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DOMESTIC VIOLENCE IN THE WORKPLACE

— By Mark Hamilton. © 2012 Richards Buell Sutton LLP.

Notwithstanding efforts to avoid it, work life and domestic life often intersect in unpredictable and disruptive ways. Perhaps the most unfortunate example of this is in the context of domestic violence. When the effects of domestic violence extend outside of the home and into the workplace, the safety of an entire workplace can be compromised.

A devastating example of domestic violence entering the workplace occurred in January 2000, when a man armed with a butcher knife entered a Starbucks in downtown Vancouver to confront his estranged wife who worked there. Tony McNaughton, the employee's manager, intervened to defend the employee and he was tragically stabbed to death in the process.

A more recent but similarly devastating example occurred in July 2011, when Manmeet Singh is alleged to have entered a Surrey newspaper office and savagely murdered his estranged wife, Ravinder Bhangu, with an axe and meat cleaver. Singh is also alleged to have seriously injured Bhangu's co-worker who attempted to intervene.

WorksafeBC has recently published "Addressing Domestic Violence In the Workplace: A Handbook for Employers" available at http://www2.worksafebc.com/pdfs/Violence/DomesticViolenceBK133.pdf, to help raise awareness about domestic violence in the workplace, its signs and effects, the obligations of employers in response to it, and recommendations for addressing it.

As noted in the Handbook, domestic violence may enter the workplace when an abuser attempts to harass, stalk, threaten or injure a victim at work. The implications of domestic violence can range from reduced employee productivity to serious injuries or death. Victims of domestic violence may feel isolated due to shame, and may be reluctant to ask for assistance. This silence can put other workers at risk, and employers should strive to provide opportunities for workers to feel more comfortable discussing domestic violence so as to help prevent it from entering the workplace.

The Handbook also summarizes an employer's legal obligations, under occupational health and safety legislation or otherwise, to address domestic violence that enters the workplace. Such obligations include: (1) conducting a formal assessment or investigation of the risk; (2) eliminating or minimizing the risk by establishing policies and procedures, securing the premises, or contacting the police, depending on the severity or imminence of the situation; (3) informing staff who are likely to be confronted of the nature of the risk, the abuser's identity, and the controls that have been put in place to deal with the situation; and (4) reporting and investigating any incidents that do occur, either to the police or to occupational and health authorities.

An employer is also required to address improper activity or behaviour that occurs between co-workers, including violence or threats of violence. This may include: eliminating or minimizing the possibility of contact between the employees while at work; offering appropriate referrals to both employees, such as providing information about where they can get help; developing a personal safety plan with the victim; talking to the abuser and being clear about what that employee is alleged to have done; and taking disciplinary steps to hold the abuser accountable, among other things.

Employers can also take proactive steps to help avoid the prospect of domestic violence entering the workplace, such as: creating clear procedures and a domestic violence policy for the workplace; developing a workplace domestic violence education program; working with affected employees and providing appropriate resources; developing a workplace safety plan to help keep the workplace and all workers safe from threats of domestic violence; and developing personal safety plans for employees suffering from domestic violence.

Employers and employees alike are encouraged to review the Handbook so that they are better aware of the risks of domestic violence in the workplace, and steps that can be taken to protect against it.

Mark Hamilton articled with Richards Buell Sutton LLP and joined the firm as an associate in 2007. He has a diverse civil litigation practice, with a focus on personal injury and employment litigation. He has also practised with a leading Alberta firm focused on employment, labour, and human rights law.

This article was prepared for the RBS Employment Law Group Newsletter *and is reproduced with permission.*

WHAT WOULD YOU DO . . .

. . . With an Employee You Believed Had Resigned After Becoming Emotionally Upset and Leaving His Keys on Your Desk?

Hooman was hired by you to work as a winemaker at your vineyard and winery. The position of winemaker was a senior position, requiring significant decisions to be made with respect to the process of turning grape juice into wine. Specifically, the winemaker was responsible for determining which grapes would be used to produce what wine; whether the grapes needed to be blended; when, under what circumstances, and for how long fermentation would proceed; how long the wine should be aged; when it should be bottled; and, to a degree, how the wine should be marketed. Generally, a winemaker is responsible for all aspects of wine production.

Initially, you were very happy with Hooman's work, and thought of him as a dedicated and conscientious employee. However, during harvest time, which was the most stressful time of year for a winery, some concerns arose about Hooman's actions. One day, Hooman emailed to inform you that he was taking the day off. Given the busy time of year, you did not receive the email until later in the day, and so it appeared that it was an unexpected and unexplained absence from work.

