length of service
 - Medical note is not required (employers may ask for school or daycare enrolment)
 - Employees can take this leave more than once
 - Employees may not be terminated or temporarily laid off for requesting a protected leave or being on the leave
- Employees can access this leave until August 14, 2021

COVID-19 Alberta Businesses Re-Opening



— Relaunch Strategy

- 1) Stage 1 (May 14- June 11)
- 2) Stage 2 (Starting June 12)
- 3) Stage 3 (Timing TBD)

— The Alberta Government ordered all businesses throughout the Province who are re-opening or who continue to operate to:

- implement practices to minimize the risk of transmission of infection among persons working at or attending the business;
- provide procedures for rapid response if a person develops symptoms of illness while working at or attending the business;
- ensure that persons working at or attending the business maintain high levels of sanitation and personal hygiene;
- comply, to the extent possible, with any applicable Health guidance found in [Alberta Biz Connect](#).

COVID-19 Alberta Businesses Re-Opening



— **The Alberta Biz Connect:**

- provides general workplace guidance for business owners re-opening or continuing operations:
 - The Alberta Government strongly recommends businesses and entities develop, implement, and publicly post relaunch plans.
 - An optional relaunch plan template is available
 - Distancing measures
 - Cleaning and disinfecting
 - screening for symptoms
 - Personal protective equipment
 - Responsibilities
- provides guidance for specific industries:
 - retail, grocery stores, malls and shopping centres, restaurants, cafes, pubs, and bars, health non-essential services, industrial work camps, food processing facilities, golf course operators, office buildings, warehouses, hotels,

COVID-19

Bill C-4: An Act Relating to Certain Measures in Response to COVID-19



— Three new temporary recovery benefits:

— The Canada Recovery Benefit

— \$500 per week, for up to 26 weeks, available to workers who are self-employed or who are otherwise not eligible for Employment Insurance

— The Canada Recovery Sickness Benefit

— \$500 per week, for up to two weeks for individuals that cannot work because they are sick or must self-isolate for reasons related to COVID-19.

— The Canada Recovery Caregiving Benefit

— \$500 per week, for up to 26 weeks for individuals who cannot work because they must provide care to children or family members due to the closure of schools, daycares or other care facilities.

COVID-19

Bill C-9: An Act to Amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)

- Extends the Canada Emergency Wage Subsidy availability to June 2021
- The subsidy provides employers with varying amounts dependent on the period and the decline in the employer's revenue
- Introduces the Canadian Emergency Rent Subsidy



Accessibility for Ontarians with Disabilities Act Reports & Compliance

- Public organizations must file by December 31, 2020
- Private and non-profit organizations must file by June 30, 2021
- Private and non-profit organizations with more than 50 employees must comply with the World Wide Web Consortium's WCAG 2.0 Level AA standard by January 1, 2021
- Fines for non-compliance up to **\$100,000** per day



Bill 32 Changes to the *Employment Standards Code*

Group Termination

- Employers must give 4 weeks' notice to the Minister of Labour and Immigration unless unable to do so, in which case the employer must provide written notice as soon as is reasonable and practicable in the circumstances, when they terminate 50 or more people at a single location within a four-week period

Temporary layoffs

- Employers can lay employees off for up to 90 days total within a 120 day period (if non-COVID related)
- Specific timing requirements for notice are removed
- 180 day layoff period for COVID-19 related layoffs

Bill 32

Changes to the *Employment Standards Code*

Averaging Arrangements

- Employers can start an hours of work averaging arrangement without employee consent/agreement if they provide two weeks' notice
- More flexibility in terms of scheduled hours and averaging period
- Flexibility for employers to decide if daily overtime applies

Payroll

- **Holiday pay:** Average daily wage no longer has to include vacation pay and general holiday pay
- **Deductions:** Employers can correct payroll errors or vacation pay paid in advance without employee's written authorization to deduct it from their paycheque
- **Final pay:** Extended deadlines for issuing final pay to employee upon termination

Bill 32

Changes to the *Labour Relations Code*

Picketing

- If a union wants to engage in secondary picketing, it must get approval from the Alberta Labour Relations Board in order to picket at a location other than the employees' workplace
- Picketing is now deemed wrongful when it obstructs or impedes a person from crossing a picket line

Changes to reverse onus rules

- An employer is only responsible for proving they did nothing wrong when there is a complaint against them for an employee being unfairly terminated
- Reverse onus for unions is added where there is alleged union coercion or intimidation, or alleged breach of opt-in provisions

Bill 32

Changes to the *Labour Relations Code*

Certification

- Specific timelines for union certification are removed
 - Alberta Labour Relations Board should still complete certification applications within six months for most cases
- Alberta Labour Relations Board can only certify a trade union as a remedy in circumstances where no other remedy is sufficient
- Auto-certification where there was more than 65% of union support was eliminated by Bill 2: An Act to Make Alberta Open for Business in 2019

Case Law Updates

Compensation Entitlements Upon Termination

Matthews v. Ocean Nutrition Canada Ltd., 2020 SCC 26

- Mr. Matthews brought an action for constructive dismissal and claimed damages for a payout under a Long Term Incentive Plan
- A realization event for payout under the plan occurred 13 months after resignation.
- Trial Judge found:
 - Common law notice period was 15 months; and
 - Mr. Matthews would have been employed at the realization event had he been given working notice and was therefore entitled to damages related to the Long Term Incentive Plan
- SCC agreed with the Trial Judge
- A contractual breach of the duty of good faith is different than failure to provide reasonable notice

Compensation Entitlements Upon Termination

Matthews v. Ocean Nutrition Canada Ltd., 2020 SCC 26

- SCC confirmed that parties may contract out of common law damages, with clear and unambiguous language.
- SCC also confirmed that the case *Bhasin v Hrynew* is still the leading case on the duty of good faith.
 - Still possibility of imputing a duty of good faith in wrongful dismissal matters. The Court described the duty as “a simple requirement not to lie or mislead the other party about one’s contractual performance”.

Compensation Entitlements Upon Termination

Battiston v Microsoft Canada Inc., 2020 ONSC 4286

- Ontario Superior Court held a limiting provision unenforceable because the employer did not specifically call attention to the provision
- Provision was in an online agreement that the employee was required to click “accept”
- Provision clearly and unambiguously limited employee entitlements to stock awards post termination
- Court decided that harsh or onerous provisions must be specifically drawn to the attention of the vulnerable party
 - Consider highlighting key changes in correspondence and/or directing employee's to the specific change

Termination Clauses

Waksdale v Swegon North America Inc., 2020 ONCA 391

- The Ontario Court of Appeal found that an unenforceable “just cause” termination provision will render an otherwise enforceable “without cause” provision unenforceable
- Potential to increase damages in wrongful dismissal claims
- Leave sought to the Supreme Court of Canada
- Sewell and Provincial Fruit Co, 2020 ONSC 4406 relied on *Waksdale*.

Sewell and Provincial Fruit Co. 2020 ONSC 4406

The Company is entitled to terminate your employment at any time and without any notice or any further compensation for just cause and the Company will not have any further obligations to you whether at contract, under statute, at common law or otherwise

Termination Clauses

Kim v. BT Express Freight Systems (2020), 317 A.C.W.S. (3d) 255

- The employer was found liable for damages after terminating an employment contract before the employee started working
- BT Express Freight Systems poached Mr. Kim and Mr. Kim gave his resignation to his former employer
- BT Express terminated the contract less than a week before Mr. Kim started
- Probationary period clause found not to apply. Awarded 3 months.

Mitigate Risks

- High degree of certainty regarding offer of employment
- Valid termination clause

Arbitration Clauses

Canadian Union of Postal Workers v Foodora Inc. d.b.a Foodora, 2020 CanLII 16750 (ON LRB)

- The Canadian Union of Postal workers applied for certification to represent Foodora couriers
- The Ontario Labour Relations Board found Foodora couriers were dependent contractors with rights to unionize and considered the following factors:
 1. Subcontracting: Couriers were not allowed to subcontract work.
 2. Tools: The service uses an App that is exclusively developed, owned and controlled by Foodora.
 3. Opportunity for profit: Couriers do not have any entrepreneurial activity.
 4. Economic dependence:
 5. Control: Foodora can control how couriers perform their work through incentives and prohibitions
 6. Compensation: Couriers had no ability to negotiate fees.

