Workplace Issues around Alcohol and Drug Use
Legal Update on Employer Rights and Obligations re: Testing, Accommodation and Discipline

Labour, Employment and Human Rights Group Seminar
Wednesday, September 28, 2011
Workplace Issues around Alcohol and Drug Use: Legal Update on the Employer’s Rights and Obligations regarding Testing, Accommodation and Discipline

Donna J. Gallant
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Overview

- Pre-employment testing, for cause testing and random testing: What are the rules?

- What does the duty to accommodate require in substance abuse cases?

- What aspects of substance abuse call for discipline, if any?

- Tips for employer policies regarding alcohol and drug use.
Sources of Guidance

• Ontario Human Rights Commission Policy.
• Canadian Human Rights Commission Policy.
• Case Law.
• Arbitral Law.

General Principle - Reasonableness

• General Principle → An employer must be able to show why testing is a reasonable workplace requirement or reasonable in the circumstances?
  
  • Is there basis for a belief that performance would be impaired by alcohol or drug dependency/abuse?  
    → Pre-employment testing may be possible.
  
  • Is there basis for a belief that a particular employee’s work place behaviour is related to alcoholism or drug addiction/dependency?  
    → Cause testing may be possible.
  
  • Is there basis for a belief that the degree, nature, scope and probability of risk caused by alcohol or drug abuse or dependency will adversely affect the safety of co-workers or the public?  
    → Random testing may be possible.
Pre-Employment Testing

• Pre-employment testing is arguably permitted for safety sensitive positions.
• General definition: Those positions in which incapacity due to drug or alcohol impairment could result in direct and significant risk of injury to the employee, others or the environment.

• Tribunals and Commissions are generally against pre-employment testing because they do not:
  • Measure impairment, in the case of drug testing; or
  • Predict ability to perform essential requirements of a position, in the case of alcohol testing.

Pre-Employment Testing - Guidelines

• Proceed with caution!
  • Limit testing to that needed to determine a person’s ability to perform the essential job duties.
  • Notify job applicants of the need to undergo this testing when they make an offer of employment.
  • Make clear to applicants the reasons why such medical testing is needed.
  • Test only after making a conditional offer of employment.
  • Pre-employment testing does not permit simple rejection of candidate.
  • *Must accommodate prospective employee who tests positive and has a dependency.*
Pre-Employment Testing – Human Rights Considerations

• Ontario Divisional Court decision – *Weyerhaeuser Co.*, 2007.
• Offer of safety sensitive employment was made conditional on passing urinalysis drug test.
  • Employee recreational user of marijuana, failed test.
  • Employer’s policy did not provide for automatic withdrawal of the position for a positive drug test.
  • Instead, allowed for accommodation to the point of undue hardship.
    • Hired upon negative retest.
    • Required to abide by Commencement of Duty Agreement.

For Cause Testing

• Employers *do* have the ability to implement a drug and alcohol testing policy for employees in just cause situations:
  • *Accidents* or near misses where there is evidence that an employee’s act or omission may have contributed to the incident or accident;
  • Suspicion of being *under the influence* of drugs or alcohol at work; or
  • In the context of a *rehabilitation plan* for an employee with an acknowledged drug or alcohol dependency.

- Grievance re: Substance Abuse Prevention Policy
  - Policy authorized reasonable cause and post-incident drug and alcohol testing of employees in safety sensitive positions.
  - Employer characterized entire bargaining unit at one facility as safety-sensitive.
- Union – Not reasonable, not safety sensitive industry, exemplary safety record and culture.
- Employer – Inherently safety sensitive, threat of serious injury, legally liable and responsible for workplace safety.
- Arbitrator – Reasonable and justified policy. Entitled to pro-active approach without need to demonstrate accidents or drug/alcohol problem.
- Policy natural progression of proactive approach to safety.

Random Alcohol Testing

- Arguably permitted for safety sensitive positions.
  - Particularly where supervision is limited or non-existent.
  - Upheld by Ontario Court of Appeal in *Imperial Oil*, 2002.

