



Human Rights Seminar

Thursday, June 4, 2009

Toronto, Ontario

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Agenda

- 8:15 am – 8:55 am** **Registration and Breakfast**
- 8:55 am – 9:00 pm** **Welcome**
Brian O'Byrne
- 9:00 am – 9:40 am** **Ontario Human Rights Reform – One Year Later**
Mr. Michael Gottheil - Chair, Human Rights Tribunal of Ontario
- 9:40 am – 10:00 am** **Recent Case Highlights**
Patrick Gannon and Alix Herber
- 10:00 am – 10:05 am** **Accessibility for Ontarians With Disabilities Act, 2005 – Setting the Standards**
Sara Parchello
- 10:05 am – 10:10 am** **Bill 168 – Expanding the Scope of Harassment Policies and Protections**
Brian Smeenk
- 10:10 am – 10:25 am** **Human Rights Considerations when Downsizing or Restructuring Operations**
Katherine Pollock and Ian Campbell
- 10:25 am – 10:30 am** **Background Checks – The Impact of a Criminal Record**
Donna Gallant
- 10:30 am – 10:45 am** **Break**
- 10:45 am – 12:00 pm** **The Accommodation Challenge – Chips Inc. Case Study**
Martin Denyes, Donna Gallant, Brian O'Byrne, Karen Sargeant, Brian Smeenk

Firm Profile

Fasken Martineau is a leading international business law and litigation firm with more than 650 lawyers. The firm has offices in Vancouver, Calgary, Toronto, Ottawa, Montréal, Québec City, London and Johannesburg.

As a full service law firm, Fasken Martineau provides strategic advice in virtually all areas of business law to a broad range of clients including more than half of the Fortune 100 companies, major corporations, government agencies, regulatory and non-profit bodies and individual clients.

Recognized in *The International Who's Who of Business Lawyers* in 2005, 2006, 2007 and 2008 as the #1 firm worldwide in mining law, Fasken Martineau is also acknowledged in *Euromoney's Guide to the World's Leading Environment Lawyers* as the top firm in Canada in environmental law. The prestigious *Best Lawyers in Canada* 2008 directory lists 79 of the firm's lawyers as experts in various areas of practice. *Bloomberg's* 2007 Global Mergers & Acquisitions Advisory Rankings ranked Fasken Martineau, among its Canadian peers, as #1 for cross-border M&A, #1 for European deals and #1 for UK deals (by value). Our lawyers served as counsel in four of the top ten business cases considered by *Lexpert* to have made the most significant and wide-ranging impact on the business community in 2007. Additionally, we have defended clients in more than 100 class actions representing the majority of significant cases in Canada.

Fasken Martineau is consistently distinguished in the *Canadian Legal Lexpert Directory*, the *Chamber's Global Guide to the World's Leading Lawyers*, and the *International Financial Law Review's Guide to the World's Leading Financial Law Firms*.

Our approach is built on relationships. We develop those relationships one-on-one. That means practicing where our clients operate their businesses. Two 2007 mergers demonstrate our commitment to this approach.

Our merger with London-based Stringer Saul LLP enables us to provide strategic legal advice on a range of Canadian business initiatives to UK, continental European, African and other clients. Our lawyers there also assist North American and other clients of the firm with business and legal challenges in the UK as well as advising on public and private mergers and acquisitions, private equity transactions, privatizations, corporate finance transactions, debt project and structured financings, financial services, infrastructure/public private partnerships, international joint ventures and projects, and establishing businesses in Canada.

Our merger with Ottawa-based Johnston & Buchan LLP created a high profile presence in Canada's capital to better serve federally regulated and national clients. This group offers inimitable knowledge of the federal government and its agencies, and is expanding its trade law practice, which comprises agricultural trade law, trade remedies, import and export controls, and advising clients on WTO and NAFTA related issues. The 2007 edition of Chambers Global's *The World's Leading Lawyers for Business* recognizes six of the 11 partners there as among the top Canadian lawyers in their chosen fields of practice.

Lawyers in our Johannesburg office provide legal advice to North American and European companies looking to invest in the African continent as well as South African companies looking for foreign debt and equity finance, cross-border and cross-continent mergers and acquisitions, privatizations, public-private partnerships, restructuring and trade. Many of the Johannesburg office engagements are resource or energy-related matters.

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Labour, Employment and Human Rights

Comprised of recognized leaders in their fields and representing employers from all facets of industry and government, Fasken Martineau's Labour, Employment and Human Rights Practice Group provides innovative business solutions and timely advice regarding the wide range of significant issues that employers face.

We regularly provide advice and representation in diverse labour matters, including:

- organizing campaigns
- collective bargaining
- unfair labour practice proceedings
- privacy
- employment equity and pay equity
- human rights
- discrimination charges and lawsuits
- workers' compensation
- immigration
- investigations
- day-to-day employment matters

We also assist clients in the labour aspects of major corporate reorganizations and acquisitions. We regularly provide advice on designing and implementing employee pension and health and welfare benefit plans. We have in-depth and up-to-date knowledge of all federal and provincial legislation affecting employers and successfully represent our clients in the courts and before federal and provincial administrative boards. Fasken Martineau's advantage is that our team of lawyers across the country has a unique combination of skills and expertise in all areas of employment, labour and human rights law. The end goal of Fasken Martineau's Labour, Employment and Human Rights Practice Group is for our clients to achieve their business objectives, and we emphasize advice and planning in order to minimize the time and costs associated with litigation.

Collective Bargaining

The initial collective agreement is the most important one since it forms the base for all subsequent negotiations. Therefore, it makes sense to have a legal professional review the integrity of the agreement before it is accepted. Even for employers in more mature bargaining relationships, the Labour, Employment and Human Rights lawyers act as in-house labour relations experts who can deliver strategic advice to help employers achieve the best possible collective agreement by:

- Critiquing the union's demands;
- Drafting a complete employer proposal;
- Acting as spokesperson at the bargaining table;
- Developing a comprehensive strategy to ensure the negotiated collective agreement meets business needs;
- Managing communications with employees and the media;
- Providing experience representation at mediation/conciliation;
- Providing integrated legal advice with respect to all aspects of the negotiations; and,
- Providing professional legal representation at any labour board hearings.

In preparation for bargaining and administering collective agreements, our members provide training and team building workshops for clients to ensure the best collective bargaining agreement is always realized.



Employment Equity

Federal and provincial employment standards, human rights and pay equity statutes cause Canadian employers to apply pay and job equity to their employment policies. Compliance reduces the risk of significant repercussions, such as court orders, hearings, and substantial fines.

The lawyers of the Labour, Employment and Human Rights Practice Group can help clients meet their employment law compliance requirements. They will work with employers from all industries to review, draft and update employment and HR policies and procedures to prevent problems before they occur. An ongoing business relationship helps clients properly prepare for and respond to audits and investigations.



Employment Law Advice

The modern workplace is in transition. One of the significant issues facing employers is the variety of regimes that regulate employment. Fasken Martineau's Labour, Employment and Human Rights lawyers understand these requirements and assist employers with creative business planning on employment issues.

We provide timely advice on all aspects of the employment relationship. This includes the preparation of employment contracts for senior executives, assistance in the resolution of employment disputes, guidance in the termination of the employment relationship and, if necessary, representation in the courts or before federal and provincial administrative boards. Members of our firm have been instrumental in promoting alternative dispute resolution methods.

We provide employers with strategies that can minimize the risks of potential wrongful dismissal suits. An important initial step is demonstrating how employment and contractor agreements should be structured.

Employment litigation can be extremely costly to employers. Not only are we committed to cost-effective and innovative solutions to employment issues, we strive to reduce overall legal costs, achieved by providing ongoing and proactive advice to management clients prior to and during the course of personnel decisions.



Employment Standards

Minimum standards for employment are regulated by either provincial employment standards laws or the *Canada Labour Code* for federal employers. These regimes set out basic entitlements for employees such as wage rates, vacation, holiday pay and overtime entitlements, none of which may be reduced by individual contract although differing collective agreement provisions may be permitted.

In addition, these regimes impose liabilities and restrictions on employers arising out of closures, sales and other events giving rise to terminations. Directors and officers may be personally liable for unpaid wages and for statutory penalties. We have extensive experience in advising employers and officers and directors on meeting obligations, obtaining variances and avoiding liabilities and penalties as businesses are developed and reorganized.

Human Rights

Businesses must be prepared to address human rights issues. This includes questions about employment, tenancies, and the provision of services to the public. Whether it is the development of an anti-harassment policy, recognizing the need for or reviewing a request for accommodation, conducting an investigation into a harassment complaint, defending a case brought in court, or arbitration through a human rights tribunal or commission, Fasken Martineau has lawyers with specialized skills in the human rights area.

Human rights complaints are very expensive to process and litigate and may generate negative publicity. Fasken Martineau is a leader in helping employers manage human rights issues in the workplace proactively and thereby avoid litigation.

In this regard, several of our lawyers specialize in:

- Development and implementation of human rights (anti-harassment) policies;
- Training supervisors and managers on how to respond to human rights related complaints;
- Advising employers on the conduct of investigations;
- Acting as counsel through litigation, including matters before federal and provincial human rights tribunals; and,
- Conducting fast and thorough investigations into harassment (human rights-related complaints) as counsel for employers or as independent, and neutral, fact finders.

Immigration

In today's economy, companies, big or small, regional or multinational, enjoy the services of foreign workers in senior executive, professional, highly skilled technical positions or trades. Accordingly, there is a complex and lengthy bureaucratic process governing the admission of foreign workers. Our Labour, Employment and Human Rights lawyers can guide employers, regardless of sector, through the process by generating:

- The facilitation of entry into Canada and the U.S. for frequent Business Visitors
- Temporary resident visas
- Work permits exemptions for after-sales services providers, performing artists etc.
- Work permits for intra company transfers of senior executive, specialized knowledge employees, professionals, consultants or other labour market opinion exempted situations
- Labour market Opinions from Human Resources and Social Development Canada (when a shortage of skilled employees has to be demonstrated prior to hiring a foreign workers)
- Bulk work permit applications
- Special temporary permits to overcome an inadmissibility ground (due to a previous criminal conviction or medical condition)
- Young Worker Programs (for interns and trainees)
- Spousal work permits
- Study permits for family members
- Permanent residence
- Canadian citizenship
- General border-crossing troubleshooting

Labour Mergers and Acquisitions

Because numerous legislative provisions and common or civil law requirements create obligations and potential liabilities for parties involved in mergers and acquisitions, it is important to consider the labour, employment and benefits aspects early on. Fasken Martineau's Labour, Employment and Human Rights Practice Group regularly advise purchasers, vendors and other interested parties on all relevant aspects of law.