Just Cause: Termination For Sexual Harassment ***Calgary (City) v Amalgamated Transit Union, Local 583 (Sebua Grievance), [2019] A.G.A.A. No. 48***

- Transit driver was terminated for violation of the City's Respectful Workplace Policy and for making inappropriate and unwelcome sexual advances towards a female transit driver
- No progressive discipline and clean disciplinary record.

Decision:

- The Board found that dismissal was not an excessive response given the serious nature of the sexual harassment
- The City's Respectful Workplace Policy clearly indicates that unwanted sexual touching and remarks about person's bodies of a sexual nature constitutes sexual harassment and the grievor knew he could be terminated for sexual harassment
- City had legal responsibility to protect employees from sexual harassment under OH&S legislation

Lessons for Employers:

- Progressive discipline is often required, however, depending on the seriousness of the misconduct, termination can still be justified.

Just Cause: Different Sanctions for Different Employees ***Alberta Union of Provincial Employees v. Alberta 2020, ABCA 284***

- Correctional officer recorded and sent CCTV security footage of an assault by an inmate to co-workers, video footage was leaked to media, although not by grievor, grievor was terminated for involvement.
- Grievor denied any involvement and confessed following termination
- Three other correctional officers were disciplined but not terminated

Decision:

- Termination was upheld by Board and appeal dismissed
- CA found the Board was entitled to decide the grievor's dismissal was justified notwithstanding that different penalties were given to the other officers.

Lessons for Employers:

- Different discipline for the same conduct may be discriminatory, however, employers are entitled to address misconduct differently where there are different degrees of participation or responsibility

Privacy Issues: Anticipating the Breach

Kate McNeill-Keller, Shana Wolch and
Marco Fimiani

Privacy Laws

The “Current” State:

—*Personal Information Protection and Electronic Documents Act (PIPEDA)*, applies to:

—Canadian private-sector organizations that collect, use or disclose personal information in the course of a commercial activity – but only if a province does not have equivalent legislation.

—Federally regulated organizations that conduct business in Canada are subject to PIPEDA.

—Alberta, British Columbia and Quebec have their own private-sector privacy laws deemed substantially similar to PIPEDA. Organizations subject to a substantially similar provincial privacy law are generally exempt from PIPEDA.

—Several jurisdictions have enacted privacy legislation regarding the collection, use and disclosure of personal health information.

Privacy Laws

Replacing PIPEDA?

- On November 17, 2020, Bill C-11 was introduced seeking to replace PIPEDA – with: (i) the *Consumer Privacy Protection Act* (CPPA); and (ii) the *Personal Information and Data Protection Tribunal Act* (PIDPT)
- PIPEDA's Model Code principles are expected to be reflected
- It remains to be seen how this new proposed federal legislation, if passed, will interact with provincial legislation

What is a Privacy Breach?

- A privacy breach means a loss of, unauthorized access to, or unauthorized disclosure of personal information

AB PIPA:

Organizations subject to Alberta's PIPA are required to: notify the Privacy Commissioner without unreasonable delay of a privacy breach where a reasonable person would consider that there exists a real risk of significant harm to an individual as a result of the loss or unauthorized access or disclosure

PIPEDA:

Organizations subject to PIPEDA are required to, as soon as feasible after determining a breach occurred:

- (i) report to the Privacy Commissioner of Canada and
- (ii) notify affected individuals of

breaches of security safeguards involving personal information that pose a real risk of significant harm to individuals

What is a Privacy Breach?

— Examples of some causes of a privacy breach:

Human Error	<ul style="list-style-type: none"> • Sending email, mail or faxes to the wrong individual(s) • Sending a fax to an unsecure fax • Mail or couriers sent to the wrong person • Losing documents on public transport or misplacing documents • Improperly disposing of documents (i.e. throwing them in the garbage, or intended for shredding but dealt with in another way) • Computer hard drive given to the wrong person • Verbal disclosure
Theft	<ul style="list-style-type: none"> • Information taken by a former employee • Office and car break-ins resulting in the loss of files and computer devices, including laptops and hard drives
System Compromise	<ul style="list-style-type: none"> • A targeted network of attacks by external hackers seeking to extract large amounts of data or ethical-hackers hacking a system • A system upgrade that results in information being viewable on the Internet • A system glitch that misdirects faxes or emails
Inadequate Access Control	<ul style="list-style-type: none"> • Improper access controls to electronic and paper files resulting in the files being accessible to those not authorized to have access

Real World Examples

— **Example #1:** An employee notified his company that he could access electronic HR folders in a shared drive. The permission setting on the folder was inadvertently set to allow broad access. The company could not determine who accessed the folder, but the employee who discovered the incident confirmed he did not use, copy, disclose, etc. any of the information.

— Personal information: Name, home address, hire date, salary, vacation entitlement. SIN of only 10 employees.

— **Example #2:** An organization discovered two of its call centre employees were in violation of its own protocols on direct system entry of payment card information. The employees were copying down customer payment card information into notebooks they took home. No evidence that the information was misused but the organization could not eliminate the possibility.

— Personal information: Name, address, payment card number, expiry date and CVV code.

— **Example #3:** A “spear phishing” email was sent to an organization’s email addresses. One of the employee’s clicked on an attachment that installed a rule in the employee’s Outlook account. As a result, the attacker collected a copy of certain emails addressed to the employee between November 25 – December 31, 2019.

— Personal information: Name, address, telephone number, email, personal financial information, medical information.

Privacy Breach Preparedness Plan

1. Consider your Cyber Response Strategy

- Be defensive: minimize data collection and retention – you cannot lose what you do not have
- Be ready: plan for a breach/loss, in advance
- Get expert help: technical; legal; PR.
- Stop the bleeding: close the door, permanently
- Determine your story, and tell it: to your customers, to the Board, to the Regulator (and later, to the Court)
- The lawyers, and privilege, are important. But a fast, thoughtful response is job one

Privacy Breach Preparedness Plan

2. Assemble the Right Internal Team

- Executive management: should have broad authority so that the process can advance quickly
- Legal investigation team: should be led by in-house and external counsel, with support of technical experts
- IT and security team: should perform the technical response and remediation work
- Digital forensics team: should investigate the incident (usually consists of a third party consultant)
- Communications and PR team: should coordinate the communication efforts to all parties

Privacy Breach Preparedness Plan

3. Identify the Right External Team

- External counsel: should have cyber/data expertise
- Digital forensics team: should have capability to provide technical response, forensics and remediation advice
- Public relations firm: should have expertise with similar organizations
- Staffing services: should be able to provide qualified replacement or supplemental personnel
- Call centre services: should have capacity to provide quality on-demand services

Privacy Breach Preparedness Plan

4. Have an Escalation Criteria in Place

- Understand and communicate incident life cycle management within the organization.
- Incorporate and document risk/harm assessment
- Establish criteria and processes to evaluate and escalate an incident to senior management

5. Use Insurance as a Risk Management Tool

- Evaluate insurance policies to understand coverage

6. Class Actions

- Data breaches are a classic mass event – a single corporate failure, with identical effect on many individuals (says the Plaintiffs' lawyer...)