- Some arbitrators still opposed to random testing in safety sensitive situations where there is no history of alcohol abuse or problems.

- Random alcohol testing of employees in positions that are not safety-sensitive is unlikely to be considered reasonable and a necessary invasion of privacy, and is not addressed in the jurisprudence.
Random Alcohol Testing – *Limited v. CEP Canada (2011)*

- Policy of random alcohol tests for safety sensitive positions in a pulp and paper mill.
- Arbitration Board struck down policy.
  - Ultra-dangerous vs. dangerous.
  - No evidence of significant problem with alcohol-related impaired performance.
- Lower Court overturned Arbitration Board’s decision.
  - Disagreed with ultra-dangerous/dangerous distinction.
  - Unreasonable to require history of accidents.
- Court of Appeal upheld lower court finding, disagreed with union’s ultra-dangerous/dangerous distinction.

Random Drug Testing

- **Not considered permissible in Canada**
- Considered discriminatory and an unreasonable privacy invasion.
- **WHY? Presence vs. Impairment.**
  - Most tests can only detect the presence of drugs, and cannot determine impairment.
- **Future potential:**
  - Requires development of immediate detection methods.
Random Drug Testing – Buccal Swab

- Current method that allows employer to determine whether someone was impaired at the time of the test.
- Results come a few days later.
- Still not accepted by Canadian Courts:
  - *Imperial Oil v. CEP Canada*, 2008.
    - Random alcohol testing upheld by Court of Appeal in 2002
    - Random drug testing struck down.
  - Introduced random drug testing policy.
  - Struck down by Arbitral Board, decision upheld on appeal.
  - Test did not immediately show impairment because of delay.
  - Thus, the test’s main purpose must be to detect violators of the Policy and to deter drug use.

Special Exemption – Cross Border Drivers

- Applies to a bus or truck driver has reasonable potential for crossing the border.

- Employers may subject the employee to drug and alcohol testing as required by the United States Federal Department of Transportation Alcohol and Drug Testing Regulations.
  - Includes random drug testing.

- "MUST STILL ACCOMMODATE A DISABILITY."

- Recreational marijuana user.
- Driver tested positive on random test. Terminated after failing follow up drug test.
- Cross border environment, subject to American drug testing regulations.
  - Discipline warranted for failing follow up test.
  - Employer improperly took into account drug test beyond sunset clause.
  - No known drug problem, no history of work performance problems related to marijuana use.
  - US requirement okay, but can't terminate only because of US regulations.
  - Driver reinstated.

Substance Abuse and Duty to Accommodate

- Drug or alcohol dependency as a disability.
  - Under the *Code*, drug and alcohol dependencies - as well as perceived dependencies - are a form of disability.

- **Example:** An employer refuses to promote an employee because of the perception that the employee has an alcohol dependency. Because of this perception and resulting action by the employer, the person's right to equal treatment under the *Code* may have been infringed.

- **Example:** A person who had a drug or alcohol dependency in the past, but who no longer suffers from an ongoing disability, is still protected by the *Code*. 
Substance Abuse and Duty to Accommodate

- Only have a duty to accommodate those with a dependency/abuse problem/addiction.
  - Not those who are admitted casual users.

- Accommodation of prospective employees.
  - Eligible for hire after negative retest.
  - Follow up testing.

- Accommodation of Employees.
  - Accommodation can include alternative employment within the company, and/or access to time off for treatment and rehabilitation.

Refusal to test = Termination? No.

- There is no case law that supports the automatic termination of employees who refuse to participate in testing.

- Where an individual refuses testing and admits they have a substance related disability, it will most likely trigger the employer’s duty to accommodate the employee’s disability.

- Potential for human rights claim.
Substance Abuse & Discipline for Drug & Alcohol Policy Breaches

• Where employee has an actual or perceived disability – Accommodate.

• Where no evidence of a disability, actual or perceived – Discipline.

• What about a refusal to admit a disability, or failure to comply with treatment for disability?