Our lawyers regularly provides labour and employment advice in all forms of commercial transactions, including mergers and acquisitions and insolvency-related transactions. Our expertise includes strategic planning, negotiation, successor employer and large-scale reorganization issues, as well as drafting all forms of employment-related agreements relating to the commercial transaction. With collective knowledge and experience that encompasses every aspect of labour, employment and benefits, we are able to advise clients on a full-range of transaction issues such as:

- Labour relations, including common employer and successorship applications;
- Employment standards requirements;
- Common law and civil law and statutory notice requirements when changing terms or terminating employees;
- Strategic planning including combinations and redundancies;
- Appropriate structures to protect against liability;
- Pension and benefit obligations; and,
- Directors' and officers' liability.

Labour Relations

Our lawyers have a long history of representing employers in all aspects of labour law. This service includes strategic and tactical advice as well as the representation of employers before arbitration boards, provincial labour boards, and the Canada Industrial Relations Board.

Fasken Martineau emphasizes teamwork both with clients and internally. Our lawyers work together with clients to develop a labour relations strategy which is consistent with business objectives. In addition, the combination of our size and experience means that our lawyers are able expeditiously and consistently to meet our clients' objectives. This is particularly significant in labour relations cases, which generally proceed on an expedited basis.

Examples of labour board matters which our lawyers handle for employers include:

- Certification applications
- Common employer and successorship applications
- Unfair labour practice complaints
- Strikes, picketing and replacement worker applications
- Decertification applications

Clients whose employees are covered by a collective agreement are subject to compulsory grievance arbitration. We act only for management and represent our clients in all matters including:

- Discipline and discharge cases
- Collective agreement interpretation issues
- Work assignment cases
- Contracting out disputes
- Policy grievances

Labour relations issues often spill over into the courts.

We have extensive experience in obtaining court injunctions in labour matters and acting in judicial review applications of arbitration and labour board decisions.

Pay Equity

A prohibition against pay inequity in the performance of equal or substantially similar work or in the performance of work of equal value has been incorporated by all jurisdictions in Canada through their human rights legislation. These prohibitions are enforced through a complaint mechanism.

In addition to the general prohibition, some jurisdictions have mandated pay equity in the public sector through positive action designed to correct systemic wage discrimination in predominantly female job classes.

Two provinces, Ontario (in 1990) and Quebec (in 1997), have extended the positive obligation to implement pay equity to the private sector. Employers who are subject to this legislation must identify - within their establishments - job classes that are predominantly female, predominantly male, as well as gender neutral. They must then value the work performed by each job class by utilizing a composite of skills, required effort, responsibilities, and the conditions under which the work is normally performed. Once the categories are evaluated, predominantly female job categories must be compared to predominantly male classes of same or proportionate value. In case of inequity, the wages of the predominantly female job categories must be adjusted to that of the comparator group. Once pay equity is achieved, it must be maintained on a continuous basis.

Our Labour, Employment and Human Rights professionals regularly guide employers through the many issues that can arise in determining whether pay equity exists in a given establishment and, where this is not the case, deliver a comprehensive plan to achieve and maintain pay equity.

Pensions and Benefits

Our Pension and Benefits Law Group is one of the longest-established groups in Canada and has extensive experience in a wide range of matters in this important area. We draw from the diverse expertise of specialists in other practice areas of the firm such as litigation, trusts, and taxation, who have considerable expertise in pension and benefits issues.

Both employers and employees are increasingly aware of the significance of pensions and employee benefits. Our goal is to provide clients with timely and practical advice and innovative solutions on a cost-effective basis. Our clients include employers, plan administrators, financial institutions, governments, actuarial and benefits consultants and pension regulators. We advise our clients on a wide variety of pension and benefits issues, including:

- Treatment of benefits in acquisitions, divestitures, mergers, and other corporate reorganizations;
- Surplus and deficits in benefit plans (e.g. surplus entitlement and distribution, surplus withdrawals, contribution holidays, funding obligations);
- Pension plan governance and fiduciary obligations;
- Pension plan termination and partial wind up;
- Pension plan funding and investment;
- Tax consequences of various pension and benefit plans;
- Family law (marriage breakdown and credit splitting);
- Pension plan design;
- Post-retirement benefits;
- Supplementary pensions;
- Pension litigation and class action claims.

Together with our pension litigation specialists, we play a key role in resolving disputes between the different parties involved in benefit plans and have been involved in many of the leading Canadian pension litigation cases before the courts and tribunals, as well as pension class actions.

Workers' Compensation/Occupational Health and Safety

Workers' compensation legislation ensures that workers who sustain injuries in the course of employment or who are disabled by occupational diseases are entitled to indemnification. The workers' compensation system is an intricate regime that represents a significant cost of doing business. The lawyers in the Labour, Employment and Human Rights Group of Fasken Martineau regularly act for employers at all adjudicative and appeal levels of provincial workers' compensation systems. They provide advice and training to assist employers in reducing costs through timely and effective claims management. Managing and reducing costs is the primary focus for our legal professionals when representing employers within the complex administrative bureaucracy of the workers' compensation classification, assessment and experience rating systems.

Federal and provincial legislation established detailed health and safety regulation standards, which impact employers in all provinces. Administrative bodies are provided with wide-ranging powers to inspect workplaces, issue orders, and impose fines and other penalties. Our lawyers provide services to employers encompassing all aspects of occupational health and safety, including:

- Advising on the application of, and compliance with, the regulatory standards
- Representing employers with respect to orders, penalties and prosecutions for alleged non-compliance with occupational health and safety requirements
- Training on how to achieve and maintain the standard of "due diligence"

State of the Tribunal

June 2009

HUMAN RIGHTS TRIBUNAL OF ONTARIO



Where we are

- The “new” Tribunal is 9 months old:
 - Who we are
 - What we’ve done
 - The Process: Then & Now
 - What we’ve seen
 - Developing Trends
 - What’s next

Who we are

Our mandate is to resolve applications brought under the Ontario Human Rights Code.

Core values inform our approach:

- Accessibility, both physically and functionally.
 - Physically: everything from our hearing rooms to our publications and information will be designed in a way which does not create barriers to people who seek to participate effectively in the Tribunal's processes.
 - Functionally: all people, whether involved as claimants, respondents or other interests, should feel that the process is understandable, fair and relevant to their own experience, whether or not they are represented by a lawyer.
- Fairness: the process will ensure that decisions are based on the facts, the law and the merits of the case.

Who we are

Core Values (continued):

- Transparency: Tribunal procedures will be clearly established and decisions will be made in an open way, with substantive reasons that are clear, concise and understandable.
- Timeliness: resolutions will be reached and decisions made in a timely way, so that delays do not frustrate the objects of the *Code* - to prevent discrimination and if a violation is found, to provide effective, meaningful remedies.
- The Opportunity to be Heard: a complaint that is within the jurisdiction of the Tribunal will not be finally determined without giving the parties an opportunity to make oral submissions.

Who we are

Our mission

The Tribunal will:

- Play its role in the human rights system by providing expeditious and accessible processes to assist the parties to resolve complaints brought before the Tribunal, and to determine complaints where the parties are unable to resolve them.
- Be activist to seek a fair, just and expeditious resolution of the merits of an application.
- Provide and promote meaningful and effective public interest remedies in appropriate cases.
- Not bar settlements where parties freely desire to resolve their dispute.

Who we are

Our mission (continued)

The Tribunal will:

- Seek to maintain the highest standards of integrity and quality of work.
- Strive for consistency to enhance the parties' reasonable expectations of Tribunal policy and process, but will remain responsive to differing cases and party needs, and to an evolving understanding of human rights and discrimination.
- Strive to promote a clear understanding of the Tribunal's work among the general public.
- Will work to be responsive to the needs of its stakeholder communities.

What we've done

Restructuring

- From:
 - 3 full-time and 6-8 part-time adjudicators
 - 8 staff
- To:
 - Approximately 50 staff
 - Vice-Chairs and members:
 - 22 full-time
 - 22 part-time

What we've done

New Applications under Section 34

- As of March 31, 2009:
 - 1829 new applications received
 - 350 mediations held
 - 16 hearings held
 - 424 decisions issued
 - 391 cases closed

What we've done

Transitional Applications

(Sections 53(3) and 53(5))

- Separate stream with designated resources
- As of March 31, 2009:
 - Received 945 transitional applications under 53(3)
 - 345 mediations and 80 hearings held
 - 141 cases settled at mediation
 - 252 cases finally resolved
- Additional 183 applications since January under Section 53(5)
- 127 mediations and 110 hearings scheduled through June 2009

What we've done

Commission referred complaints

- As of March 31, 2009, 142 active cases:
 - Scheduled for Mediation 31
 - In Settlement Discussions 18
 - Scheduled for Hearing 39
 - Adjourned 12
 - Pending Final Decision 9

The Process - Then

- Complaints were filed with the Ontario Human Rights Commission
- Unless the matter was dismissed under s. 34, the Commission "shall investigate a complaint and endeavour to effect a settlement"
- Under s. 33 of the *Code*, the Commission had various investigatory powers
- Where the Commission decided it was appropriate, it would refer a complaint to the Tribunal for a hearing
- The Commission referred about 150 cases each year to the Tribunal

The Process - Then

- At a hearing at the Tribunal, the Commission was a party together with the Complainant(s) and Respondent(s)
- The Tribunal mediated and conducted hearings *de novo* – the Commission's investigation and recommendation was not binding

The Process - Now

- Applications are filed directly with the Tribunal
- Tribunal reviews for completeness, jurisdiction and deferral, serves application on Respondent
- Respondent has 35 days to file response

The Process - Now

- Active Triage: considers the application and response. What is the most "fair, just and expeditious" way to proceed?
- We provide the parties an opportunity to engage in voluntary mediation
- Where the parties do not choose mediation or mediation does not result in a settlement, a hearing is scheduled

The Process - Now

Applicants should know:

- All applications are reviewed for completeness and jurisdiction before Respondents are served
- Incomplete applications are returned with an explanation, Applicants have 20 days to provide the missing information
- Applicants must complete all applicable sections of application and supplemental forms

The Process - Now

Applicants should know (continued)

- Where the subject matter of the application is being dealt with in another proceeding the Tribunal will propose that the human rights application be deferred until the other proceeding is concluded
- Where the Tribunal raises an issue of lack of jurisdiction, the Tribunal will ask the Applicant to explain how they believe the claim is one that falls under the provisions of the *Code*
 - The Applicant has 30 days to provide a response
- The Human Rights Legal Support Centre provides advice and assistance regarding the infringement of rights, legal services for making applications at the Tribunal, proceedings before the Tribunal and related matters

The Process - Now

Respondents should know:

- You may raise preliminary or procedural issues, but except in limited circumstances, you must file a complete response
 - Where the same claim is the subject of a court proceeding, was a complaint at the Commission, was previously settled
 - Where there is an issue of federal/provincial jurisdiction
- Where you have jurisdictional, procedural or other objections, you should identify them in your response
- The Tribunal will review the application and response and determine when and how to deal with any preliminary or procedural issues, based on what would ensure a fair and expeditious resolution of the merits