A Practical Guide For Your Business



Request a copy here: <https://www.mccarthy.ca/en/insights/books-guides/cybersecurity-risk-management-practical-guide-businesses-0>

Class Actions: Recent Trends and Examples of Employment Class Actions and Strategies to Reduce the Risk

Justin Turc, Meghan Hillstrom and Nicole Naglie

Introduction

- Increase in class-actions
- Key issue: Overtime
- Emerging issue: COVID-19 specific class actions
 - E.g. Long-term care homes



Significant New Changes to the Ontario *Class Proceedings Act, 1992*

Bill 161 - *The Smarter and Stronger Justice Act, 2020*

- Came into force on October 1, 2020
- Applies to class proceedings commenced after October 1, 2020
- Key changes:
 - Mandatory dismissal for delay
 - Preferable forum
 - Common issues predominate over individual issues

Unpaid Overtime

Fulawka v. Bank of Nova Scotia, 2016 ONSC 1576

- Claim made by a group of retail sales staff
- Period of claim spanned 2000-2010
- Plaintiffs argued they were routinely required to work overtime without pay
- Plaintiffs sought \$250 million in general damages and \$100 million in punitive damages
- Case settled for \$39.3 million

Unpaid Overtime

Fresco v. Canadian Imperial Bank of Commerce, 2020 ONSC 75

- Claim made by 31,000 customer service employees
- Period of claim spanned 1993-2009
- Partial non-payment of overtime hours based on overtime policy
- Plaintiffs seeking \$600 million

Unpaid Overtime

Eklund v GoodLife Fitness, 2018 ONSC 4146

- Claim made by non-managerial & non-unionized employees
- GoodLife made significant changes to compensation policies
- Implemented a new record keeping system
- Settled for \$7.5 million

Mitigation of Unpaid Overtime Claims

- Monitor employee hours
 - Even while employees are working from home
- Review and update work-from-home policies
- Implement methods to control overtime costs
- Consider averaging agreements and overtime agreements
- Maintain accurate records to defend against overtime claims

Manager Misclassification

- Do your “managers” fit the managerial exception?
 - a person whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis
- How has working remotely changed your “managers” duties?
 - Possibly engaging in less:
 - Supervision
 - Scheduling
 - Employee discipline

Manager Misclassification

Brown v CIBC, 2012 ONSC 2377

- Plaintiffs sought order excluding them from manager classification
- Claimants were analysts, investment advisors, and associate investment advisors
- Not certified as a class action
- Class members had too little in common

Manager Misclassification

Rosen v BMO, 2016 ONSC 4752

- Claim made by 1800 Nesbitt investment advisors
- Period of claim spanned 2002-2016
- Certification granted
- Settled for \$12.5 million

Mitigation of Manager Misclassification

- Review non-managerial tasks assigned to managers
- Review time allocation towards non-managerial tasks
- Appropriately monitor remote employees

Independent Contractor Misclassification

- Increase in misclassification class-action lawsuits
- Risk of orders for:
 - Overtime pay
 - Vacation pay
 - Holiday pay
 - Increased termination and severance payments
- Risk of owing third parties:
 - unremitted taxes
 - workers' compensation insurance premiums

Independent Contractor Misclassification

Omarali v. Just Energy, 2019 ONSC 3734

- Claimants are 7000 door to door sales agents
- Argued they were employees and therefore entitled to *Employment Standards Act* ("ESA") protections
- Class action certified
 - Commonality among claimants was that the corporation had some level of control over them

Mitigation of Independent Contractor Misclassification

- Relationships are substance over form
- Consider:
 - Who supplies tools and equipment
 - Whether the worker can choose to work statutory holidays
 - If there's economical dependence
 - If the worker works exclusively for the corporation
 - If there's uniform treatment across workers
- Clearly define independent contractor policies and allow contractors to maintain control

General Takeaways to Reduce the Risk

- Proactive compliance with employment regulations
 - Review policies
 - Ensure implementation of policies
 - Monitor employees, even while working remotely
 - Keep up to date records
- HR Compliance Diagnostic tool
 - Identifies gaps in compliance
 - Offers workable solutions to bridge these gaps

Accommodations for Family Status and Mental Health Issues in the time of COVID-19

Carolyn Lee, Justine Lindner,
Ben Ratelband and Simmy
Sahdra

Safety and the Duty to Accommodate

- Occupational health and safety legislation imposes a general duty on employers to take all reasonable precautions in the circumstances to protect the health and safety of workers in the workplace. Additionally, under the applicable human rights legislation, employers also have a duty to accommodate employees with disabilities and/or family status related claims up to the point of undue hardship.
- There is no requirement to come up with a perfect solution, but undue hardship is a stringent standard; a minor inconvenience to an employer will not be enough to negate the duty to accommodate.
- Generally, accommodation means conducting a thorough search of all of the options and making alteration to: a) the physical workplace; b) work duties; or c) schedules. Employers should also consider any government guidelines that have been released regarding the accommodation being requested.
- Accommodation generally does **not** mean that an employer has to change the fundamental requirements of a job, displace other employees, or create a new job.

COVID-19 Related Leaves of Absence

Ontario: The Declared Emergency leave provisions in the *Employment Standards Act, 2000*, S.O. 2000, c. 41 have been expanded to encompass two types of unpaid, job-protected leaves for eligible employees: **Declared Emergency Leave** and **Infectious Disease Emergency Leave ("IDEL")**. The IDEL applies to employees who need to stay home to isolate or quarantine or take care of a dependent due to COVID-19, which includes parents who decide not to send their children back to school due to concerns about COVID-19.

Alberta: Alberta Regulation 29/2020 under the *Employment Standards Code* provides all employees who are in quarantine due to COVID-19 entitlement to 14 days of unpaid leave. Employees do not need to provide a medical note. The availability of personal and family responsibility leave has also been expanded in response to COVID-19.

Federal: Part III of the *Canada Labour Code* now entitles employees to 2 weeks of leave if the employee has contracted COVID-19 or is medically required to self-isolate and 26 weeks if an employee is unable to work for certain childcare or family care reasons. Employees are not required to provide a medical certificate.

Duty to Accommodate – Family Status

Under the applicable human rights legislation in Ontario, Alberta, and in the Federal jurisdiction, the ground of **family status** requires employers to accommodate an employee who has certain care-giving responsibilities, in some circumstances, up to the point of undue hardship.

Accommodations could include: modifying shift schedules, work from home arrangements, working part-time, etc.

Family Status Legal Tests: *Canada (Attorney General) v Johnstone*, 2014 FCA 110 ("Johnstone") or the more recent test outlined in *Misetich v Value Village Stores Inc.*, 2016 HRTO 1229 ("Misetich") should be applied in cases of discrimination on the basis of family status.

In *Johnstone*, it was held that applicants must demonstrate that:

- (i) the childcare obligations stem from the applicant's "legal responsibility" for the child, not merely personal choice;
- (ii) the applicant has made reasonable efforts to meet their childcare obligations through reasonable alternatives, and no alternative solution is reasonably accessible, this is also known as the requirement for "self-accommodation"; and
- (iii) the impact of the applicable workplace interferes with the applicant's ability to fulfill their childcare obligations in more than a trivial or insubstantial way.

Ontario: In *Misetich*, the HRTO found the *Johnstone* test was too onerous, particularly the requirement for applicants to self-accommodate. The HRTO found the test should remain the same, regardless of the ground of discrimination, therefore, an applicant must only establish: (i) the parent and child relationship; (ii) the adverse treatment; and (iii) the adverse treatment was due, at least in part, to the family status discrimination. [mccarthy.ca](https://www.mccarthy.ca) | McCarthy Tétrault LLP

Duty to Accommodate – Mental Health Disability

A recent [research poll](#) conducted by Nanos for the Mental Health Commission of Canada surveyed over 1,000 individuals and found that:

- Approximately **84%** of participants reported **feeling some amount of stress related to COVID-19**, with **13%** reporting they felt stress all the time, and **33%** reporting they felt stress regularly because of the pandemic.

- Under provincial and federal human rights legislation, employers have a duty to accommodate workers with disabilities; stress and anxious feelings are not in and of themselves disabilities, but they may be symptomatic of one.
- The duty to accommodate may be triggered where an employee experiences a mental health disability, including an anxiety or depressive disorder, that has been brought on and/or exacerbated by the COVID-19 pandemic.