Drug & Alcohol Policy Breaches - Refusal to Admit a Problem?

• **Example:** An employee in a clerical position appears to be inebriated frequently during work hours, and the employer has a conversation to address the problem. The employee refuses to acknowledge the problem or seek counselling at the employer's expense. Shortly after, the employee is fired without formal warning.

• Perception of a substance abuse problem – *Code protection*
• Immediate dismissal not justified
• Progressive discipline → Termination
Drug & Alcohol Policy Breaches - *Cudmore v. Inter Cap Industries*, 2009

- Shift worker, worst attendance record.
- Shows up for work drunk.
- Disciplined, warned future violation → dismissal.
- Shows up drunk again → dismissed.
- Filed discrimination claim.

**Tribunal: Termination Justified.**
- Employee repeatedly asked if he had a problem with alcohol.
- Offered leave of absence to attend rehab.

Drug & Alcohol Policy Breaches - *Domtar Inc. v. CEP*, 2011

- Grievor discharged, reported to work impaired.
- Driver claimed at meeting that he was not drunk, didn’t have a drinking problem that required accommodation.
- At termination meeting, 9 days after first meeting, declared that he was an alcoholic.
- Company claimed just cause and that it was unable to accommodate.

**Arbitrator reinstated grievor.**
- Grievor had seriously addressed alcohol addiction.
- If sobriety maintained, and subject to suitable testing, Grievor could be trusted to use vehicle and work with equipment.
Drug & Alcohol Policy Breaches – Marijuana Use & Termination Example

• Review of arbitral decisions in Ontario from the past 10 years that involved the consumption of marijuana while at work and the termination of the employee.

• 15 decisions that met these criteria.
  • Termination was upheld in 8 decisions.
  • The grievor was reinstated with a lengthy suspension in 7.
    • In some of the latter cases, the grievor was reinstated with a last chance agreement.

Drug & Alcohol Policy Breaches – Factors that Supported Reinstatement

• Insufficient evidence that grievor was smoking or in possession of marijuana (this was the most important factor in respect of reinstatement).
• A drug test that failed to pinpoint the time of intoxication.
• Where the grievor was permitted to continue to work after being suspected of drug use.
• Evidence of a disability and treatment for disability.
• Lack of EAP program at the workplace.
• Remorse.
Drug & Alcohol Policy Breaches – Factors that Supported Upholding Termination

- Prior history of the same misconduct.
- Safety sensitive positions (forklifts, operation of equipment).
- A lack of mitigating factors (long service, clean disciplinary record).
- A claim of addiction but failure to provide evidence.
- Belated admission, continued minimization of conduct.
- Lack of credibility at arbitration (hollow denials of wrong doing, implausible explanations).

Discipline for Other Misconduct?

- Alcohol/Drug Abuse not a “get out of jail free card.”

- An employee’s dependence on drugs or alcohol does not automatically shield such an employee from the consequences of his or her misconduct unless there is *prima facie* discrimination or a causal connection between the disability and the misconduct.
Other Misconduct: *TTC v. CUPE*, 2011

- Employee terminated for dishonesty, breach of trust, theft, and selling the stolen goods.
- Employee suffered from cocaine and marijuana dependence, pathological gambling, alcohol abuse and depression.
- Union alleged discriminatory discipline without just cause by terminating while on sick leave, and failure to accommodate.

  **Arbitrator upheld termination.**
  - Just cause for discipline, termination not excessive.
  - Premeditated theft, continues to blame cocaine problem.
  - Disability not a factor in termination.

Developing Drug & Alcohol Policies

- Determine the need for a policy objective of the policy.
- Establish a policy development team. Policy development process is as important as content of ultimate policy.
  - Give structure and boundaries.
  - Involve employees if possible.
  - Involve union if unionized?
- Policy should strike the balance between safety/due diligence and human rights/employee privacy.
- Possible application to others? (E.g. onsite contractors)
Developing Drug & Alcohol Policies

Include:

- A reasonable definition of safety sensitive positions and if those employees are subject to specific work rules such as certification or random testing.
- Work rules applicable to all positions.
- Consequences of policy violation or suspected violation.
- Outline of the range of disciplinary responses which will be used to sanction employees found to have breached the policy.
- A statement that sanctions will be tailored to the specifics of each case.