The Process - Now

Mediation

- Is voluntary: parties are asked whether they wish to engage in mediation as a way to resolve the dispute
- Where parties do not indicate, Tribunal may follow up to explore mediation as an option, but it remains voluntary
- Is conducted in a structured way with a “listening component” where parties have an opportunity to tell their stories and have an opportunity to be heard
- Conducted by a Tribunal Vice-Chair or member who has expertise in human rights

The Process - Now

Mediation (continued)

- Role of Tribunal is to “facilitate the parties’ efforts in reaching a settlement”
- The Tribunal does not “approve” settlements
- The Vice-Chair or member may provide information on likely outcomes if the case does not settle, or what outcomes have been reached in other similar cases
- Settlements are voluntary and require the agreement of both parties

The Process - Now

Pre-hearing requirements

- Where mediation has not resulted in a settlement or the parties did not opt for mediation, the Tribunal will issue a Confirmation of Hearing notice
- The notice:
 - Triggers the obligation to exchange all “arguably relevant documents” within 21 days
 - Sets the hearing dates
- 45 days before the hearing, the parties must deliver to one another, and file with the Tribunal:
 - All documents they intend to rely upon at the hearing
 - A list of witnesses they intend to call at the hearing
 - A brief summary of the anticipated testimony of each witness they intend to call

The Process - Now

Case Assessment Direction

- Prior to the hearing the Tribunal may issue a Case Assessment Direction
- The Direction:
 - Will assist the parties with preparing for the hearing
 - May provide directions to the parties on things to do before the hearing
 - May identify things parties need to be prepared for at the commencement of the hearing:
 - Require additional production
 - Identify facts that do not appear in dispute
 - What witnesses will be necessary to attend at the commencement of the hearing
 - Which legal or procedural issues the parties will have to address at the start of the hearing, including issues the parties may have raised
- The Case Assessment Direction is a decision of the Tribunal. The parties must comply with the directions, and be prepared to address each issue identified.

The Process - Now

Hearings:

- On the merits, generally in-person unless parties waive their right to an oral hearing – held all over Ontario
- Procedural and preliminary matters may be heard by conference call, in writing, or in person
- Decisions in writing – from 3 pages to more than 100

The Process - Now

Hearings: the Tribunal's approach

- The Adjudicator plays an active role in the hearing process, the procedure used in each hearing may vary
- The Rules of Procedure allow the Adjudicator to adopt non-traditional methods of adjudication in order to best focus on the human rights issues in dispute and reach a decision about whether the *Code* has been violated
- The Adjudicator has the power to question witnesses, parties or representatives, receive testimony not taken under oath, limit the evidence or submissions on any issue or limit a party from presenting multiple witnesses to testify about the same facts in issue
- At the same time, however, the Adjudicator is a neutral decision-maker and cannot take responsibility for identifying and leading evidence
- The Adjudicator will adopt the approach which facilitates the fair, just and expeditious resolution of the merits of the application

What we've seen

- Feedback, although largely anecdotal, has been extremely positive
- Individuals, including self-represented parties seem to be able to navigate the system and participate in the process

Developing Trends

Deferrals

- The Tribunal will generally defer an application where the same subject matter is being dealt with in another proceeding
- Where the same facts are being determined in another proceeding
- Where the same human rights claim is being advanced in a Court proceeding it's not a deferral issue – Tribunal has no jurisdiction
- Timing may be a factor, but generally is not

Developing Trends

Deferrals (continued)

- The goal is to avoid multiple proceedings dealing with the same issue
- Parties are asked for their positions before the Tribunal will decide to defer
- If the Tribunal defers, the Applicant has 60 days to bring the application back on once the other proceeding has concluded

Developing Trends

Section 45.1:

The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application.

- Recognizes that other tribunals and decision makers have the power (and obligation) to apply the *Code* in proceedings before them

Developing Trends

Principles

- Tribunal does not act as an appellate body for decisions of other tribunals
- Will look at whether other decision-making process was a "proceeding," (operated under the principles of natural justice, was impartial, provided an opportunity to be heard)
- Whether the "pith and substance" of the human rights claim were dealt with in the other decision
- Will ensure that the other decision maker applied human rights principles
- Early days, jurisprudence is developing

Developing Trends

Examples:

- In Campbell, the Tribunal found that a decision of the Special Education Tribunal appropriately dealt with the substance of the application
- In Dunn, the Tribunal decided that a settlement of a matter before another tribunal may be sufficient to conclude that section 45.1 applies

Developing Trends

Requests to Expedite and Requests for Interim Remedy

- Exceptional circumstances, to deal with urgent issues
- Except where the Tribunal orders otherwise, Respondent has 7 days to respond to request
- Tribunal may expedite all or part of the process
- Tribunal may decide request in writing, in person or by teleconference

Trends: What we've learned

Reconsideration

- Not an appeal
- Only available in limited circumstances:
 - There are new facts or evidence that could potentially be determinative of the case and that could not reasonably have been obtained earlier
 - The party seeking reconsideration was entitled to but, through no fault of its own, did not receive notice of the proceeding or a hearing
 - The decision or order which is the subject of the reconsideration request is in conflict with established jurisprudence or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance
 - Other factors exist that, in the opinion of the Tribunal, outweigh the public interest in the finality of Tribunal decisions.
- Two step process:
 - Threshold of whether Tribunal should reconsider
 - If yes, may reconsider all or part of the decision
- Respondent need not respond unless directed to by the Tribunal

What's next

- More cases moving into hearing phase
- Monitoring pre-hearing and hearing processes
- Working through Commission referred cases and s. 53(3) and 53(5)
 - Individuals with complaints still at the Commission have until June 30, 2009 to "transfer" their complaints to the Tribunal by making an application under section 53(5)

Consultation:

- Stakeholder Advisory Committee
- Considering consultation on privacy issues
- Gathering information for 18 month fine tuning of forms and Rules

Learn more

www.hrto.ca

News – Forms & Guides – *Code* – Policies &
Practice Directions – Decisions

MICHAEL GOTTHEIL

Mr. Gottheil was appointed Chair of the Human Rights Tribunal of Ontario in April 2005. He is a graduate of Osgoode Hall Law School and was called to the Bar of Ontario in 1987. After working as in-house counsel for two national trade unions, in 1991 he co-founded the Ottawa law firm of Engelmann Gottheil, where he practiced labour, employment and human rights law until his recent appointment. In addition to practicing law, Mr. Gottheil has also held the positions of part-time professor at Algonquin College and the University of Ottawa Law School.

Mr. Gottheil has been actively engaged in professional and volunteer activities focused on improving the lives of the visually impaired. He is a member of the Canadian Association of Visually Impaired Lawyers and over a 12-year period, served on the Board of the Canadian National Institute for the Blind as member, vice-chair and chair at the Ottawa local and provincial levels.

Mr. Gottheil's interest and commitment to human rights and social justice extends beyond his professional activities. He has travelled the world, climbed mountains and in taking the time to exchange views and build bridges, sought to explore the differences that create the human fabric. He is a keen believer that learning and living varied experiences and perspectives is fundamental to both personal growth and positive community change.



Recent Case Highlights

Alix Herber
Patrick Gannon
June 4, 2009

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CASE STUDY

Markovic v. Autocom Manufacturing Ltd.

(September 3, 2008)

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Factual Background

- Employee was not paid when he took time off for religious purposes.
- Employee made a complaint alleging discrimination on the basis of creed.
- Company developed new policy after employee made his complaint.

Issue Considered

- Is the company's new policy regarding accommodating employee requests for time off work for religious holidays contrary to the *Human Rights Code*?

Position of the Parties

- Position of the Complainant and the Commission:
 - Policy is not consistent with the *Code* as no option of 2 days paid leave
 - Paying employees for not working on Christmas and Good Friday and not for other religious observances is discriminatory.
- Position of the Company:
 - Policy provides a variety of accommodation options.
 - The *Code* does not require that an employer provide 2 paid days to parallel Christmas Day and Good Friday.

DECISION OF TRIBUNAL

- **Menu of Options *Satisfied Duty to Accommodate***
 - Christmas and Good Friday now considered secular days.
 - Employer's policy is not contrary to the *Code*.
 - Not necessary for employer to have 2 days of paid leave as an option.

Markovic v. Autocom Manufacturing Ltd.

Case Commentary

- If possible, use scheduling changes to accommodate
- Conflicting caselaw – how do you accommodate employees with a fixed schedule of work?
 - *Chambly* - Employers should look to personal days, special leave days, compassionate leaves, and other paid leaves to accommodate
 - *Toronto District School Board (2008)* – must work for pay.

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CASE STUDY

Lavoie v. Canada (Treasury Board)

(June 20, 2008)

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Background Facts

- Industry Canada instituted a new policy requiring 3 years of service to become a permanent employee.
- Policy excluded leave without pay of more than 60 consecutive calendar days
- Employee's maternity leave therefore not included in the calculation of service for a permanent position.
- Complaint filed against the Treasury Board alleging discrimination on the basis of gender.

Issue Considered

- Was the complainant discriminated against on the basis of gender within the meaning of the *Canadian Human Rights Act*?

Position of the Parties

- Position of the Complainant and Commission:
 - Complainant deprived of the opportunity to become a permanent employee
- Position of the Government:
 - Policy applied to any person that took unpaid leave for more than 60 days.
 - Cannot be considered discriminatory simply because more women than men might be affected by this policy.

Policy was Discriminatory

- Excluding maternity and parental leave was discriminatory.
- In 2004 77% of people taking parental leave for more than 60 days were women.
- Government failed to show it would suffer undue hardship.

CASE STUDY

Espey v. London (City)

(December 18, 2008)

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Espey v. London (City)

Background Facts

- Long term firefighter/District Chief of London Fire Department.
- Turned 60 in September 2004; City of London required him to retire at end of that month.
- Requested an extension on his retirement date.
- Request denied.

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Issues Considered

- Does the provision in the collective agreement requiring mandatory retirement at age 60 for firefighters violate the *Code*?

Position of the Parties

- Position of London and Firefighters' Association:
 - Provision is *prima facie* discriminatory BUT
 - Provision is a bona fide occupational requirement (BFOR).
 - Higher risk for cardiac events for firefighters.
- Position of the Complainant and Commission:
 - Individual testing could show that a firefighter over 60 has a lower risk than the average risk in the population aged 55 to 59.

Provision Discriminatory BUT justified as BFOR.

- Looked at SCC *Meiorin* test to determine whether mandatory retirement at age 60 was a BFOR.
- Readily established the first two requirements of the *Meiorin* Test.
- Third requirement more difficult to prove but was decided in favour of the City of London:
 - 1) No individual testing
 - 2) Medical evidence
 - 3) Public safety concerns
- No violation of the *Code* and the complaint was dismissed.

Case Commentary

- In 2006 definition of age amended in the *Code* to remove mandatory retirement at age 65.
- Many of the cases on this topic were decided before the revisions to the *Code*.
- Recent decision in *Vilven v. Air Canada (2009)* where pilots were required to retire at age 60.
- Note that decision in this case not determinative for all cases of firefighters wanting to work past age 60.