Workplace Policies – COVID-19 Leaves, Mental Health, and Accommodation

- Employers should develop policies for the following situations where employees may request not to return to work:

High risk employees

Employees with childcare issues or who are caring for a sick relative

Employees concerned about workplace safety

Employees who are entitled to statutory leaves of absence

- Other employees may have non-specific health concerns related to the general risks of COVID-19, such as taking public transit, which do not trigger statutory duties in all circumstances. Employers should strive to treat employees consistently when addressing these types of concerns.

Accommodations in the Workplace – Best Practices

- For employees with family status concerns, employers should consider whether it is feasible for employees to:
 - Work from home;
 - Arrange alternate childcare arrangements; and/or
 - Modify shift schedules to accommodate co-parenting or family care responsibilities.
- With regards to mental health concerns, employers should consider whether it's feasible to:
 - Provide information to all employees regarding the actions they have taken and/or will take to minimize the risk of transmission.
 - Remind employees of available mental health resources, whether general or specific to COVID-19
 - Help their team check-in with themselves about their mental health, emphasize the importance of taking care of themselves, and provide reminders to use healthy coping strategies.
 - With employees who are working from home, be sure to observe and follow-up with employees as much as possible and model healthy coping strategies.

Scenario 1

Given that in-person attendance at school is optional for the 2020 – 2021 school year, some employees have elected to enroll their child/children in remote learning until a vaccine is made widely available. These employees plan to remain at home to facilitate remote learning and to care for their children.

What obligations (if any) does an employer have to accommodate these employees? What steps (if any) must be taken to accommodate these employees?



Scenario 2



A business has been permitted to re-open under modified conditions and with appropriate precautions in place. The business has decided that it is appropriate for employees to return to the office every other day. One of the employees has informed the employer that they are immunocompromised and have concerns about the risks to their health associated with returning to the office. The business is also aware that this employee has been struggling with work from home arrangements.

What steps (if any) must the employer take to accommodate the employee?

Working from Home Arrangements: General Best Practices and Best Practices for Addressing Performance Management

Patrick Pengelly, Ryan Plener and Jessica Wuergler

Agenda

- General Best Practices
- Health & Safety
 - Principles
 - WSIB/WCB
- Virtual Performance Management
 - Remotely Managing Employees

Best Practices- **Working From Home**

- Remote Work Policies
 - Clear Structure
 - Reporting Relationship/Requirements
 - Hours of Work
 - Overtime
 - Confidentiality
 - Designated Work Space
 - Use of Authorized Devices

Best Practices- **Working From Home**

- Remote Work Agreements

- Tax Implications

- Does remote work create a permanent establishment for provincial tax purposes?

- Are their differing withholding obligations?

- Employment Standards Implications

- Is the employer now carrying on business in another province?

- Health and Safety Implications

- Is the employee covered under the health and safety regime of another province?

Remote Work- **Health & Safety**

- *Occupational Health & Safety Act*

- Workplace (ON): any land, premises, location or thing at, upon, in or near which a worker works

- Worksite (AB): a location where a worker is, or is likely to be, engaged in any occupation and includes any vehicle or mobile equipment used by a worker in an occupation

- Employer Duties

- Maintain safe work environment

- Inspections?

Remote Work- **Health & Safety**

➤ Steps to ensure safe and healthy remote working environment:

- Consider type of work & type of equipment
- Inspections
- Attestations
- Guidance/Information
 - Ergonomics
 - Changes to work environment
 - Fire Safety

WSIB & **WCB**

- WSIB/WCB coverage extends to employees as long as they are in the course of employment.
- Factors in determining a claim:
- Time of accident
 - Place
 - Activity
 - Was the worker paid for the time?
 - Was the work arrangement authorized by the employer?
 - Did the injury occur in the course of using equipment or materials supplied by the employer?

WSIB & WCB Examples

1. Margaret is a typist for a municipality. She transcribes transportation planning reports from audiotapes. She works in a spare room in the basement of her home that was designated as her workspace. Her home office has a computer, fax machine and printer supplied by the employer. On her way to the basement office one morning, Margaret slips on some water on her kitchen floor. She falls and hurts her lower back. Is her injury covered?
2. Margaret drives to a local office supply store to purchase toner and paper for the printer in her home office. On the way home she is involved in a motor vehicle accident and suffers a neck injury. Is Margaret covered?

WSIB & WCB Examples

3. Margaret has typed transportation planning reports out of her home for three months using her own desk and chair. Her work station was not ergonomically assessed before beginning the telecommuting arrangement. Lately, she is experiencing pain in her wrists and neck. Her doctor diagnosed a repetitive strain injury in her wrists. Her employer sent an ergonomist out to assess her workstation. The ergonomist determined her chair and desk, which cannot be adjusted, do not suit her body and she needs new office equipment. Is her injury covered?
4. At noon, Margaret decides to take a lunch break. She leaves her home office in the basement and climbs the stairs to her kitchen. On her way up the stairs, she misses a step, falls and cuts her chin on a step. The cut requires three stitches. Is Margaret covered?

Virtual Performance Management

Best Practices

- Focus on short-cycle work planning, breaking large tasks into smaller, more manageable deliverables/goals.
- Establish expectations regarding core hours.
- Accurate, complete, timely and transparent feedback.
- Feedback should be provided informally and regularly via virtual face-to-face feedback, as well as formal, face-to-face midyear and annual reviews. Allocate time to question about the employee's well-being.
- Clear warning of any and all performance concerns and potential consequences.
- Performance improvement plans and progressive discipline.

Remotely Managing Employees

- In most circumstances, an employee logging on for a set time throughout the day does not guarantee their productivity, and an employee logged off of a work system may still be working offline.
- It is important to manage employees working from home for a number of reasons, including:
 - Productivity.
 - Compliance with hours of work and overtime rules.
 - Confidentiality and protection of company property/information.
- Surveillance technologies and methods.

Remotely Managing Employees

Best Practices

- Consult with employees.
- Implement/update technology policies (e.g. privacy policy, IT acceptable use policy).
- Proportionality is key regarding the type of managing done.
- Train employees on accessing sensitive information.
- Non-disclosure and/or confidentiality agreements.

Thank you.

This program qualifies for up to 2.25 hours of CPD credit under the mandatory regimes in British Columbia and Ontario. This program has also been approved for 2.25 CPD hours under Section A of the Continuing Professional Development (CPD) Log of the Human Resource Professionals Association (HRPA) as well as 2 CPD hours for Chartered Professionals in Human Resources (CPHR).

Barreau du Québec Continuing Education: This program contains up to 2.25 hours of content. For more information regarding the declaration and recognition of educational activities, please contact the Barreau du Québec.





McCarthy Tétrault Speaker Biographies



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Bar Admission

Alberta 2009
Ontario 2012

Law School

Osgoode Hall Law School

Practices

Disputes
Labour
Employment
Health & Safety
Human Rights
Alternative Dispute Resolution

Industries

Energy & Infrastructure
Oil & Gas
Technology

Clients look to Ben for practical, proactive, and cost-effective advice on all aspects and stages of their relationships with employees and trade unions.

Ben is a partner in the firm's Labour & Employment Group who practices in both our Toronto and Calgary offices and advises clients on Ontario and Alberta law. He also provides nationwide labour and employment advice to employers operating across Canada.

Ben represents management in a variety of issues including recruitment, hiring, performance management, employment standards, pay equity, human rights, drug and alcohol testing, disability management, occupational health and safety, workers' compensation, dismissals, privacy, collective bargaining, labour board proceedings, grievances, and labour arbitrations.

Frequently engaged to conduct workplace investigations, he also has significant experience advising on employment issues arising in mergers and acquisitions and regularly works with the firm's corporate group on transactions.