Developing Drug & Alcohol Policies

- Testing should be part of a broader program of medical assessment, monitoring and support.
- Cover consequences of a positive test and/or a voluntary admission of a substance abuse or dependency problem.
  - Outline rights of the employees.
  - Outline duties and obligations of employer and employee.
- Address testing in all scenarios (pre-employment, just cause, random, following treatment or disclosure of current dependency or abuse).
  - What will be tested and when?
  - Who will be tested?
  - How samples will be collected, processed and reviewed.
  - Confidentiality of test results.
REFERENCE MATERIALS
The recent decision of *Irving Pulp & Paper, Limited v. Communications, Energy and Paperworkers Union of Canada, Local 30*, 2011 NBCA 58, by the New Brunswick Court of Appeal has upheld random alcohol testing where the workplace is determined to be "inherently dangerous" and the method of testing is minimally intrusive.

In this case, a grievance was brought by a 34-year-old millwright in the maintenance department of a pulp and paper mill. He was randomly selected for an immediate breathalyser test. The employer's policy on drug and alcohol use stated:

"Employees involved in safety sensitive positions will be subjected to unannounced random tests for alcohol."

Although the employee passed the test, he challenged the policy. His union alleged there were no reasonable grounds to test because there had been no accident or incident that would justify such test.

The arbitration board that initially heard the case focused on whether the policy struck a reasonable balance between the competing interests of the employee and employer. The board found that it did not. It ruled that the employer had to justify the policy by demonstrating that the benefit of the policy was proportional to the intrusion on employees' privacy rights. The board acknowledged that alcohol and safety issues were a prominent concern given the nature of the work at the employer's mill. But it distinguished between an "ultra-dangerous" workplace (such as a nuclear plant, an airline, a railroad or a chemical plant), where no history would be required to justify such a policy, and a merely "dangerous" one, where such testing would only be reasonable if the employer could demonstrate a history of alcohol-related incidents. The board ruled that there was no evidence of a significant problem with alcohol-related impaired performance in the employer's operations (there were 5 alcohol-related incidents but no accidents or injuries over 15 years). Furthermore, despite random testing of 10% of the workforce, there had been no positive tests reported. As a result, the board concluded there was no real advantage to be gained and struck down the employer's policy.

The employer successfully applied to have the decision overturned by the New Brunswick Court of Queen's Bench. In its reasons, the court disagreed with the board's distinction between "dangerous" and "ultra-dangerous." In the court's view, once a workplace is found to be dangerous, no further justification is required; the only issue to decide is whether or not the policy was proportional to its potential harm. It was unreasonable to require a history of accidents or incidents to justify a policy of random alcohol testing where the potential for a catastrophe exists. The prevention of a single catastrophe in the life of the employer's operations would be enough to make the policy reasonable in the court's view. It would be unreasonable to require an employer to wait until a catastrophe occurred before taking proactive measures to prevent it.

The court ruled that breathalyser testing was minimally intrusive. The policy only applied to a limited number of employees in legitimately safety sensitive positions. As a result, the policy was not out of proportion to the actual and expected benefit. The policy was justified in the circumstances.

The union then appealed to the New Brunswick Court of Appeal. The appeal was dismissed in a decision issued July 7, 2011. The appeal court disagreed with the board's argument that sufficient evidence of a pre-existing drug or alcohol problem in the workplace is a precondition to the enforceability of such a policy unless the workplace is "ultra-dangerous." The finding of the lower court was upheld.

This decision is important for employers. It confirms the employer's right to implement random alcohol testing for safety sensitive positions in an inherently dangerous workplace. One does not necessarily need to show a history of alcohol-related accidents or infractions. Earlier decisions upheld testing where reasonable grounds to test clearly exist, or after an accident has occurred. This decision builds upon these prior cases. It confirms the employer's right to randomly test employees employed in safety sensitive positions, at least for alcohol.