CASE STUDY

British Columbia (Public Service Agency) v. British Columbia Government and Service Employees Union

(September 18, 2008)

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*British Columbia (Public Service
Agency) v. British Columbia Government
and Service Employees Union*

Background Facts

- Grievor was a 26 year employee of the Liquor Distribution Branch and a manager at one of the stores.
- Grievor began to drink heavily and regularly steal alcohol from his store.
- Other employees complained about his behaviour. Grievor admitted to thefts and drinking problem.
- Grievor terminated

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Previous Decisions

- At the arbitration medical experts on both sides concluded that the Grievor was dependant on alcohol.
- Dismissal upheld by Arbitrator.
- Union appealed to B.C. Labour Relations Board
- “Hybrid” approach was applied from the decision in *I.W.A., Local 1-424 v. Fraser Lake Sawmills (2002)*.
- Arbitrator reversed original decision

Position of the Parties

- Position of the Employer:
 - Arbitrator erred by looking at accommodation before first determining whether there had been *prima facie* discrimination.
 - Employer fired the employee because he had stolen repeatedly not because of his addiction to alcohol.
- Position of the Grievor and Union:
 - Employer failed to accommodate Grievor to point of undue hardship

No Evidence to Support Discrimination

- B.C. Court of Appeal allowed the appeal.
- No evidence that showed the Grievor's termination was based on his alcohol addiction.
- Did not look at issue of accommodation.

Case Commentary

- B.C. Court of Appeal decision *Health Employers Association* not followed:
 - Discrimination was established based on the link between the prohibited ground and the workplace misconduct.
- SCC decision *McGill University Health Centre* followed:
 - Simply because an alcohol dependent individual may be more likely to steal does not mean that the employer's decision to terminate the employee was based on or influenced by his/her alcohol dependency.



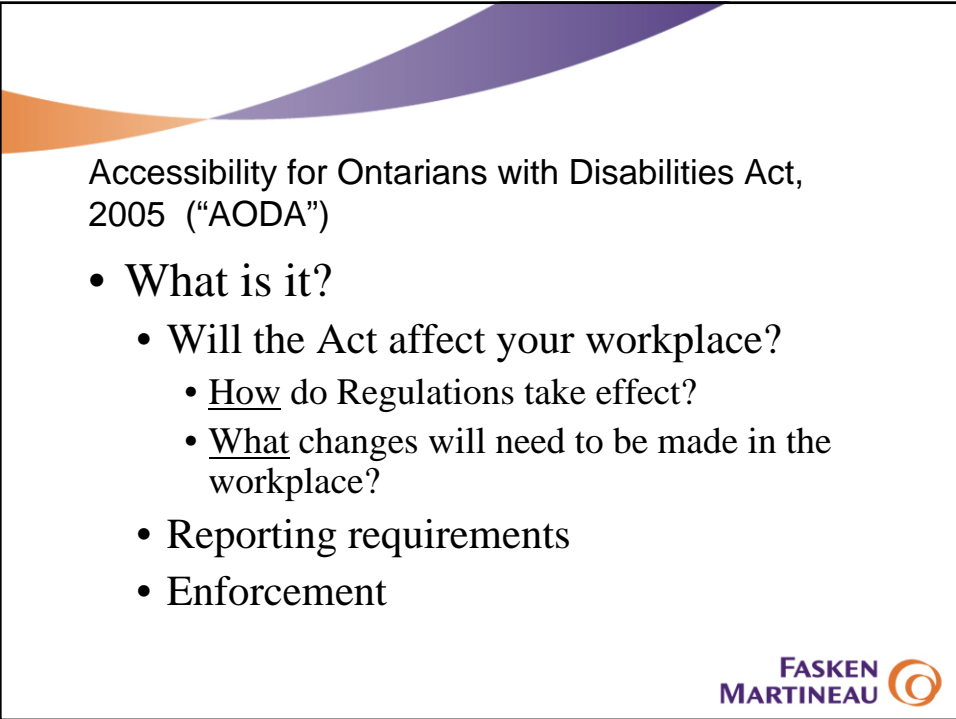
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Accessibility for Ontarians With Disabilities Act, 2005 – Setting The Standards


Sara Parchello
June 4, 2009



Accessibility for Ontarians with Disabilities Act, 2005 (“AODA”)

- What is it?
 - Will the Act affect your workplace?
 - How do Regulations take effect?
 - What changes will need to be made in the workplace?
 - Reporting requirements
 - Enforcement

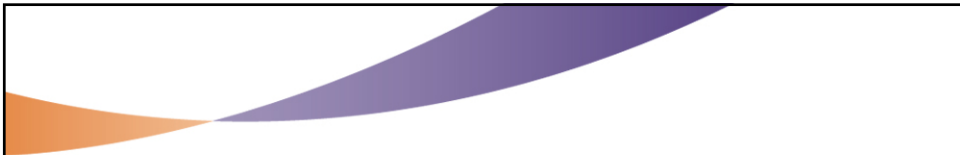




AODA, 2005 :

What is an “accessibility standard”?

- Measurement, policy or practice to remove “barriers”
 - and within a certain time period
- “Barriers” tangible and intangible
 - Goods, services, transportation, communication, buildings, **employment**, etc.
- How is “disability” defined?
 - Same definition as Ontario *Human Rights Code*
 - Includes physical and mental disability(s)



AODA, 2025

What is an accessibility standard?

- Five categories of “Regulations” (standards):
 - Customer Service* (effective 2012)
 - Transportation
 - Information and Communications
 - Built Environment
 - **Employment*** (just finished public review)
- How do Regulations take effect?




How do Regulations Take Effect?

- Legislatively mandated “process”
(i.e. Minister → committee → draft → consultation → law (?))
- Depends on Regulation
 - More than one regulation/standard may apply to an “organization”
- Depends on size of “organization”
 - Different designated “classes”
 - Public versus private
 - Different standards / requirements
 - Different timelines for implementation
 - Some exemptions

Highlights: Requirements for Employers Employment Standard

- Employment Standard contemplates
 - Minimum accommodation standards *at every stage of employment*
 - Hiring
 - Recruitment, assessment, selection
 - Employment
 - Retention requirements
 - » (i.e. accessible information)
 - Workplace accommodation
 - Staff Training

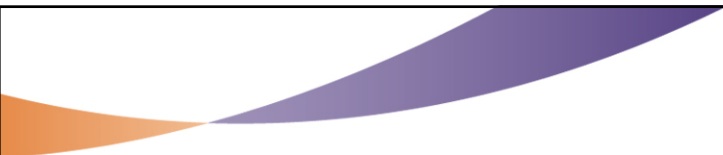


What does this mean practically? AODA-Mandated Processes

For Employers...

Pro-active approach to accommodation...

- Develop certain policies
 - Most employers must develop policies within 2 years after Regulation becomes law (*under draft Employment Accessibility Standard*)
- More training*
 - i.e. Most employers must develop Disability Awareness Training within 3- 5 years (*under draft Standard*)
- More monitoring / management
 - i.e. Individual Accommodation Plans for employees within three years (60 + employees only – *under draft Standard*)



What does this mean practically? AODA-Mandated Processes cont'd...

For Employers...

- More reporting obligations?
 - Organizations must report compliance with AODA standards
 - Certified by directors
 - Make reports available to the public
 - Certain classes must report on training materials*
 - Some exemptions to reporting
- Penalties under AODA
 - Administrative Penalties
 - Fines for Offences (significant!)



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Labour, Employment, and Human Rights Bulletin

April 2009

Fasken Martineau DuMoulin LLP

New Bill Introduced to Curb Workplace Violence and Harassment

Author: Karen M. Sargeant

Ontario is looking to reduce violence and harassment in the workplace. To that end, Bill 168, *An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace*, received first reading on April 20, 2009. Bill 168, if passed, would amend the *Occupational Health and Safety Act* (“OHSA”).

The key components of Bill 168 are:

- workplace violence and harassment policies;
- workplace violence and harassment programs;
- workplace violence assessments;
- disclosure of information where there is a risk of violence; and
- work refusals upon threat of workplace violence.

Policies

Bill 168 would require employers to prepare a policy with respect to workplace violence and a policy with respect to workplace harassment.

“Workplace violence” is defined as the exercise of (or an attempt to exercise)

physical force by a person against a worker in a workplace that causes or could cause physical injury to the worker. “Workplace harassment” is defined as engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

Employers would have to review the policies at least annually and those with more than five employees would be required to post the policies in the workplace.

Programs

Bill 168 would also require employers to develop and maintain a program to implement the workplace violence and workplace harassment policies.

The workplace violence program would have to include measures and procedures:

- to control the risks identified in the assessment (described below) as likely to expose a worker to physical injury;
- for summoning immediate assistance when workplace violence occurs or is likely or threatened to occur;

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Ottawa

Montréal

Québec City

London

Johannesburg

- for workers to report incidents or threats of workplace violence; and
- for investigating and dealing with incidents, complaints or threats of workplace violence.

The workplace harassment program would have to include reporting and investigation procedures.

Workplace Violence Assessments

In addition to implementing policies and programs, employers would also have to prepare a workplace violence assessment, to assess the risk of violence in the workplace. The assessment would be based on the nature of the workplace, the type of work and the conditions of work. Thereafter, employers would have to advise the workers, through the joint health and safety committee or otherwise, of the results of the assessment.

Particular Risk of Violence

Bill 168 would also require employers and supervisors to inform workers of a risk of workplace violence from a person with a history of violent behaviour if:

- the worker was expected to encounter that person in the course of his or her work; and
- the risk of workplace violence was likely to expose the worker to physical injury.

Further, if there was a risk of domestic violence in the workplace, the employer would be required to take every precaution reasonable in the circumstances for the protection of workers.

Work Refusals

Bill 168 would also amend Part V of OHSA so that workers would have the right to refuse or stop work where they felt endangered by workplace violence. As is the case with respect to work refusals generally, the worker's refusal to work would be investigated by the employer and, potentially, a Ministry of Labour inspector.

Implications for Employers

The OHSA already provides that employers must take every precaution reasonable in the circumstances for the protection of a worker. Bill 168 does not change that: it simply makes it clear that employers' and supervisors' duties in this respect would apply to workplace violence and harassment.

Although many employers will already have workplace harassment policies and programs in place as a result of their obligations under the Human Rights Code, employers may have to expand those policies and procedures. They would also have to develop specific policies and programs to deal with workplace violence. This will be particularly important in workplaces where the risk of violence is greater, such as in the health care, social services, retail, hospitality, financial institutions, education, transportation, and police, security and corrections industries.

For more information on the subject of this bulletin, please contact the author at ksargeant@fasken.com or 416-868-3475.