Ben helps companies operating in various industries, including oil and gas, energy, utilities, transportation, logistics, retail, hospitality, manufacturing, consumer goods, banking, financial services, communications, property management, security, insurance, technology, pharmaceuticals, cannabis, healthcare, and education. He advises both provincially and federally regulated employers and has conducted unjust dismissal hearings under the *Canada Labour Code*.

Demonstrating a special interest in helping clients with departing employee issues, he notably advises on non-competition, non-solicitation, and confidentiality clauses. He was the successful counsel in one of the leading cases on the enforcement of non-competition clauses - *Ceridian Dayforce Corporation v. Daniel Wright and Ultimate Software*, 2017 ONSC 6763.

Ben frequently appears before provincial and federal courts, as well as arbitrators and adjudicators, labour boards, and human rights tribunals, including in the following reported decisions:

- *Jog v. Bank of Montreal*, 2019 FC 1326
- *Badejo v. The Cadillac Fairview Corporation Limited*, 2019 AHRC 67
- *Ceridian Dayforce Corporation v. Daniel Wright and Ultimate Software*, 2017 ONSC 6763

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- Sugiono v. Human Rights Tribunal (Ontario), 2016 ONSC 3705
- Weir-Jones Technical Services Incorporated v Purolator Courier Ltd, 2015 ABQB 468
- Alam v. Toyota Tsusho Canada Inc., 2015 HRT0 571
- IMS Health Canada Inc. v Harbin, 2014 ONSC 4350
- D'Ermes v. Enbridge Gas Distribution Inc., 2013 HRT0 2098
- LIUNA, Local 183 v. Bentall and Hallmark, (2013) O.L.R.D. No. 3505
- Kish v. LDM Yorkton Corp., 2013 C.L.A.D. No. 211
- 760437 Alberta Ltd. v. Fabutan Corp., 2012 ABQB 266
- Qualex-Landmark Investments Inc. v. Soroya, 2011 ABQB 354

Ben also regularly presents on labour and employment topics at conferences and seminars. Recent speaking engagements include:

- Upcoming April 2020: Transport Lawyers Association 2020 Annual Conference - Amelia Island, Florida - *"Never Say Never Again: The Latest Hot Topics in Labor and Employment"*
- HRPA 2019 HR Law Conference, Toronto - *"War of Attrition: They Won't Leave!"*
- CM Murray LLP Global Business Protections 2018 Conference: International Restrictive Covenants and Confidential Information Protections, London, England - *"Innovations: Pushing the Envelope in Restrictive Covenants – Innovation in Drafting and Enforcement of Non-Competes and Other Restrictions"*
- Canadian Transport Lawyers Association 2018 Annual Conference, Montreal - *"Cannabis Legalization and the Transportation Industry"*
- Lancaster House 2018 Human Rights and Accommodation Conference, Toronto - *"Accommodating Employees with Mental Health Disabilities: A skills training session"*
- Lancaster House 2018 Annual Labour Arbitration and Policy Conference, Calgary - *"Conducting Harassment Investigations: Practical guidance for employers and unions"*
- Lancaster House 2016 Annual Labour Arbitration and Policy Conference, Calgary - *"Obtaining and Using Medical Evidence"*

Ben received his Bachelor of Commerce (2005) from the University of Alberta, where he was the Dr. Hu Harries Gold Medallist, and his JD

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from Osgoode Hall Law School (2008). Prior to his legal studies, he served in the United States Marine Corps as an Infantryman.

Ben is a member of the Canadian Bar Association, Ontario Bar Association, Law Society of Alberta, Law Society of Ontario, and the Canadian Association of Counsel to Employers. He is also an active member of the Canadian Transport Lawyers Association and the (US) Transport Lawyers Association.

Recent Experience

- **Canadian Western Bank acquires iA Investment Counsel Inc.**
June 01, 2020
- **Evolution Mining acquires Red Lake gold mine from Newmont**
March 31, 2020
- **Olymel closes the acquisition of Ontario company Pinty's Delicious Foods Inc.**
November 26, 2018
- **Fusion acquires the Cloud and Business Services unit of Birch Communications for US\$600M**
May 04, 2018

Recent Insights

- **FMCSA Drug/Alcohol Clearinghouse Rule Applies to Canadian Cross-Border Motor Carrier Employers**
February 12, 2020
- **Transportation Industry Employers, Don't Miss Out on Employment and Social Development Canada's Guidelines**
October 18, 2019
- **US Supreme Court rules union agency fees not enforceable**
July 03, 2018
- **Changes to the Public Holiday Pay Calculation in Ontario**
May 10, 2018

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Events

- **Coast-to-Coast L&E Series: Your Top Questions Answered**

August 13, 2020

- **Your Top Alberta Labour & Employment Questions Answered**

June 03, 2020

- **Employment in the Time of COVID-19: Where Are We Now? Where Do We Go From Here?**

April 21, 2020

- **Coast-to-Coast L&E Series: Top 10 Most Important Recent Developments in Labour and Employment Law**

February 10, 2020

Danielle Douglas

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Calgary

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Bar Admission

Alberta 2018

Law School

University of Calgary

Practices

Labour
Employment

Danielle Douglas is an associate in our Labour and Employment group in Calgary. She assists employers with a variety of labour and employment issues, including wrongful dismissals, human rights, labour arbitrations, employment standards and workplace policies.

Danielle received her Bachelor of Arts from the University of British Columbia and her Juris Doctor from the University of Calgary. During law school, Danielle was the Program Coordinator at Pro Bono Students Canada. While Program Coordinator, Danielle supervised 15 projects and over 100 law students. She developed new projects in the areas of environmental law, family law and criminal law. Danielle regularly volunteers for the Civil Claims Duty Counsel Project and the Queen's Bench Amicus Project which provide pro bono legal advice to unrepresented individuals within the Alberta courts.

Danielle is a member of the Law Society of Alberta, the Canadian Bar Association and the Calgary Bar Association.

Recent Insights

- **Trend Stopper: Proactive Compliance to Reduce Risk of Class Action**

August 27, 2020

- **COVID-19 Update: Canada Emergency Response Benefit ("CERB") Extension, Employment Insurance ("EI") Expansion, New Sickness and Caregiving Benefit**

August 24, 2020

- **COVID-19 Update: Alberta Employer's Re-launching and Re-opening Protocol: Posting of Related Plans No Longer Required**

May 21, 2020

- **COVID-19 UPDATE: Temporary Relaxation of Alberta Layoff, Group Termination, Scheduling Rules, New Unpaid Job Protection Entitlements for Employees and Recent Amendments**

April 07, 2020

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Events

- **Coast-to-Coast L&E Series: Your Top Questions Answered**
August 13, 2020
- **Your Top Alberta Labour & Employment Questions Answered**
June 03, 2020
- **Employment in the Time of COVID-19: Where Are We Now? Where Do We Go From Here?**
April 21, 2020
- **Coast-to-Coast L&E Series: Top 10 Most Important Recent Developments in Labour and Employment Law**
February 10, 2020



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Bar Admission

Ontario 2019

Law School

University of Windsor

University of Detroit Mercy

Practices

Labour

Employment

Marco Fimiani is an associate in the firm's Labour & Employment Group in Toronto. He advises and represents clients regarding a variety of matters including, labour arbitrations, employment standards, wrongful dismissals, occupational health and safety, and human rights.

Marco received his Canadian Juris Doctor from the University of Windsor as well as his American Juris Doctor from the University of Detroit Mercy. While in law school, Marco remained active as a volunteer with Pro Bono Students Canada working closely with various organizations to provide legal information. He also completed a judicial internship with the late Judge Richard M. Skutt at the Third Judicial Circuit Court of Michigan. Over the course of law school Marco was the recipient of numerous awards and scholarships, most notably, graduating as the Dual J.D. gold medalist.

Marco obtained his Honours BA in Criminology from York University.

Marco is a member of the Law Society of Upper Canada, the Ontario Bar Association, and the Canadian Bar Association.

