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# What's trending? The 2017 Year in review

Bill Armstrong, Partner

Danielle Emmett, Associate

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## *British Columbia Human Rights Tribunal v Schrenk (SCC)*

- Complainant supervised foreman
- Different employers
- Foreman made discriminatory comments
- Complainant filed a human rights complaint
- Foreman applied to dismiss complaint because lack of employment relationship

## *British Columbia Human Rights Tribunal v Schrenk (cont'd)*

- SCC held the legislation and did not require a traditional employment relationship
- Requires a contextual interpretation of “regarding employment”
- Discriminatory conduct must have sufficient nexus with the employment context
- Foreman’s conduct subject to the Code:
  - Complainant was an unavoidable part of the Foreman’s work environment
  - Foreman’s conduct was detrimental to the workplace

## *Styles v Alberta Investment Management Corporation*

- Plaintiff was terminated without cause
- Awarded \$440,000 for his long-term incentive plan grants at trial:
  - Duty of good faith in contractual dealings
  - Discretionary plan language
- Held that employer should have used its discretion and paid out grants
- Employer appealed

## *Styles v Alberta Investment Management Corporation (cont'd)*

- Court of Appeal reversed trial judge's decision
- Plan language clear: must be actively employed to receive grants
- Employer had the right to terminate the employment contract without any explanation
- Doing so did not alter plan eligibility

## *Nagribianko v Select Wine Merchants Ltd.*

- 6 month probationary period provided for in employment contract
- Terminated within the agreed-upon probationary period
- Trial judge refused to recognize the contractual probationary period
- Awarded common law damages
- Employer appealed

## *Nagribianko v Select Wine Merchants Ltd. (cont'd)*

- Ontario Divisional Court reversed trial decision:
  - Trial judge erred in not giving effect to probationary period in contract
  - Employee understood probation to be a period of time to determine suitability
  - Employer, absent bad faith, entitled to dismiss employee without notice or reason
  - Probationary period is inconsistent with any inducement or promise of long-term employment

## *TCF Ventures Corp v The Cambie Malone's Corporation*

- Plaintiff hired as CFO
- CMC terminated the contract without notice
- Plaintiff filed a claim for wrongful dismissal
- CMC took the position the Plaintiff was independent contractor
- Trial judge held Plaintiff was dependent contractor
- Awarded 9 months reasonable notice
- Court of Appeal agreed but reduced the damages awarded



## *Smith v Pacific Coast Terminals Co. Ltd.*

- Professional engineer
- Offered termination package
- Employer withdrew and terminated for after-acquired cause
- Relied on “revelation of character”
- Trial judge held insufficient evidence - awarded 19 months
- Court of Appeal agreed and upheld decision

## *Health Employers Association of BC v BC Nurses Union*

- Nurse was terminated for improperly accessing medical records
- Arbitrator reinstated nurse:
  - Post-termination apology mitigating factor
  - Biggest employer in small town
- Substituted 13 month suspension
- On reconsideration, Board upheld arbitrator's decision
  - Late apology not inconsistent with Labour Code

## *Alberta v Suncor Inc.*

- Worker injured at worksite
- OHS involved
- Suncor conducted internal investigation
- OHS demanded production
- Claimed privilege over certain documents created or collected in the course of the investigation
- Her Majesty the Queen filed an application for production or further particulars

## *Alberta v Suncor Inc. (cont'd)*

- Court held documents protected by privilege
- Alberta appealed
- Court of Appeal held Suncor could not make blanket claim of privilege
- Employer required to provide particulars to identify the reasons for the claim of privilege
- Privilege could be determined for each document, or group of like documents, afterwards

## *IRIS The Visual Group Western Canada Inc. v Park*

- Optometrist provided services to IRIS
- Entered into a contract that contained non-competition and non-solicitation clause
- Resigned and set up a new optometry practice
- Asked to be relieved of obligations under employment contract
- IRIS brought claim for breach of restrictive covenants
- Trial judge held covenants unenforceable
- Court of Appeal agreed

## *Bottiglia v Ottawa Catholic School Board*

- Employee went on sick leave
- Never returned
- Filed human rights claim:
  - Failed to accommodate
  - Improperly requested an IME
- Tribunal found no discrimination

## *Bottiglia v Ottawa Catholic School Board (cont'd)*

- Court agreed:
  - Request for IME was part of statutory duty to accommodate
  - Reasonable and bona fide reason to question the adequacy of medical info
  - Refusal and resignation not attributable to a failure to accommodate

## *Skinner v Board of Trustees Of the Canadian Elevator Industry Welfare Trust Fund*

- Employee suffered from chronic pain, anxiety and depressive disorders
- Prescribed medical marijuana after other narcotics found ineffective
- Submitted cost of medical marijuana to his employee benefit plan
- Was denied
- Filed a human rights complaint



## *Skinner v Board of Trustees Of the Canadian Elevator Industry Welfare Trust Fund (cont'd)*

- Denial of coverage amounted to *prima facie* discrimination
- Very little evidence to justify the denial of coverage
- Extending coverage to medical marijuana not undue hardship
- Commission acknowledged that not all benefit plans are required to cover medical marijuana
- Ordered to cover cost of medical marijuana



## Contact

**Bill Armstrong**

Senior Partner

[bill.armstrong@nortonrosefulbright.com](mailto:bill.armstrong@nortonrosefulbright.com)

**Danielle Emmett**

Associate

[danielle.emmett@nortonrosefulbright.com](mailto:danielle.emmett@nortonrosefulbright.com)

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