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Human Rights Considerations when Downsizing or Restructuring Operations

Katherine Pollock
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June 4, 2009



Agenda

- Restructuring and its Impact on your Ability to Accommodate
- Terminating Employment of those on Statutory Leave
 - pregnancy/parental leave, workers comp., etc.
- Releases – What should you be asking for?
- Post-Employment Continuation of Disability & Other Benefits
 - Managing your Risk





When Restructuring Affects your Ability to Accommodate

- assessing who is to be impacted by a restructuring
 - decisions should be based on objective/relevant factors, cannot be influenced in any way by prohibited ground of discrimination (i.e. age, race, sex, disability, etc.)
- increased demands being placed on those who remain
 - Will this impact ability to offer modified duties?



Employers' Obligations with Respect to Employees on Statutory Leave of Absence

- Employers' general obligation to reinstate at end of leave is subject to only limited exemptions
- Must demonstrate that decision to terminate entirely unrelated to employee have taken/being off on legitimate leave of absence
- Trend: Concerns re: impact on EI eligibility/entitlements



Human Rights Release Language

- Careful consideration should be given to what you ask employees to sign off on, in the way of a release, as part of separation package
- Risks of human rights related complaints/issues only effectively dealt with if human rights specifically and properly referenced in the Release
- What may be most appropriate will depend on the circumstances and the workplace



Post-Employment Benefit Continuances

- Obligation at common law to continue all benefits, including disability and life insurance, over common law notice period
- Insurance companies becoming increasingly un-cooperative, making satisfying your obligations as an employer more difficult and, in some cases, more expensive
- Never discontinue benefit coverage before having assessed risk associated with uninsured claims





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Background Checks - The Impact of a Criminal Record

Donna Gallant
June 4, 2009



Rationale for Criminal Records Checks

1. Relevant to specific job duties
2. Necessary to ensure physical safety of others, particularly vulnerable persons
3. A prudent precautionary measure
4. Required by clients, customers, stakeholders





Considerations for New Employees

1. Do you have the required consent to perform the criminal records check?
2. Are you entitled to revoke the offer of employment if the candidate fails the criminal records check? It depends



Applicable Human Rights Legislation – Prohibited Grounds of Discrimination


Re: Criminal Record

Ontario/Federal: conviction for an offence in respect of which a pardon has been granted

British Columbia/Quebec: conviction for an offence that is unrelated to the employment

Other:

Do the results of the criminal records check disclose a disability? See also OHRC policy on police record checks.



Existing Employees - Ability to Require a Criminal Records Check / Consequences of an Offence

Consider:

- terms of written employment contract/collective agreement;
- applicable human rights legislation; and
- common law – just cause.



Other Important Issues:

1. If you are using a third party to provide the criminal records check, what does your agreement say about how the third party will handle the results (confidentiality, storage)?
2. If you are providing results to a third party (e.g. client) do you have the employee's consent as well as an information transfer agreement, which describes the obligations of the third party regarding use and disclosure of the information?



Summary

- increasing pressure to perform criminal records checks.
- employer options to address results depend on applicable human rights legislation, terms of the offer letter or contract of employment and the common or civil law.
- results may reveal a disability, which calls for accommodation.
- where results are obtained by, or provided to, a third party – should have an agreement setting out terms for use and disclosure of the information by the third party, having regard to applicable human rights and privacy legislation.

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Chips Inc. Case Study

June 4, 2009

Chips Inc. manufactures and sells potato chips to the Canadian market. Chips Inc. has a plant in Sarnia, Ontario. Approximately 300 non-union and unionized employees work at the Sarnia plant:

- (a) 235 unionized employees work in a manufacturing capacity. They are part of the United Chipmakers of Canada Union bargaining unit;
- (b) 20 employees are responsible for cleaning, and are part of the Cleaners Union bargaining unit;
- (c) 25 non-union employees work in the office, which is located in one corner of the plant; and
- (d) 20 employees are considered to be managerial.

Eleanor Wood works in the seasoning area of the plant. She is responsible for loading specific seasonings into the various seasoning machines, and for changing the seasonings when required. Eleanor is part of the Chipmakers Union bargaining unit. She is in her mid forties and has worked at Chips Inc. for six years, always in this capacity.

Eleanor is not a model employee. In fact, just yesterday she received a 3-day suspension for unexplained lateness and unsubstantiated absenteeism. Eleanor has a history of discipline:

- (a) 5 months ago she received a verbal warning for being up to 30 minutes late for four shifts, with no explanation;
- (b) 4 months ago she received a written warning for leaving work early, without permission, on three different occasions; and
- (c) 2 months ago she received a one-day suspension, for being late for work on two occasions and absent without explanation on three occasions.

On each occasion, Chips Inc. asked Eleanor if there were any reasons for her lateness and poor attendance and, even after Eleanor said no, referred Eleanor to the Employee Assistance Program.

This morning, the very day after Eleanor received her 3-day suspension, Eleanor has called into work and said she will be unable to attend work today and for the next week because she has a sore back. You don't believe Eleanor's story about a sore back, particularly since:

- (a) you have given Eleanor many opportunities to tell you whether anything is wrong; and
- (b) she has only raised this condition in the face of more serious discipline.



Eleanor's manager wants to fire Eleanor for cause. What is your advice?

PLEASE STOP - DO NOT READ FURTHER

You have stepped back and decided that Chips Inc. has an obligation to find out if there is anything to Eleanor's excuse that she cannot come to work because she has a sore back. As such, you have telephoned Eleanor and asked her to provide you with a note from her doctor, confirming that she is unable to work, the reason why she is unable to work and for how long she will be unable to work.

Two days later, Eleanor brings in a short note from a doctor, written on a prescription pad. The only comments that the doctor has made are the following:

“Patient reports that is unable to work for one week due to sore back.”

What's more, the note appears to be from a walk-in clinic.

Now you are very sceptical since the note:

- (a) is from a walk-in clinic; and
- (b) says only that the patient reports that she is unable to work. The note does not set out the doctor's assessment.

What should Chips Inc. do next?

PLEASE STOP - DO NOT READ FURTHER

You considered sending Eleanor for an independent medical assessment (“IME”) so that you could get to the bottom of whether she is really suffering from a sore back or not. Given the cost of such an assessment (\$1,500 to \$3,000) and the length of time it often takes to arrange for an IME, you decided to ask Eleanor to have her own doctor answer the following questions.


1. Does Ms. Wood have a condition which prevents her from working as a chip seasoner on a full-time basis?
2. What is the treatment program that you have recommended for Ms. Wood to follow?
3. What workplace activities are you recommending that Ms. Wood avoid?
4. What workplace activities can Ms. Wood perform?
5. How long do you expect it will take Ms. Wood to recover from her current condition?
6. When do you expect Ms. Wood to be able to return to work, both on a full-time and/or modified basis?
7. What steps, or actions, do you recommend that Chips Inc. initiate to accommodate Ms. Wood’s condition?
8. In your opinion, is Ms. Wood unable to perform any of the duties of her position? If so, please describe in as much detail as possible your concerns with these required duties.

Eleanor arranged to have her own family physician answer all of the questions and you received her doctor’s responses within the one week time limit you had provided.

From Eleanor’s doctor’s answers, you have learned that Eleanor:

- (a) has suffered from back problems for at least a year;
- (b) was recently diagnosed with a herniated disc; and
- (c) is able to return to work immediately, so long as she:
 - (i) avoids standing for more than 20 minutes at one time;
 - (ii) avoids lifting anything over 5 pounds; and
 - (iii) is able to take walking breaks at least every 30 minutes.

The doctor has further indicated that these work restrictions are expected to be permanent since Eleanor is not a candidate for surgery.



You know you have heard about this obligation to accommodate an employee's disability up to the point of undue hardship. But what does that mean?

There is nothing you can do to accommodate Eleanor's work in the seasoning area. You cannot have her avoid standing for more than 20 minutes at one time and she has to lift 25 pound bags of seasoning all day — that's the essence of her job. Even if you could accommodate Eleanor's condition, you couldn't do so on a permanent basis.

What do you think Chips Inc. is required to do?

PLEASE STOP - DO NOT READ FURTHER

Because you were not sure about how far the duty to accommodate required Chips Inc. to go in its accommodation of Eleanor's disability, you spoke to one of your colleagues at head office. Your colleague told you that the duty to accommodate applies regardless of whether an employee's restrictions are temporary or expected to be permanent. Your colleague also told you that some employers have been required to transfer disabled employees to different work areas or even bundle job duties from a number of different jobs to "create" a job for a disabled employee.

With that information in mind, you sit down at your desk, think about the jobs in the Sarnia plant and make the following determinations:

- (a) Chips Inc. could bundle a number of tasks to create a job for Eleanor but there would be no classification in the collective agreement to cover this new job. Also, the Union might object if Eleanor gets to do more of the lighter tasks, such that other employees have to do a greater percentage of the more physical tasks.
- (b) Chips Inc. could move Eleanor to the quality control lab. But there are only-four employees per shift in the quality control lab and all of them have far more seniority than Eleanor's six years.
- (c) Chips Inc. could put Eleanor in one of the lighter cleaning roles. But that would require her moving from the Chipmakers Union to the Cleaners Union. You wonder if the Chipmakers Union would agree and what would happen to Eleanor's seniority if she moved to the Cleaners Union.
- (d) Chips Inc. could transfer Eleanor to one of its office jobs. In fact you have a vacant payroll clerk job in the office, but the pay is lower than what Eleanor is earning now.
- (e) The only other position that meets Eleanor's physical limitations and is covered by the Chipmakers Union collective agreement is the inspection position. However, you already have three disabled employees in that role. You don't want that role to become the place where all disabled employees automatically go.

Are the concerns raised about each option valid?

PLEASE STOP - DO NOT READ FURTHER

Fast Forward: It's now 2020. Eleanor is 65 years old and has been working in the inspection area on the day shift along with three other employees who are over age 60. They have moved to the inspection area over the years, due to their declining strength and ability to handle the general labour functions in the plant. The average age of your workers is now 55.

Paul has been employed with Chips Inc. for 29 years. He is 67 years old and, for the past 10 years has been doing Eleanor's previous job in the seasoning area. His manager is very frustrated because Paul is too slow in changing the seasoning. As well, Paul has made several mistakes, including two mistakes in the past week, where he has put the wrong seasoning into a machine. The delays caused by Paul being unable to keep up are becoming a serious concern, from a cost and morale point of view. Paul has indicated that he is going as fast as he can and that it was the stress of trying to keep up that has caused his mistakes.

You do not have another job to offer Paul, since all of the functions that require little physical strength are being performed by workers with similar limitations, attributable to normal aging or various disabilities. What should you do?

Biographies

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Ian Campbell has a general and diverse labour and employment practice. Ian regularly represents employers in the Ontario Superior Court of Justice, the Federal Court of Canada and before various federal and provincial labour, employment and human rights related administrative tribunals. In particular, his practice is focused on providing his clients, who consist mainly of employers and senior executives, with strategic advice regarding various matters including employee terminations, restructurings and downsizings, employment agreements, labour relations, collective agreement interpretation and human rights. Ian also regularly assists his employer clients with reviewing and updating their workplace policies and procedures and providing the training required to ensure these policies are properly implemented and applied.