Recent Experience

- **Evolution Mining acquires Red Lake gold mine from Newmont**
March 31, 2020

Recent Insights

- **COVID-19: Recovery and Re-opening Tracker**
September 03, 2020
- **COVID-19: Emergency Measures Tracker**
September 03, 2020
- **Trend Stopper: Proactive Compliance to Reduce Risk of Class Action**
August 27, 2020
- **Difficult Decisions May Be on the Horizon as Ontario's Declaration of Emergency has Ended Effective July 24, 2020**
August 11, 2020



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Bar Admission

Ontario 2019

Law School

Osgoode Hall Law School

Practices

Labour
Employment

Meghan Hillstrom is an associate in the firm's Labour & Employment Group in Toronto. She advises and represents management in a variety of labour and employment issues including employment standards, occupational health and safety, workers' compensation, wrongful dismissals, labour board proceedings, grievances, and labour arbitrations.

During law school, Meghan was an active member of numerous student organizations. Most notably, she was Vice President of the Osgoode Women's Network (OWN), and the 3rd year representative for the Legal and Literary Society (L&LL). Meghan was also a Criminal Law Division Leader at the Community and Legal Aid Services Program (CLASP) intensive.

Meghan obtained her BSc. in Forensic Science from Laurentian University, graduating magna cum laude. She obtained her Juris Doctor from Osgoode Hall Law School in 2018, graduating with distinction in the top 5% of her class.

Meghan is a member of the Law Society of Upper Canada, the Canadian Bar Association, and the Ontario Bar Association.

Recent Experience

- **Cineworld Group's proposed acquisition of Cineplex for C\$2.8B**
June 12, 2020

Recent Insights

- **COVID-19: Recovery and Re-opening Tracker**
September 03, 2020
- **COVID-19: Emergency Measures Tracker**
September 03, 2020
- **Canada Revenue Agency Announces New T4 Reporting Requirements**
September 01, 2020
- **Canada Revenue Agency Announces New T4 Reporting Requirements**
September 01, 2020

Meghan Hillstrom

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Events

- Violence in the Workplace
September 30, 2019



Carolyn Lee

**Specialist, Labour Relations
and Employment**

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Team Value and Skills

Carolyn Lee is a Labour Relations and Employment Specialist in our Labour & Employment Group in Toronto. She supports clients by assisting with the preparation for collective bargaining, labour arbitrations and human rights matters. She also provides guidance on issues including employment standards, training and compliance. Carolyn blends an understanding of human resources best practices with practical frontline experience to provide a unique perspective and value to clients.

Experience

Carolyn brings extensive experience providing advice and guidance on employment-related issues in union and non-union environments. Before joining McCarthy Tétrault in 2015, Carolyn worked for a global security company, where she supported operations in federal and provincial jurisdictions. As a strategic human resources professional, she conducted workplace investigations related to harassment, discrimination and various policy breaches. She also provided effective coaching and leadership to managers on employee and labour relations matters to ensure compliance with policies, employment legislation and collective agreements.

Certifications and Education

- BA (Hons.) (Economics), Queen's University, 2011
- MIR (Masters of Industrial Relations), Queen's University, 2012

Recent Insights

- **COVID-19: Emergency Measures Tracker**
December 01, 2020
- **Canada's Public Health Experts Issue New Guidance on Non-Medical Face Masks**
May 21, 2020
- **COVID-19 Update: Considering a Supplemental Unemployment Benefit ("SUB") Plan? Things to Think About.**
March 19, 2020

Carolyn Lee

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Events

- **Labour and Employment Conference: Ontario and Alberta**
October 06, 2020



Justine Lindner

Associate

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Bar Admission

Ontario 2014

Law School

Osgoode Hall Law School

Practices

Labour
Employment
Health & Safety
Human Rights

Justine Lindner is an associate in the firm's Labour & Employment Law Group in Toronto.

Justine joined McCarthy Tétrault in 2014 after completing her articles at a national law firm. She represents clients in workplace law matters including employment standards, wrongful dismissals, human rights, privacy, workplace investigations, occupational health and safety, labour arbitrations and employment issues arising in corporate transactions.

While in law school, Justine worked as a Research Assistant for a labour and employment law professor, completing extensive research on unfair labour practices as well as freedom of expression under the Charter. She also volunteered in the Osgoode Business Clinic program providing legal advice to entrepreneurs. Justine graduated in the top 5% of her class and was the recipient of several academic awards, including the Charles Edward Woodrow Award for academic excellence.

Justine received an Honours Bachelor of Arts Specialization in Political Science (with Distinction) from the University of Western Ontario in 2010. She obtained her Juris Doctor from Osgoode Hall Law School in 2013.

Justine is a member of the Law Society of Upper Canada, the Ontario Bar Association, and the Canadian Bar Association.

Recent Experience

- **Mondelez International completes acquisition of a significant majority interest in Give & Go**
April 01, 2020
- **Stifel Financial Corp. announces agreement to acquire GMP Capital Inc.'s capital markets business**

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Recent Insights

- **Difficult Decisions May Be on the Horizon as Ontario's Declaration of Emergency has Ended Effective July 24, 2020**

August 11, 2020

- **COVID-19 Update: The "New Normal" – Facilitating Work-from-Home Arrangements**

April 07, 2020

- **Retailers: COVID-19 Closures and Reductions in Operations**

March 18, 2020

- **Snow, Rain or Shine?: Five Tips for Employers on Winter Driving**

March 05, 2020



Kate McNeill-Keller

Partner

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Bar Admission

New York, USA 2006
Ontario 2007

Law School

University of Ottawa
Michigan State University

Practices

Labour
Employment
Human Rights

MT?Divisions & Client Solutions

HR Compliance & Risk Management
Diagnostic
Supply Chain Stabilization Solutions

Industries

Cannabis

Kate McNeill-Keller is a partner in the firm's Labour & Employment Group in Toronto.

Kate represents management in all aspects of labour and employment-related issues including employment standards matters, wrongful dismissal litigation, labour arbitrations, occupational health and safety, human rights litigation and labour and employment issues arising in corporate transactions. She has represented both federally and provincially-regulated employers, in both the private and public sectors, including before the Ontario Superior Court of Justice, the Ontario Labour Relations Board, the Ontario Human Rights Tribunal, the Canadian Human Rights Tribunal, boards of arbitration and in private dispute resolution. The clients that Kate represents carry on business in a wide range of sectors, including government, retail, education, communications, banking and finance, insurance, energy, technology, manufacturing, consumer goods, and pharmaceuticals.

Kate is also co-author of "A Legal Guide to the Accessibility for Ontarians with Disabilities Act, 2005", published by Canada Law Book.

Kate received her BA (Hon.) in Sociology from Queen's University in 2002. As a participant in the Joint JD/LLB Program, she received her JD from Michigan State University College of Law in 2005 and her LLB from the University of Ottawa Law School in 2006.

She is a member of the Law Society of Upper Canada, the New York State Bar Association, the Ontario Bar Association, the American Bar Association and the Canadian Bar Association.

Recent Experience

- **MLSE announces "Bringing Toronto Back to Its Feet" program**
April 24, 2020
- **City Capital Ventures acquires Burger King and Pizza Hut franchisee business from Redberry Group**
January 22, 2019
- **Nestlé closes perpetual global license deal with Starbucks**
August 28, 2018
- **Vista Equity Partners' owned Xactly Corp. acquires Obero Technologies Inc.**
February 14, 2018

Kate McNeill-Keller

Partner

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Recent Insights

- **Difficult Decisions May Be on the Horizon as Ontario's Declaration of Emergency has Ended Effective July 24, 2020**

August 11, 2020

- **COVID-19 Update: Federal Government Redefines Canada Emergency Wage Subsidy ("CEWS") Program**

July 21, 2020

- **COVID-19 Update: Canada Emergency Wage Subsidy ("CEWS") Program to be Extended to December 2020**

July 14, 2020

- **COVID-19 Update: Returning to New Office Life**

June 29, 2020



Nicole Naglie

Associate

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Bar Admission

Ontario 2020

Law School

Queen's University

Practices

Labour
Employment

Nicole Naglie is an associate in the firm's Labour & Employment Group in Toronto. She advises and represents management regarding a variety of matters including employment standards, occupational health and safety, workers' compensation, wrongful dismissals, labour board proceedings, grievances, human rights and labour arbitrations.