The next day you had a meeting with Hooman to discuss this incident, at which point he became emotionally upset, and claimed that he was underappreciated at work. He handed his keys over, although he retrieved them a week later and remained at work. On a subsequent occasion, you confronted Hooman when you were unable to get an answer from him about four wines that should be entered into a competition. During the confrontation, Hooman became very emotionally upset, and at one point you informed him that if he was so unhappy he should look for another job. At that point, he put his keys down on your desk and left.

You believed that he had resigned, and sent him an email to confirm his departure.

What You Need To Know

A resignation is serious, since it effectively ends an employee's position with the company. In order for an employee's resignation to be effective, the resignation must meet the objective test of the disinterested and reasonable observer. An employer must ask whether a reasonable observer would conclude, from the employee's words and actions, that the

employee had irrevocably quit his or her job. In addition, would the reasonable observer conclude that the employer accepted the resignation as an end to the relationship? This is a high standard in order to ensure that heated words exchanged between an employee and an employer are not used to end an employment relationship, when that was not the intention of the employee.

What Really Happened

Hooman reacted to the email from the winery by hiring counsel, and claiming that he had been wrongfully dismissed. Soon after, he suffered from serious depression resulting from the lost job, and the difficulty he was experiencing finding another position. Eventually, he was hired as a full-time winemaker at a small winery, and his mood greatly improved.

Hooman brought a wrongful dismissal action against his employer. The Court determined that the words and actions of Hooman on the day in question did not amount to an unequivocal expression of resignation from his employment. At the same time, the words and actions of the employer were not intended to be, and did not amount to, termination of his employment. The comment that Hooman should find a job somewhere else if he was so unhappy would not be taken by a reasonable disinterested observer as termination of the employment contract. Therefore, when the meeting ended, Hooman had not resigned, and the employer had not fired him.

However, the email sent by the employer later in the day indicated that the working relationship had come to an end, and amounted to a termination of Hooman's employment. The Court awarded Hooman eight months' reasonable notice.

The Court declined to award Hooman moral damages. The employer had the honest, but mistaken, belief that Hooman had quit his employment, and acted accordingly. As a result, the manner of his dismissal was neither unfair nor unduly insensitive.

(Based in part on *Haftbaradaran v. St. Hubertus Estate Winery Ltd.*, 2011 BCSC 1424; 2012 CLLC ¶210-016.)

LEGISLATIVE ALERT

Federal

Bill C-38: *Jobs, Growth and Long-term Prosperity Act*

On April 26, 2012, the federal government introduced Bill C-38, the *Jobs, Growth and Long-term Prosperity Act*. The large omnibus Bill contains amendments to implement certain provisions of the 2012 federal Budget.

The Bill proposes the following amendments to the *Employment Insurance Act*:

- Permitting a person's benefits to be determined by reference to his or her highest earnings in a given number of weeks.
- Allowing regulations to be made respecting what constitutes suitable employment.
- Removing the requirement that a consent to deduction be in writing.
- Providing a limitation period within which certain repayments of overpayments need to be deducted and paid.
- Clarifying the provisions respecting the refund of premiums to self-employed persons.
- Modifying the Employment Insurance premium rate-setting mechanism, including requiring that the rate be set on a seven-year break-even basis once the Employment Insurance Operating Account returns to balance.
- Repealing certain provisions related to social insurance registers and Social Insurance Numbers and maintaining the power to charge the costs of those registers to the Employment Insurance Operating Account.

It also proposes amendments to several other employment-related Acts:

- The *Canada Labour Code* will be amended to require parties to a collective agreement to file a copy of the agreement with the Minister of Labour, subject to the regulations, as a condition for it to come into force.
- The *Canada Labour Code* will be amended to require employers that provide long-term disability benefits to their employers to insure those plans, subject to certain exceptions.
- The *Canada Labour Code* will be amended to increase the maximum fine for certain offences.
- The *Fair Wages and Hours of Labour Act*, which regulates wages and hours in relation to public works and contracts, will be repealed.
- The *Employment Equity Act* will be amended to remove requirements specific to the Federal Contractors Program for Employment Equity.
- The *Wage Earner Protection Act* will be amended to update the definition of "eligible wages."
- The *Department of Human Resources and Skills Development Act* will be amended to establish the Social Security Tribunal and to authorize the electronic administration or enforcement of programs, legislation, activities, or policies. In addition, the *Canada Pension Plan*, *Old Age Security Act*, and *Employment Insurance Act* will be amended so that appeals from decisions made under those Acts will be heard by the Social Security Tribunal.

Bill C-38 received first reading on April 26, 2012 and second reading on May 14, 2012.

Alberta

Bill 1: *Workers' Compensation Amendment Act, 2012*

Bill 1 was introduced into the Alberta legislature on May 24, 2012, to streamline workers' compensation coverage for post-traumatic stress disorder ("PSTD") in the case of first responders.