It must be noted, however, that this ruling would not necessarily extend to drug testing. While current methods of alcohol testing can be used to assess an employee's impairment at the time of the test, the courts have determined that current drug testing methods are unable to provide this information. As a result, the privacy intrusion associated with random drug testing can often not be justified.
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BIOGRAPHIES
BIOGRAPHY

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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 articled 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

- **MIJO Corporation sold to DG FastChannel for $40 million**
  Counsel to MIJO Corporation in its $40 million cross-border acquisition by DG FastChannel, Inc.
- **NFI Industries acquires IPD Global**
  Advised NFI Industries
- **Logistec acquires Rideau Bulk Terminals**
  Advised Logistec Corporation and Logistec Stevedoring (Atlantic) Inc.
- **Alliance Grain Traders Income Fund completes $104 million transformational acquisition and conversion from income trust to corporation**
  Advised Alliance Grain Traders Inc.
- **MIJO acquires Thunder North**
  Advised MIJO Corporation
BIOGRAPHY
Donna J. Gallant

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

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

Workplace Issues around Alcohol and Drug Use, Labour, Employment and Human Rights Seminar, September 28, 2011

Background Checks and References - the Do's and Don'ts, Labour, Employment & Human Rights Group Seminar, May 11, 2011


Human Rights Seminar, June 4, 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


Publications


BIOGRAPHY
Donna J. Gallant

• "The HR Space: Overtime Class Action News", Labour, Employment and Human Rights Bulletin, October 26, 2010
• "The HR Space: $300 Million Overtime Class Action Against CN Rail Gets Green Light", Labour, Employment and Human Rights Bulletin, September 8, 2010
• "The HR Space: Employee Awarded $500,000 for Bad Faith Termination", Labour, Employment and Human Rights Bulletin, May 25, 2010
• "The HR Space: Pre-Hiring Credit Checks May Not Check Out", Labour, Employment and Human Rights Bulletin, May 4, 2010
• "Labour Relations and the Local Health System Integration Act, 2006", by Donna Gallant, March 8, 2006
• "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
Ralph Nero practises in all areas of labour, employment and human rights law, with a particular focus on business transactions, workers’ compensation and business immigration. Ralph regularly provides labour and employment advice in all forms of commercial transactions, including mergers and acquisitions and insolvency-related transactions. In this area, Ralph’s expertise includes strategic planning, negotiation, successor employer and large-scale reorganization issues, as well as drafting all forms of employment-related agreements. Ralph also regularly advises clients on a full range of labour, employment and human rights issues, including employment policies and practices.

Ralph’s recent experience includes:

- As part of a multi-billion dollar global transaction, coordinated the labour and employment issues across Canada, including negotiation of relevant portions of the commercial agreements, drafting a variety of employment-related agreements and strategic planning relating to the acquisition.
- Represented a foreign purchaser in the acquisition of a multi-jurisdictional Canadian business, including due diligence, negotiation of the purchase agreement, drafting employment and related contracts and strategic planning relating to reorganization of the business.
- Represented many debtors and purchasers in insolvency-related transactions, including evaluation and insulation of existing liabilities and drafting all forms of employment and commercial agreements relating to the insolvency or bankruptcy.

Ralph joined the firm as an associate in 1990, and became a partner in 1997.

**Representative Experience**

- **Desjardins Credit Union amalgamates with Meridian Credit Union**
  Counsel to Desjardins Credit Union in its amalgamation with Meridian Credit Union to create an Ontario credit union with 263,000 members and $8 billion in assets under management

- **Internet Brands acquired by Hellman & Friedman in US$640 million deal**
  Counsel to Internet Brands, Inc. on Canadian aspects of its US$640 million acquisition by investment funds managed by Hellman & Friedman LLC

- **Advent International acquires BOS Solutions**
  Advised Advent International

- **MDS completes divestiture of instrument division to Danaher for US$650 million**
  Canadian counsel to MDS Inc.