Nicole received her Juris Doctor from Queen's University (2019), where she was an active member of numerous student initiatives. Notably, Nicole served as a case worker for the Queen's Prison Law Clinic and Pro Bono Students Canada, advocating for client's rights. Nicole was the recipient of the Queen's Law Prize in Labour Law and the Stringer, Brisbin, Humphrey Prize in Labour Law.

Nicole obtained her Honours BA in History and Political Science from Western University.

Nicole was called to the Ontario Bar in 2020, and she is a member of the Law Society of Upper Canada and the Canadian Bar Association.

Recent Insights

- **COVID-19: Recovery and Re-opening Tracker**
December 01, 2020
- **COVID-19: Emergency Measures Tracker**
December 01, 2020
- **British Columbia Foreign Nationals' Property Tax Faces Challenge for Being Ultra Vires and Discriminatory**
August 02, 2018

Events

- **Labour and Employment Conference: Ontario and Alberta**
October 06, 2020



Patrick Pengelly

Associate

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Bar Admission

Ontario 2013

Law School

Queen's University

Practices

Labour
Employment
Human Rights

Patrick Pengelly is an associate in our Labour & Employment Group in Toronto.

Patrick represents clients in a variety of labour and employment issues including employment standards, wrongful dismissals, human rights, occupational health and safety, labour arbitrations, and employment issues arising in corporate transactions.

Patrick received his BA (Hons.) in Political Studies from Queen's University in 2004, and a JD from Queen's University in 2012. As a law student, he was awarded the Fasken Martineau Dumoulin LLP Prize In Torts and the Osgoode Society for Canadian Legal History Book Prize. He also served as Articles Editor of the Queen's Law Journal. Prior to becoming a lawyer, Patrick toured extensively around the world as the drummer and co-founder of a Juno Award-winning band.

He is a member of the Law Society of Upper Canada, the Canadian Bar Association, and the Ontario Bar Association.

RECENT PUBLICATIONS & ATTRIBUTIONS

Article in *Toronto Law Journal*: "Termination Provisions: Challenges and Strategies," April 2016.

Recent Experience

- **Cineworld Group's proposed acquisition of Cineplex for C\$2.8B**
June 12, 2020
- **Metso Corporation completes acquisition of McCloskey International for C\$420M**
October 01, 2019
- **Novacap acquires Spectrum Health Care**
July 11, 2019
- **Brookfield Infrastructure acquires Enercare Inc. for C\$4.3B**
October 16, 2018

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Recent Insights

- **Difficult Decisions May Be on the Horizon as Ontario's Declaration of Emergency has Ended Effective July 24, 2020**
August 11, 2020
- **COVID-19 Update – Things to Think About When Contemplating Workforce Adjustments or Reductions**
March 15, 2020
- **Considerations for Your Upcoming Holiday Party**
November 12, 2019
- **Ontario Court of Appeal: Upon Termination, Employee's Shareholder Rights Distinct From Common Law Entitlements**
September 09, 2019



Ryan Plener

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Bar Admission

Ontario 2017

Law School

Queen's University

Practices

Employment
Labour

Ryan Plener is an associate in our Labour & Employment Group in Toronto. He represents clients in both the private and public sectors and regularly advises on employment standards, wrongful dismissals, human rights, workplace investigations, occupational health and safety, labour arbitrations and employment issues arising in corporate transactions.

Ryan graduated from the dual Master of Industrial Relations/Juris Doctor program at Queen's University. During his years at Queen's, Ryan was an active member of the Labour & Employment Law Club, a past President and received the Queen's Law student ambassador award for his work promoting and supporting the school. Ryan has an honours Bachelor of Management and Organizational Studies with a specialization in Human Resources and Organizational Behaviour from Western University. Ryan has also received his Certified Human Resource Professional (CHRP) designation.

Prior to law school, Ryan worked at a leading Canadian Retailer creating and facilitating soft and hard skills training programs.

Ryan was called to the Ontario bar in 2017. He is a member of the Law Society of Ontario, the Ontario Bar Association and the Canadian Bar Association.

Recent Experience

- **MLSE announces "Bringing Toronto Back to Its Feet" program**
April 24, 2020

Recent Insights

- **COVID-19 Update - The Emergency Response Benefit Complements the Employment Insurance Regime**
March 25, 2020
- **COVID-19 Update - Federal Government Announces "Canada's COVID-19 Economic Response Plan"**
March 18, 2020
- **COVID-19 Update: Court/Tribunal/Board Cancellations in Ontario**
March 16, 2020
- **COVID-19 Update: EI Sickness Benefits and Work-Sharing**
March 15, 2020

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Events

- **Coast-to-Coast L&E Series: Your Top Questions Answered**

August 13, 2020

- **Employment in the Time of COVID-19: Where Are We Now? Where Do We Go From Here?**

April 21, 2020



Ben Ratelband

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Bar Admission

Ontario 1998

Law School

University of Toronto

Practices

Labour
Employment
Health & Safety
Human Rights

Industries

Global Metals & Mining
Automotive

Ben Ratelband is a partner at McCarthy Tétrault's Labour & Employment Group in Toronto and is a member of the firm's Environment Health & Safety Group.

Ben's practice is focused exclusively on management-side labour, employment and health and safety law. He has advised and represented employers in the sectors of manufacturing, security, energy, trucking, health care, education, information technology, correctional services, hospitality, public service, water supply and finance and investment. He has also advised and represented those employers in collective bargaining, labour board proceedings, labour arbitration, mediation, employment litigation, judicial review and civil appeals, employment standards, privacy, human rights, occupational health and safety and workplace safety and insurance proceedings. He regularly provides training for clients' managers and other staff to assist them in meeting their legal duties.

Ben has spoken on various labour, employment and health and safety topics for such organizations as the Canadian Institute, Rotman School of Business at the University of Toronto, the Human Resources Professionals Association of Ontario, and the Ontario Bar Association. He has also written on a number of labour and employment law topics for various legal publications.

Prior to joining McCarthy's, Ben worked in the field of management-side labour relations in private and public sector settings in both Ontario and the Yukon. He was legal counsel to the Management Board Secretariat of the Ontario Ministry of the Attorney General, where he represented the Crown as an employer in a variety of forums, including the Divisional Court and the Court of Appeal.

Ben received his B.A. (Hons.) from York University, where he graduated *cum laude* in 1992, and he received his LLB from the University of Toronto in 1996.

Awards & Rankings

Acritas Stars

"Stand-out lawyer"

Ben Ratelband

Partner

Toronto

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t. +1 416-601-8016

Recent Experience

- **Evolution Mining acquires Red Lake gold mine from Newmont**
March 31, 2020

Recent Insights

- **Cross-Border M&A: Top 10 Considerations for U.S. Acquirers of Canadian Targets**
August 11, 2020
- **COVID-19: L&E Webinar - "The Road Back to Work: Health & Safety Considerations for Resuming your Operation"**
May 19, 2020
- **COVID-19 Update: Moving Forward - Considerations for the Re-Opening of Physical Workplaces**
April 29, 2020
- **COVID-19 Update: Increased OHSA Enforcement in Ontario**
April 19, 2020

Events

- **The Road Back To Work: Health & Safety Considerations for Resuming Your Operation**
May 04, 2020
- **Violence in the Workplace**
September 30, 2019



Simmy Sahdra

Associate

Toronto

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t. +1 416-601-8418

Bar Admission

Ontario 2018

Law School

Osgoode Hall Law School

Practices

Labour
Employment

Simmy Sahdra is an associate in the firm's Labour & Employment Law Group in Toronto.