Ian has developed a particular expertise in the federal sector and regularly advises clients on matters involving the *Canada Labour Code* and the *Canadian Human Rights Act*.

Ian summered and articulated with the firm before joining the Labour, Employment and Human Rights Practice Group in 2003.

Representative Experience

- *Foresters completes acquisition of Unity Life in Canada's first sponsored demutualization*
Advised The Independent Order of Foresters
- *United Group completes US\$408 million acquisition of UNICCO*
Advised United Group Limited
- *Providence Equity Partners acquires Decision Resources*
Canadian counsel to Providence Equity Partners
- *Travelzest acquires iTravel2000.com for \$51.5 million*
Acted for Travelzest plc in Canada
- *Hilton Canada sells last five Canadian hotels for \$243 million*
Advised Hilton Canada Co.

Ian M. Campbell

- *CHUM completes \$265 million purchase of Craig Media and financing*
Advised CHUM Limited
- *Employment policy and practices audits for retail and transportation clients*
Conducted employment policy and practices audits for major national and international clients in the retail and transportation sectors.
- *Civil and administrative employment and labour related injunction proceedings*
Regularly represents clients in various civil and administrative employment and labour related injunction proceedings, involving matters ranging from unfair competition to illegal strikes and/or picketing.

Presentations

- Human Rights Seminar, June 4, 2009
- 24th Fasken Forum, Employment, Labour, Human Rights, Pensions & Benefits Conference, March 3, 2009
- National Human Rights Seminar, Toronto, June 3, 2008
- Fasken Martineau National Human Rights Seminar, May 25, 2007
- 22nd Labour, Employment, Human Rights, Pension & Benefits Conference, February 8, 2007
- 21st Annual Fasken Forum on Employment, Labour, Human Rights, Pensions & Benefits, October 26, 2005

Publications

- "Landmark Supreme Court of Canada Decision Significantly Alters the Law Regarding Damages in Wrongful Dismissal Cases", Labour, Employment and Human Rights Law Bulletin, July 2008
- "Hours of Work and Overtime Litigation on the Rise", Labour, Employment and Human Rights Bulletin by Maria Giagilitsis and Ian Campbell, June 2007

Memberships and Affiliations

- Member, Canadian Bar Association
- Member, Ontario Bar Association - Labour Relations Section



Martin K. Denyes

Partner

Toronto

Direct Line: 416 868 3489

Facsimile: 416 364 7813

mdenyes@fasken.com

www.fasken.com

Martin Denyes helps employers solve their workplace crises. His experience includes:

Areas of Practice

Labour, Employment and Human Rights

Labour Mergers and Acquisitions

Collective Bargaining

Employment Law Advice

Employment Standards

Human Rights

Labour Relations

Pensions and Benefits

- assisting management teams in developing policies, practices and attitudes that help them stay union free;
- successfully advising employers during union organizing drives;
- negotiating collective agreements to mandate;
- successfully assisting management teams with plant closure and relocation decisions;
- grievance arbitration;
- labour relations board litigation;

Martin also helps executives manage their way through the complications and risks of today's employment environment. He negotiates employment agreements on behalf of executives and assists them through changes in their increasingly complex working relationships.

Martin is a talented trainer, combining a depth of legal knowledge and entertaining training style. He makes risk management entertaining, even fun. In recent years, he has trained employers and their managers on human rights issues, sexual harassment, privacy compliance, managing in the unionized workplace, managing to stay union free, attendance management and workplace investigations.

Education

B.Journ. (Hons), 1987
Carleton University

LL.B., 1990
Queen's University

Called to the Bar

Ontario, 1992

Representative Experience

- *FCI acquires IMPLO Technologies*
Advised FCI Canada
- *North Castle Partners acquires World Health Club*
Advised North Castle Partners
- *DaimlerChrysler sells Chrysler Group to Cerberus Capital Management in US\$7.4 billion deal.*
Acted as special Canadian counsel to DaimlerChrysler AG

Martin K. Denyes

- *Toyotetsu Canada to build \$50 million Canadian automotive parts plant in Simcoe, Ontario*
Advised Toyotetsu Canada, Inc.
- *Pan-Oston (U.S.) merges with Complete Retail Solutions*
Advised Pan-Oston Ltd.
- *IBM acquires PwC consulting and technology services business in US\$3.5 billion deal*
Advised PricewaterhouseCoopers

Presentations

- Human Rights Seminar, June 4, 2009
- 24th Fasken Forum, Employment, Labour, Human Rights, Pensions & Benefits Conference, March 3, 2009
- What You Need To Know About Labour, Employment and Pensions, Navigating The Financial & Economic Crisis Seminar Series, January 15, 2009
- 22nd Labour, Employment, Human Rights, Pension & Benefits Conference, February 8, 2007

Publications

- "H1N1 Influenza Flu Virus: Information for Employers", Labour, Employment and Human Rights Law Bulletin, May 2009
- "Landmark Supreme Court of Canada Decision Significantly Alters the Law Regarding Damages in Wrongful Dismissal Cases", Labour, Employment and Human Rights Law Bulletin, July 2008
- "Drug testing in the mining sector", CIM Magazine Vol.3, No. 3 by Martin Denyes, May 2008
- "Ontario's New Statutory Holiday -- Employer Impact", Labour and Employment Alert, October 2007
- "Changes to Family Medical Leave in Ontario", Labour, Employment and Human Rights Bulletin by Martin Denyes and Maria Giagilitsis, October 2006

Martin K. Denyes

- "The End of Mandatory Retirement - Until Death Do Us Part?", Labour, Employment and Human Rights Bulletin, June 2005
- "South Asian Tsunami - Extraordinary Times Call for Management Discretion", Labour, Employment and Human Rights Bulletin by Martin Denyes, January 2005
- "West Nile Virus in Ontario - Legal Considerations", Fasken Martineau Alert by Richard Swan in conjunction with Rosalind Cooper, Martin Denyes, Lynne Golding, June 2003
- "Ontario's Collective Bargaining Process - Renewal Agreements", Labour, Employment and Human Rights Bulletin by Martin Denyes, April 2001
- "Ontario's New Labour Bill - Workplace Democracy or Shop Floor Disruption?", Labour, Employment and Human Rights Bulletin by David Corbett, Martin Denyes and Mary Gersht, November 2000



Donna J. Gallant

Counsel

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www.fasken.com

Areas of Practice

Labour, Employment and
Human Rights

Employment Equity

Human Rights

Labour Relations

Health

Education

B.S.W., 1978
University of Western
Ontario

LL.B., 1982
Dalhousie University

Called to the Bar

Ontario, 1984

Donna Gallant provides employment and labour law advice to management across a broad range of industry sectors. She works with employers on a day-to-day basis to develop, implement and update their human resource policies and practices, and to resolve workplace issues quickly as they arise. She represents employers in wrongful dismissal litigation, grievance arbitrations, and claims pursuant to human rights, employment standards, and workers' compensation legislation. Donna frequently provides advice on employment and labour issues in the context of corporate reorganizations, mergers and acquisitions.

Donna's experience includes:

- Employer counsel in human rights cases, wrongful dismissal litigation, grievance arbitrations
- Employer representative in workers' compensation cases
- Advising on labour and employment issues in context of mergers and acquisitions
- Assisting employers to negotiate terms of severance in the context of individual terminations
- Assisting employers to implement mass layoffs, downsizings and plant closures
- Advising employers in the conduct of investigations of harassment, theft, and drug use
- Advising employers in the negotiation and drafting of executive employment agreements

Donna articulated with the firm in 1983 and became a partner in 1990. In 1993 Donna took a leave of absence from practice to focus on family and volunteer interests. In 1997, she accepted a position as in house counsel and corporate secretary for a public company, where she practised until her return to the firm in 2004.

Representative Experience

- *C.H. Robinson Worldwide acquires Transera International*
Advised C.H. Robinson Worldwide, Inc.

Donna J. Gallant

- *Asia Bio-Chem closes qualifying transaction*
Advised Asia Bio-Chem Group Company Ltd.
- *MIJO buys Broadcast Duplication Network*
Advised MIJO Corporation
- *Medical Capital Holdings acquires Specialty Board Games in Canadian exchangeable share transaction*
Advised Medical Capital Holdings, Inc.
- *MIJO buys Stancon Video*
Advised MIJO Corporation

Presentations

- Human Rights Seminar, June 4, 2009
- 24th Fasken Forum, Employment, Labour, Human Rights, Pensions & Benefits Conference, March 3, 2009
- National Human Rights Seminar, Toronto, June 3, 2008
- Fasken Martineau National Human Rights Seminar, May 25, 2007
- Hospitals and Foundations Seminar Series: Ancillary Revenue Generation in Hospitals, April 19, 2007
- 22nd Labour, Employment, Human Rights, Pension & Benefits Conference, February 8, 2007
- National Human Rights Seminar, May 26, 2006
- OBA Conference - How to Avoid Harm Caused by Departing Employees, November 8, 2005
- 21st Annual Fasken Forum on Employment, Labour, Human Rights, Pensions & Benefits, October 26, 2005

Publications

- "Landmark Supreme Court of Canada Decision Significantly Alters the Law Regarding Damages in Wrongful Dismissal Cases", Labour, Employment and Human Rights Law Bulletin, July 2008
- "Labour Relations and the Local Health System Integration Act, 2006", by Donna Gallant, March 8, 2006

Donna J. Gallant

- "The Window is Now Open", Labour Alert by Donna Gallant, December 2004

Memberships and Affiliations

- Member, Canadian Bar Association
- Member, Ontario Bar Association
- Member, Human Resources Professionals Association of Ontario



Patrick T.J. Gannon

Partner

Toronto

Direct Line: 416 865 5139

Facsimile: 416 364 7813

pgannon@fasken.com

www.fasken.com

Patrick Gannon practises labour, employment and human rights law. He advises on various labour and employment matters, including collective agreement interpretation, union certification, employment standards, wrongful dismissal as well as workplace safety and insurance and human rights issues.

Patrick has worked as a sub-editor for Canada Law Book's Canadian Labour Arbitration Summaries publication.

Patrick joined the firm as an associate in 1998, and became a partner in 2003.