- **Co-operators Life Insurance Company and Central 1 Credit Union complete $245 million acquisition of The CUMIS Group**
  Advised Co-operators Life Insurance Company
CCMP Capital stalking horse bidder in Eddie Bauer bankruptcy
Advised CCMP Capital Advisors

Northland Power Income Fund merges with Northland Power Inc.
Advised the Independent Trustees of Northland Power Income Fund in its merger with Northland Power

Linens ’N Things insolvency proceedings
Counsel to RSM Richter Inc., the Interim Receiver, Receiver and Trustee in Bankruptcy

Parker Hannifin Corporation acquires Vansco Electronics
Advised Parker Hannifin Corporation

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

Diploma acquires 75% of AMT Vantage Holdings for up to $30 million
Advised Diploma PLC

DaimlerChrysler sells Chrysler Group to Cerberus Capital Management in US$7.4 billion deal
Acted as special Canadian counsel to DaimlerChrysler AG

Goodyear sells Engineered Products Division to Carlyle Group for US$1.475 billion
Advised Goodyear on the Canadian aspects of this transaction

Cerberus Capital Management completes US$1 billion purchase of Tower Automotive
Advised Cerberus Capital Management L.P with respect to Canadian components of this transaction

US private equity firm buys majority interest in Canadian menswear retailer Grafton-Fraser
Advised Grafton-Fraser Inc.

Smiths Group completes US$4.8 billion sale of aerospace business to General Electric Company
Advised Smiths Group PLC

Baxters Canada buys Aylmer and Primo brand soup business from CanGro Foods
Advised Baxters Canada

MDS sells diagnostics business to Borealis Infrastructure Management in $1.325 billion transaction
Advised MDS Inc.

HMSHost Corporation acquires Cara Operations’ Airport Terminal Restaurant Division for $62 million
Advised Host International of Canada

Cedar Fair acquires Paramount Parks for US$1.24 billion
Advised Cedar Fair, L.P.

GPX International Tire purchases MITL
Advised GPX International Tire Corporation

Kerry Group acquires North American food ingredients businesses for US$83 million
Advised Kerry Group in its acquisition of Custom Industries
• Morse Automotive sells Gunn Metal Stampings to Qualitor
  Advised Morse Automotive Corporation

• Dofasco acquires Copperweld businesses for US$178 million
  Advised Dofasco Inc.

• SPX sells Edwards Systems Technology business to General Electric for $1.4 billion
  Advised SPX Corporation

• HudBay Minerals acquires Hudson Bay Mining and Smelting from Anglo American
  Advised Anglo American International

• ING Canada acquires Allianz of Canada
  Advised ING Canada

• CHUM completes $265 million purchase of Craig Media and financing
  Advised CHUM Limited

• McCain Foods acquires Manitoba processing plant from Nestlé Canada subsidiary
  Advised McCain Foods

• The Independent Order of Foresters enters into outsourcing arrangement with CGI
  Advised The Independent Order of Foresters

• Cable operator Persona Inc. acquired for $406 million by consortium of Canadian and U.S.
  private equity groups
  Advised Hicks, Muse, Tate & Furst Incorporated and Canadian Cable Acquisition Company Inc.

• DuPont Canada sells textiles and interior businesses in its largest transaction ever
  Advised DuPont Canada

• Glendale International completes sale of electronics business to Circuit World
  Advised Glendale International Corp.

• Desjardins Group acquires Province of Ontario Savings Office, and creates Desjardins Credit
  Union Inc.
  Advised The Desjardins Group

• P&O Ports Canada acquires assets of Casco Terminals and Canadian Stevedoring businesses
  of BCR Marine
  Advised P&O Ports Canada Inc.

• Kerry (Canada) acquires Rector Foods Group
  Advised Kerry (Canada) Inc.