Simmy joined McCarthy Tétrault in 2018 after completing her articles at a prominent labour and employment boutique in Toronto. She advises and represents management regarding a variety of labour and employment issues including, labour arbitrations, collective bargaining, judicial review, employment litigation, human rights, and workplace investigations.

While in law school, Simmy served on the editorial board for the Osgoode Hall Law Journal, and held the position of News Section Editor for the Osgoode Hall newspaper, the *Obiter Dicta*.

Simmy received her Bachelor of Arts (Honours) in Global Development Studies from Queens University. She received a Master of Critical Disability Studies from York University in 2013. She obtained her Juris Doctor from Osgoode Hall law school in 2017.

Simmy was called to the Ontario bar in 2018. She is a member of the Law Society of Ontario, the Ontario Bar Association and the Canadian Bar Association.

Recent Experience

- **Brookfield Infrastructure and GIC acquire Genesee & Wyoming Inc. for US\$8.4B**
December 30, 2019
- **Cortland Partners, LLC to acquire Pure Multi-Family REIT LP for US\$1.2B**
September 27, 2019
- **Xilinx acquires NGCodec**
July 01, 2019
- **CCMP Capital Advisors enters into approx. US\$1B agreement to acquire BGIS**
May 31, 2019

Simmy Sahdra

Associate

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Recent Insights

- **Ontario Government Releases New COVID-19 Workplace Guide**
June 22, 2020
- **COVID-19 Update: The “New Normal” – Facilitating Work-from-Home Arrangements**
April 07, 2020
- **COVID-19 Update – Things to Think About When Contemplating Workforce Adjustments or Reductions**
March 15, 2020
- **Family Status Accommodation Requests: How Far Do Employers Need To Go?**
March 12, 2020



Justin Turc

Associate

Calgary

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Bar Admission

Alberta 2013

Law School

University of Alberta

Practices

Disputes
Labour
Employment
Health & Safety
Human Rights

Industries

Energy & Infrastructure

Justin Turc is an associate in our Labour and Employment Group in Calgary. The vast majority of his practice concerns management-side issues.

Justin advises employers on a range of human resources issues, including employment contracts, workplace policies, terminations, disability management, and workplace investigations. He also assists employers with disputes, including wrongful dismissal claims.

Justin received his JD from the University of Alberta in 2012. Shortly after, he joined the firm as an articling student and was called to the Alberta bar in 2013. He is a member of the Law Society of Alberta, the Canadian Bar Association, and the Calgary Bar Association.

Recent Experience

■ Color Compass acquires WD Co-Auto's PBE Division

March 01, 2019

Recent Insights

■ Significant Legislative Changes Coming to Alberta Workplaces

July 10, 2020

■ COVID-19 Update: Alberta Extends COVID-19 Related Temporary Layoffs to 180 Days

June 19, 2020

■ COVID-19 Update: Alberta Employer's Re-launching and Re-opening Protocol: Posting of Related Plans No Longer Required

May 21, 2020

■ COVID-19 UPDATE: Temporary Relaxation of Alberta Layoff, Group Termination, Scheduling Rules, New Unpaid Job Protection Entitlements for Employees and Recent Amendments

April 07, 2020

Justin Turc

Associate

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Events

- **Your Top Alberta Labour & Employment Questions Answered**
June 03, 2020

- **2018 Labour and Employment Client Conference – Alberta**
September 17, 2018

- **Coast-to-Coast L&E Update Series: Your Top Questions Answered (Part 2)**
June 08, 2018



Shana Wolch

Partner

Calgary

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Bar Admission

Alberta 2004

Law School

University of Calgary

Practices

Disputes
Labour
Employment
Health & Safety
Human Rights
Pensions, Benefits, & Executive
Compensation
Alternative Dispute Resolution
White Collar Defence and
Investigations
Cybersecurity, Privacy & Data
Management

Industries

Energy & Infrastructure
Oil & Gas
Pension Funds Group

Shana Wolch is a partner in our Labour and Employment Group in Calgary. She assists clients with all of their day-to-day human resources matters. Shana's practice also includes occupational health and safety (safety compliance, investigations and defence of charges), workers' compensation and disability management, human rights, and privacy. Shana has extensive experience with alcohol and drug policies, administration and compliance; cannabis from medicinal to recreational (from assisting start-up growers and retail companies through to managing personnel and fitness for duty), workplace investigations, and mergers and acquisitions and management side labour issues. She also participates actively in our National Pensions, Benefits and Executive Compensation Group, and our Transportation Group.

Shana assists clients in various industries including oil and gas, energy, utilities, transportation, retail, manufacturing, hospitality, educational and financial services.

Shana is recognized by *Chambers Canada* and *Best Lawyers in Canada* in the area of Labour and Employment Law and in the *Canadian Legal Lexpert Directory* in the area of Workplace Human Rights (Employer). She is also recognized in *The Legal 500 - Canada* as a Next Generation Lawyer in the area of Labour & Employment. She is currently the Alberta Director on the Board of Directors for the Canadian Association of Counsel to Employers (CACE).

Awards & Rankings

Chambers Canada

Leading Lawyer: Employment & Labour - Alberta

The Canadian Legal Lexpert Directory

Leading Lawyer: Employment Law - Employer and Workplace Human Rights - Employer

The Legal 500 - Canada

Next Generation Lawyer: Labour & Employment

Best Lawyers in Canada

Leading lawyer in the area of Labour and Employment Law

Acritas Stars

"Stand-out lawyer"

Shana Wolch

Partner

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Recent Insights

- **COVID-19 Update: Alberta Extends COVID-19 Related Temporary Layoffs to 180 Days**
June 19, 2020
- **Obtaining Marevas During Times of Increased Fraud**
June 18, 2020
- **COVID-19 Update: Alberta Employer's Re-launching and Re-opening Protocol: Posting of Related Plans No Longer Required**
May 21, 2020
- **COVID-19: L&E Webinar - "The Road Back to Work: Health & Safety Considerations for Resuming your Operation"**
May 19, 2020

Events

- **Coast-to-Coast L&E Series: Your Top Questions Answered**
August 13, 2020
- **Your Top Alberta Labour & Employment Questions Answered**
June 03, 2020
- **The Road Back To Work: Health & Safety Considerations for Resuming Your Operation**
May 04, 2020
- **Employment in the Time of COVID-19: Where Are We Now? Where Do We Go From Here?**
April 21, 2020



Jessica Wuergler

Associate

Toronto

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Bar Admission

Ontario 2016

Law School

University of Western Ontario

Practices

Labour

Jessica Wuergler is an associate in the firm's Labour & Employment Law Group in Toronto.

Jessica joined McCarthy Tétrault in 2018 after completing her articles and her first year of practice at a prominent labour and employment boutique in Toronto. She advises and represents management regarding a variety of labour and employment issues including, labour arbitrations, collective bargaining, judicial review, employment litigation, human rights and workplace investigations.

While in law school, Jessica won Western Law's Hicks Morley Labour Law Moot and was the recipient of the Labour Law Achievement Award. She also volunteered in the Western Business Law Clinic program providing legal advice to entrepreneurs.

Jessica received her Bachelor of Arts (Honours) in Psychology, with a specialization in Human Resource Management, from the University of Waterloo where she graduated on the Dean's Honours List. She received a Master of Industrial Relations and Human Resources from the University of Toronto in 2011. She obtained her Juris Doctor from Western Law in 2015.

Jessica was called to the Ontario bar in 2016. She is a member of the Law Society of Ontario, the Ontario Bar Association and the Canadian Bar Association.

Recent Insights

- **COVID-19 Update – New Details Regarding Ontario Government's Proposed Legislation to Protect Workers Affected by the COVID-19 Pandemic**

March 16, 2020

- **Ontario Court of Appeal Overturns 30 Month Notice Period**

July 11, 2019

- **New Guidance on Human Rights and Cannabis**

October 24, 2018

- **New Rules Regarding Police Record Checks: Employers Take Note**

August 07, 2018