Areas of Practice

Labour, Employment and
Human Rights

Collective Bargaining

Employment Law Advice

Employment Standards

Human Rights

Labour Relations

Workers'
Compensation/Occupational
Health and Safety

Education

B.A., 1993
Concordia University

LL.B., 1996
Queen's University

Called to the Bar

Ontario, 1998

Languages

English

French

Representative Experience

- *Liqui-Box sells performance films business to Exopack*
Advised Liqui-Box Canada Inc.
- *Silgan Holdings acquires Cousins-Currie for \$48.3 million*
Advised Silgan Holdings Inc.
- *Vision Capital acquires businesses of AEA Technology plc for up to £76.4 million*
Acted for Vision Capital Limited
- *GMP Capital Trust completes EdgeStone acquisition for \$155.4 million*
Advised GMP Capital Trust
- *Ontario Ministry of Correctional Services in public-private partnership agreement with Utah corporation*
Advised the Ontario Ministry of Correctional Services

Presentations

- Human Rights Seminar, June 4, 2009
- 24th Fasken Forum, Employment, Labour, Human Rights, Pensions & Benefits Conference, March 3, 2009

Patrick T.J. Gannon

- Fasken Martineau National Human Rights Seminar, May 25, 2007
- Employee References: Handle With Care, Speaker, Fasken Martineau Labour, Employment and Human Rights Seminar, February 8, 2007
- Recent Developments in Employment Law in Ontario, Speaker, Fasken Martineau Labour, Employment and Human Rights Seminar, October 27, 2006
- Preventing Workplace Violence, Speaker, Fasken Martineau Labour, Employment and Human Rights Seminar, October 26, 2005
- Bill 63: Proposed Amendments to the Employment Standards Act, 2000, Speaker, Fasken Martineau Labour, Employment and Human Rights Seminar, November 18, 2004
- Video Surveillance, Speaker, Fasken Martineau Labour, Employment and Human Rights Seminar, September 23, 2002

Publications

- "Landmark Supreme Court of Canada Decision Significantly Alters the Law Regarding Damages in Wrongful Dismissal Cases", Labour, Employment and Human Rights Law Bulletin, July 2008



Alix P. Herber

Partner

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Areas of Practice

Labour, Employment and
Human Rights

Education

LL.B., 1999
University of Victoria

M.A., 1995
University of Western
Ontario

B.A. (Hon.),
University of Western
Ontario

Called to the Bar

Ontario, 2001

Alix Herber has a practice that focuses on advising and representing employers in labour, employment, and human rights matters. She offers practical advice to employers on a wide array of issues including, labour relations, performance and discipline management, employee terminations, wrongful dismissal litigation, employment standards, and human rights. In particular, Alix enjoys working with her clients to provide them with strategic advice on various matters including collective agreement interpretation and collective bargaining, union organizational campaigns, company restructurings, employment agreements, and the duty to accommodate. Working closely with her clients, she is also actively involved in auditing and drafting workplace policies as well as providing training for employees at all levels on issues such as harassment and discrimination.

Alix has also spent several years as In-House Counsel of one of North America's largest food processing and distribution companies and as Senior Director of one of its major operating divisions. In those roles, she focused on operational labour relations and the administration of approximately 50 collective agreements, leading negotiations in bargaining a number of them.

Alix is a frequent speaker at conferences relating to employment, labour relations and human rights area. She recently spoke in July 2008 at the Lorman Education Services Seminar on Employment Standards.

Alix first joined the firm in 2001 as an associate in the Labour, Employment and Human Rights Group. She is an active participant in the firm's National Human Rights Seminar and the Annual Labour and Employment Seminar for clients.

Representative Experience

- *Handleman sells its Canadian music operations to Anderson Merchandisers*
Advised Handleman Company
- *Lift Technologies sold to Calvi Holding*

Alix P. Herber

- *Klöckner sells Canadian subsidiary Namasco to Samuel, Son & Co.*
Advised Klöckner & Co and Namasco Ltd.
- *Yildiz Holding A.S purchases Godiva Chocolatier business from Campbell Soup for US\$850 million*
Advising Yildiz Holding A.S.
- *NewPage buys North American paper operations of Stora Enso in US\$2.5 billion deal*
Advised NewPage on the Canadian aspects of this transaction
- *International Automotive Components completes Collins & Aikman soft trim acquisition*
Advised International Automotive Components Group North America
- *United Group completes US\$408 million acquisition of UNICCO*
Advised United Group Limited
- *Food retail and day care industries collective bargaining agreements*
Has been the lead negotiator of several collective bargaining agreements in the food retail and day care industries.

Presentations

- The Ontario Employment Standards Act in Ontario Seminar, Lorman Education Services, July 31, 2008
- National Human Rights Seminar, Toronto, June 3, 2008
- Bill 14 - Regulation of Paralegals and implications for HR Professionals and Health and Safety Inspectors, Speaker, Retail Council of Canada, December 11, 2007
- Fasken Martineau National Human Rights Seminar, May 25, 2007

Publications

- "Landmark Supreme Court of Canada Decision Significantly Alters the Law Regarding Damages in Wrongful Dismissal Cases", Labour, Employment and Human Rights Law Bulletin, July 2008
- "New Posting Requirement for Ontario Employers", Employer Alert, March 2008
- "The New Human Rights System in Ontario", Labour and Employment Alert by Alix Herber and Katherine Pollock, September 2007

Alix P. Herber

- "Employer Liability for Drinking Employees: 2002", Labour, Employment and Human Rights Bulletin by Alix P. Herber, November 2002

Memberships and Affiliations

- Member of the Canadian Bar Association
- Member, Ontario Bar Association, Employment and Labour Divisions
- Member, Student Development Committee

Community Involvement

- Member, Human Rights Watch Toronto Network, a subcommittee of Toronto Human Rights Watch Council
- Past Board Member of Jessie's Centre for Teenagers, a multi-service resource for pregnant and parenting teenagers who are eighteen years old or younger, and their children. (2004-2005)
- Past Co-Chair of the Board of Directors and Chair of the Human Resources Committee for Opportunity for Advancement for three years. OFA is a not for profit United Way agency providing programs to women in disadvantaged life situations. (2001-2004)
- Past Board Member, Margaret Frazer House, providing support to women with mental illness



Brian A. O'Byrne

Partner

Toronto

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www.fasken.com

Areas of Practice

Labour, Employment and
Human Rights

Health

Education

B.A., 1971
University of Toronto

LL.B., 1974
Osgoode Hall Law School at
York University

Called to the Bar

Ontario, 1976

Brian O'Byrne practises labour relations, employment and human rights law. He provides general counsel and advice with respect to a variety of matters including restructurings and downsizings, employee terminations, employment agreements and policies, privacy rights, union organizational campaigns, collective agreement interpretation, workers' compensation, pay equity, employment standards and occupational health and safety matters. Brian also represents clients in a full range of litigation matters involving employment, labour and human rights issues before the courts as well as the various tribunals that deal with these matters. He also spends a significant portion of his time negotiating collective agreements on behalf of both private and public sector clients and representing clients before interest arbitration boards.

Brian is a frequent speaker on various labour, employment and human rights issues at professional conferences and seminars. Over the last few years, he has spoken at such events in Canada's major centres - Toronto, Montréal, Calgary and Vancouver as well as in the United States of America and England. He also conducts various seminars and training programs for clients.

Brian has also written various articles and commentaries on labour, employment and human rights issues. He is the author of the chapter on Canadian labour and employment law in the European Lawyer Reference book entitled Labour and Employment Law and is also the editor of the Canadian Chapter in the textbook International and EU Employment Law published by Jordans in the United Kingdom.

Brian has been consistently recognized by Lexpert as a leading labour law practitioner by WHO's WHO LEGAL, The International Who's Who of Business Lawyers, published by Law Business Research in London, U.K. as one of the world's leading management side practitioners in the field of labour and employment law; and also by The Guide to the World's Leading Labour and Employment Lawyers published by Euromoney Legal Media Group. He is also listed in the first two editions of BEST LAWYERS IN CANADA (2007 and 2008) and as a recommended lawyer in the area of labour and employment (Canada) by Practical Law Company in 2009.

Brian joined the firm as a partner in 1989.

Brian A. O'Byrne

Representative Experience

- *Ontario Ministry of Correctional Services in public-private partnership agreement with Utah corporation*
Advised the Ontario Ministry of Correctional Services

Presentations

- Human Rights Seminar, June 4, 2009
- 24th Fasken Forum, Employment, Labour, Human Rights, Pensions & Benefits Conference, March 3, 2009
- What You Need To Know About Labour, Employment and Pensions, Navigating The Financial & Economic Crisis Seminar Series, January 15, 2009
- Fasken Martineau National Human Rights Seminar, May 25, 2007
- 22nd Labour, Employment, Human Rights, Pension & Benefits Conference, February 8, 2007
- National Human Rights Seminar, May 26, 2006
- Implementing Collaborative and Innovative Approaches to Public Sector Labour Relations, May 14-15, 2003

Publications

- "Landmark Supreme Court of Canada Decision Significantly Alters the Law Regarding Damages in Wrongful Dismissal Cases", Labour, Employment and Human Rights Law Bulletin, July 2008
- "Hospitals and Foundations in Transition", Presentations by George Glover, Lynne Golding and Bryan O'Byrne, January 22, 2004
- "Ontario Ministry Of Labour Releases Guide to Preparing Union Salary Disclosure Statements", Labour, Employment and Human Rights Bulletin by David Corbett and Brian O'Byrne, March 2001
- "Maternity and Parental Leave - Update on the Status of Legislation", Labour, Employment and Human Rights Bulletin by David Corbett and Brian O'Byrne, March 2001



Sara Parchello

Associate

Toronto

Direct Line: 416 865 4442

Facsimile: 416 364 7813

sparchello@fasken.com

www.fasken.com

Sara Parchello is a member of the Labour, Employment and Human Rights and Government Relations and Ethics practice groups.

Sara summered at the firm in 2005, and was seconded to the London, England office. She completed her articles with the firm in 2006/2007 and joined the labour and employment department in September 2007.

Areas of Practice

Labour, Employment and Human Rights

Government Relations and Ethics

Education

LL.B., 2006
University of Ottawa

B.A. (International Studies, High Honours), 2000
University of Saskatchewan

Called to the Bar

Ontario, 2007

Languages

English

Spanish

Representative Experience

- *Northland Power Income Fund to merge with Northland Power Inc.*
Advised the Independent Trustees of Northland Power Income Fund

Presentations

- Human Rights Seminar, June 4, 2009
- 24th Fasken Forum, Employment, Labour, Human Rights, Pensions & Benefits Conference, March 3, 2009
- National Human Rights Seminar, Toronto, June 3, 2008

Publications

- "H1N1 Influenza Flu Virus: Information for Employers", Labour, Employment and Human Rights Law Bulletin, May 2009
- "For First Time, 22,000 Mounties Can Begin Organizing in 2010", Northern Exposure: Employment law for U.S. companies with employees in Canada, April 21, 2009
- "Canadian Employer Can't Fire Worker on Marijuana", Northern Exposure: Employment law for U.S. companies with employees in Canada, December 16, 2008
- "Creative Ways to Cut Labor Costs in Canada: Furloughs and Work Sharing", Northern Exposure: Employment law for U.S. companies with employees in Canada, November 25, 2008

Sara Parchello

- "Landmark Supreme Court of Canada Decision Significantly Alters the Law Regarding Damages in Wrongful Dismissal Cases", Labour, Employment and Human Rights Law Bulletin, July 2008
- "Capturing Methane Gas", Mining Mirror, Vol. 19, No. 8, February 2007

Memberships and Affiliations

- Member, Law Society of Upper Canada
- Member, Ontario Bar Association

Community Involvement

- Child Advocacy Project



Katherine M. Pollock

Partner

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Areas of Practice

Labour, Employment and
Human Rights

Collective Bargaining

Employment Equity

Employment Law Advice

Employment Standards

Human Rights

Immigration

Labour Relations

Pay Equity

Workers'
Compensation/Occupational
Health and Safety

Alternative Dispute
Resolution

Education

B.A. (Hons), 1983
University of Winnipeg

LL.B., 1986
Osgoode Hall Law School at
York University

Called to the Bar

Ontario, 1988

Katherine Pollock has a practice that focuses on advising and representing employers in labour, employment, human rights and business related immigration matters. She regularly appears before Federal and Provincial administrative tribunals and the civil courts with respect to wrongful dismissals, human rights, workers' compensation assessments and employment standards issues. She arbitrates cases before interest arbitrators appointed under the Hospital Labour Disputes Arbitrations Act and in connection with private, rights-based arbitrations. Katherine has been appointed to boards of arbitration from time to time.