• TD Bank Financial Group sells its internal and external custody business (transferring $75 billion
  of custodial assets under administration) to CIBC Mellon
  Advised TD Bank Financial Group

• TD Bank Financial Group transfers more than $8 billion of assets under administration to
  subsidiary of AGF Management
  Advised TD Bank Financial Group

• ING Canada acquires insurance business from Zurich North America Canada
  Advised ING Canada

• St. Lawrence Cement acquires indirect subsidiary of Lafarge
  Advised St. Lawrence Cement Inc.

• Ontario Hydro transfers $12.5 billion of pension fund
  Advised Ontario Electricity Financial Corporation (formerly Ontario Hydro)
BIOGRAPHY
Ralph N. Nero

- **Grafton-Fraser purchases Tip Top Tailors Group from Dylex**
  Advised Grafton-Fraser Inc.

- **PricewaterhouseCoopers signs US$625 million outsourcing deal with Nortel Networks**
  Advised PwC on Canadian aspects of the transaction

**Presentations**


**Publications**

- "Any Distinction Between Employees and Independent Contractors?", Mercer/CCH Guide for Employers, CCH Canadian Limited, August 2011
- "Requiring Single Parent to Work the Nights-Discrimination on the Basis of Family Status?", E-Source Newsletter, Human Resources Institute of Alberta, November 2010
- "The HR Space: Accommodation of Family Status on Same Footing as Other Human Rights", Labour, Employment and Human Rights Bulletin, November 2, 2010
- "Do Age-Based Early Retirement Programs Violate the Human Rights Code?", Case Comment, Ultimate HR Manual Newsletter, May 2010
- "Arbitrator Affirms Prohibition against Random Drug Testing", Beyond Results Bulletin, August 2007
- "Human Rights Reform is Coming to Ontario", Labour, Employment and Human Rights Bulletin by Maria Giagilitis and Ralph Nero, December 2006
BIOGRAPHY
Ralph N. Nero

- "Ontario Labour Relations Act Amendments Now In Force", Labour, Employment and Human Rights Bulletin by Tessa Kroeker and Ralph Nero, June 2005
- "Ticketing Employers Not in Compliance with the ESA", Employement, Labour and Human Rights Bulletin by Ralph Nero and Nadia A. Jandali, August 2004
- "Alberta Court: Proceeds on Demutualization of Insurance Carrier Belong to Employees", Labour, Employment and Human Rights Bulletin by Ralph Nero and Maria Giagilitsis, October 2002

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- Member, Canada and Ontario Bar Association - Labour and Immigration Sections
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Hadiya Roderique is an associate in the Labour, Employment and Human Rights Group. She is engaged in a broad practice assisting employers with matters relating to restructuring, downsizing, human rights, employment agreements and terminations, labour relations and collective agreement interpretation.

As a law student at the University of Toronto, Hadiya was the Vice-President (Student Affairs) of the Students' Law Society and served as an executive member of Downtown Legal Services, the law school's legal clinic.

Hadiya summered with the firm in 2007 and was seconded to SonyBMG Canada Inc. In 2008/09, she articled with the firm and joined as an associate in 2009.

Presentations

- Background Checks and References - the Do's and Don'ts, Labour, Employment & Human Rights Group Seminar, May 11, 2011
- Tips for Accommodating Disability, Labour, Employment and Human Rights Group Seminar, September 22, 2010

Publications

BIOGRAPHY
Hadiya J. Roderique

- "Cell Phone Ban and Employer Liability", Canadian Labour Relations and Employment Topics, November 2009
- "Giving Working Notice - What you Need to Know", Law Society of Upper Canada’s Six Minute Employment Lawyer Conference, June 17, 2009

Memberships and Affiliations
- Member, Canadian Bar Association
- Member, Ontario Bar Association
- Member, Law Society of Upper Canada
- Member and Treasurer, Canadian Association of Black Lawyers

Rankings and Awards
- Gordon Cressy Student Leadership Award, University of Toronto (2008)
- Education Equity Award, Law Society of Upper Canada (2007)