Examples of Katherine's recent experience includes:

- Negotiated favourable collective agreements with a number of trade unions, including the CAW, PSAC and the SIEU
- Provided strategic advice to employers on transferring employees to Canada on a permanent or temporary basis
- Provided solicitor's advice on employment and labour issues in the context of sales of businesses, whether asset purchase or share purchase
- Represented employers in courts and human rights tribunals on claims arising out of the complexities of the employment relationship

Representative Experience

- *Bell Globemedia acquires CHUM*
Advised CHUM Limited
- *Interest arbitration board sets terms and conditions of employment for retirement residence*
Counsel to a retirement residence

Presentations

- Human Rights Seminar, June 4, 2009
- Current Legal Issues Affecting Hospitals, May 27, 2009

Katherine M. Pollock

- Privacy Considerations for the Payroll Professional, April 16, 2009
- 24th Fasken Forum, Employment, Labour, Human Rights, Pensions & Benefits Conference, March 3, 2009
- National Human Rights Seminar, Toronto, June 3, 2008
- Fasken Martineau National Human Rights Seminar, May 25, 2007
- 22nd Labour, Employment, Human Rights, Pension & Benefits Conference, February 8, 2007
- Life Insurance Institute of Canada: Human Resources Fall Meeting, November 1, 2006
- 6 Minute Employment Lawyer and 6 Minute Business Lawyer courses, June, 2006
- Strictly Legal, Guest on the ROB TV show *Strictly Legal*, 2006
- OBA Conference - How to Avoid Harm Caused by Departing Employees, November 8, 2005

Publications

- "Landmark Supreme Court of Canada Decision Significantly Alters the Law Regarding Damages in Wrongful Dismissal Cases", Labour, Employment and Human Rights Law Bulletin, July 2008
- "New Posting Requirement for Ontario Employers", Employer Alert, March 2008
- "The New Human Rights System in Ontario", Labour and Employment Alert by Alix Herber and Katherine Pollock, September 2007
- "Employer Held Liable for Discriminatory Acts of Consumer of Services", Labour, Employment and Human Rights Bulletin by Katherine Pollack, March 2001

Katherine M. Pollock

Memberships and Affiliations

- Canadian Bar Association

Community Involvement

- Past Chair of the Board of Directors of the ALS Society of Ontario



Karen M. Sargeant

Partner

Toronto

Direct Line: 416 868 3475

Facsimile: 416 364 7813

ksargeant@fasken.com

www.fasken.com

Areas of Practice

Labour, Employment and
Human Rights

Collective Bargaining

Employment Law Advice

Employment Standards

Human Rights

Labour Mergers and
Acquisitions

Labour Relations

Pay Equity

Workers'
Compensation/Occupational
Health and Safety

Education

L.L.B., 1995
University of Toronto

B. Comm. (Hons), 1992
The University of British
Columbia

Called to the Bar

British Columbia, 1996

Ontario, 1997

Karen is a partner in the Toronto office's Labour, Employment and Human Rights Group. She carries on a general employment and labour law practice acting on behalf of large and small employers in both the public and private sectors. Included in the scope of Karen's practice are the areas of employment contracts, wrongful dismissal, human rights, employment standards, workplace safety and insurance, union relations, labour arbitrations and pay equity.

Karen provides day-to-day advice to employers in relation to both non-union and unionized workplaces. She also represents employers before boards of arbitration and various administrative tribunals, such as the Ontario Labour Relations Board, Ministry of Labour Employment Practices Branch, Human Rights Commission, Workplace Safety and Insurance Appeals Tribunal and Pay Equity Hearings Tribunal.

A regular speaker at conferences and to groups of management employees about a wide variety of employment and labour matters, Karen writes regular articles for a number of legal publications. Karen also makes frequent contributions to Northern Exposure – Employment Law for US Companies with Operations in Canada, a blog published by HR Hero.com.

Presentations

- Human Rights Seminar, June 4, 2009
- Risk Management for Associations - What You Need To Know (Managing Matters), April 2009
- 24th Fasken Forum, Employment, Labour, Human Rights, Pensions & Benefits Conference, March 3, 2009
- Labour, Employment & Human Rights Update, Fasken Martineau Seminar, October 31, 2008
- Federated Press 7th Annual Employee Complaint Management Conference, November 2008

Karen M. Sargeant

- Human Resources Professional Association (HRPA) Annual HR Law Conference, Senior Practitioners Panel, October 2008
- Employee Discharge and Documentation Conference (Lorman Education Services), June 2008
- Human Resources Professional Association (HRPA) Disability Management Webinar, April 2008
- Law Society of Upper Canada Advanced Roundtable on Employment Law, February 2008
- Employment Law from A to Z (Lorman Education Services), December 2007
- Significant Developments in Wrongful Dismissal Law- Rotman School of Management Conference, May 2007
- Just Cause for Termination: How Firings can Backfire in Canada- M. Lee Smith Audio Conference for U.S. Companies, June 2006
- Significant Developments in Wrongful Dismissal Law- Rotman School of Management Conference, May 2006
- Unlocking the Secrets of Successful WSIB Management (Lorman Education Services), March 2006
- The End of Mandatory Retirement in Ontario- The Impact on Unions (Infonex), November 2005

Publications

- "New Bill Introduced to Curb Workplace Violence and Harassment", Northern Exposure: Employment law for U.S. companies with employees in Canada, May 5, 2009
- "New Bill Introduced to Curb Workplace Violence and Harassment", Labour, Employment, and Human Rights Bulletin, April 2009
- "Be Careful Taking Cost-Saving Measures in Union Workplace", Northern Exposure: Employment law for U.S. companies with employees in Canada, March 24, 2009

Karen M. Sargeant

Memberships and Affiliations

- Canadian Association of Counsel to Employers
- Ontario Bar Association, Labour and Employment Law Section
- Canadian Bar Association
- Law Society of Upper Canada



Brian P. Smeenk

Partner

Toronto

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Facsimile: 416 364 7813

bsmeenk@fasken.com

www.fasken.com

Brian Smeenk is a Toronto partner in the Firm's Labour, Employment & Human Rights Group. Since 1981, Brian's practice has focused on management-side labour and employment law.

Areas of Practice

Labour, Employment and
Human Rights

Education

M.B.A. and Dipl. I.R., 1979
University of Michigan

L.L.B., 1977
University of Ottawa

Called to the Bar

Ontario, 1981

Brian represents both private sector and public sector employers in all aspects of labour relations and employment law. He appears regularly before tribunals such as arbitration boards, labour relations boards, employment standards adjudicators and human rights boards of inquiry. Brian also acts as counsel in employment-related civil actions, judicial reviews and appeals at all levels. In 2001, he acted for The National Ballet of Canada in a leading case regarding the departure of principal dancer Kimberly Glasco.

He has extensive experience in labour negotiations for a wide variety of employers in the private and public sectors. In 1995, he was named to national mediation-arbitration panels chaired by Mr. Justice George Adams to resolve national railroad strikes involving CP Rail and five of its unions. He has for many years represented major school boards in bargaining with both teachers and support staff.

Brian is the editor-in-chief of Northern Exposure – Employment Law for US Companies with Operations in Canada, a blog published by HR Hero.com. He was also the editor of Canadian Employment Law For U.S. Companies, published in the US by M. Lee Smith Publishers (1993 to 2001). He has been granted the designation of Certified Human Resources Professional (C.H.R.P.) by the Human Resources Professionals Association of Ontario (HRPAO). From 1992 to 1997, Brian was a member of the HRPAO's board of directors and served as its senior vice-president, Government Affairs. He is past-president of both the Toronto Human Resource Professionals Association and the Toronto Area Industrial Relations Association.

Brian appears in the 2008 edition of Chambers Global: The Worlds Leading Lawyers, as a leading lawyer in the area of labour and pensions employment. He also appears in the 2007 and 2008 edition of Canadian Legal Lexpert Directory, a guide to the leading law firms and practitioners in Canada as a leading lawyer in the area of labour relations, and in the 2009 edition of "Best Lawyers in Canada" .

Brian P. Smeenk

Representative Experience

- *York University renews three-year collective agreement with staff association*
Advised York University
- *Hassaram v. Ontario (Human Rights Commission), 2005 CanLII 367 (ON S.C.D.C.)*
Advised St. Michael's Hospital
- *Re Curtis Products Corporation And I.W.A. Canada, Local 500, 110 L.A.C. (4th) 193*
- *Re Sunnybrook And Women's College Health Sciences Centre and Brewery, General And Professional Workers' Union, 95 L.A.C. (4th) 34*
- *National Ballet of Canada v. Canadian Actors' Equity Assn., [2000] O.L.A.A. No. 334*
- *Ensign Security Services Inc. [1994] O.L.R.B. Rep. October 1310*
- *Progistix-Solutions Inc., [1999] O.L.R.B. Rep. March/April 3, [1999] O.L.R.D. No. 1070*
- *Re Canadian Pacific Ltd. and C.A.W., 39 C.L.A.S. 321*
- *Re Monarch Fine Foods Co. Ltd. And Milk And Bread Drivers, Local 647, 18 L.A.C (3d) 257*

Presentations

- Human Rights Seminar, June 4, 2009
- Current Legal Issues Affecting Hospitals, May 27, 2009
- Breakfast Forum for GTA Hospital HR Executives, June 2, 2009
- 24th Fasken Forum, Employment, Labour, Human Rights, Pensions & Benefits Conference, March 3, 2009
- Labour, Employment & Human Rights Update, Fasken Martineau Seminar, October 31, 2008

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- "Ontario's Workplace Violence and Harassment Law Overreaches", Northern Exposure: Employment law for U.S. companies with employees in Canada, May 19, 2009
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