Currently, firefighters, police officers, peace officers, and paramedics may receive compensation for PSTD only after proving that the condition is work-related. The Bill's amendments will establish a presumption that cases of PSTD in these first-responder categories, when diagnosed by a qualified physician or psychologist, have arisen during the course of employment and are eligible for compensation, unless proven otherwise.

Bill 1 received first reading on May 24, 2012.

British Columbia

Bill 14: *Workers Compensation Amendment Act, 2011*

Under this Bill, introduced on November 3, 2011, workers' compensation will be expanded to include diagnosed mental disorders caused by significant work-related stressors, including bullying and harassment.

Currently, compensation for mental stress is available for "an acute reaction to a sudden and traumatic event." Bill 14 proposes to expand coverage to workers who experience a significant work-related stressor or a cumulative series of significant work-related stressors.

Revisions to the Bill since it received first reading include the following:

- a new reference to bullying and harassment as a significant work-related stressor;
- a "predominant cause" test for mental disorders caused by significant work-related stressors;
- wording revised from "mental stress" to "mental disorder"; and
- a requirement for a diagnosis to be from a psychiatrist or psychologist rather than from a physician.

Other amendments propose:

- adjusting compensation for injured apprentices;
- reducing the length of cohabitation required to qualify for survivor benefits for common-law couples without children from three years to two years; and
- confirming the most recent inflation adjustments for compensation and penalty amounts.

Bill 14 received first reading on November 3, 2011 and second reading on May 3, 2012.

Bill 38: *Pension Benefits Standards Act*

Bill 38 repeals and replaces the *Pension Benefits Standards Act*, R.S.B.C. 1996, c. 352, to modernize the law with respect to pensions in British Columbia and to harmonize British Columbia's pension legislation more closely with that of Alberta. The new Bill does the following:

- provides for immediate vesting of members' pension rights;
- provides for more flexible pension plan structures in addition to defined benefit plans and defined contribution plans;
- requires plan administrators to ensure that plans have governance policies, and that defined benefit plans or target benefit plans have funding policies;
- enhances disclosure requirements;
- clarifies the roles and responsibilities of administrators, participating employers, and fund holders;
- creates uniformity and certainty in relation to the content of plan documents;
- allows members to suspend membership in a plan;
- provides for administrative penalties for non-compliance;
- distinguishes between collectively bargained multi-employer plans and non-collectively bargained multi-employer plans and between actuarial excess and surplus;
- enables former plan members to access locked-in funds in circumstances of financial hardship;
- allows administrators to establish solvency reserve accounts;
- empowers the superintendent to appoint a plan administrator or designate an actuary;
- permits refunds of optional ancillary contributions;
- allows plans with no active members to continue with the superintendent's consent;
- permits plans to force out small accounts;
- allows deferred members and, in prescribed circumstances, retired members to select portability options on plan termination;
- establishes a framework for jointly sponsored pension plans; and
- establishes a new framework for the regulation of multi-jurisdictional pension plans.

Bill 38 received first reading on April 30, 2012 and second reading on May 2, 2012.

Bill 53: *Family Day Act*

Bill 53 has been introduced into the legislature to establish a new statutory holiday in February to be known as "Family Day." The exact day of the holiday will be set later by regulation, after the end of a public consultation period held in May. In other provinces, Family Day is celebrated annually on the third Monday in February.

If Bill 53 is passed, British Columbia will become the fourth province to observe Family Day, along with Alberta, Ontario, and Saskatchewan. The third Monday in February is also a holiday in Manitoba (Louis Riel Day) and Prince Edward Island (Islander Day).

Bill 53 received first reading on May 8, 2012.

Manitoba

Bill 13: *The Renewable Energy Jobs Act*

Bill 13 establishes the Renewable Energy Jobs Funding Program. It provides support to Manitoba-based manufacturers of equipment, components, or construction materials used in producing, generating, transmitting, or distributing renewable energy or to process renewable resources used in producing renewable energy.

The Bill states that funding may be provided by way of loan agreements. Other forms of support may be provided in accordance with the regulations.

Bill 13 received first reading on April 30, 2012.

Bill 17: *The Non-Smokers Health Protection Amendment Act*

Bill 17 amends *The Non-Smokers Health Protection Act* to prohibit the sale of tobacco products in health care facilities and pharmacies. It also prohibits the sale of tobacco products in establishments such as retail stores if a pharmacy is located on the premises, unless the pharmacy is accessible to customers only by a separate entrance.

The Bill also prohibits the use of vending machines to sell tobacco products.

Bill 17 received first reading on May 1, 2012.

Bill 35: *The Retail Businesses Holiday Closing Amendment Act*

Bill 35 aims to give retailers more flexibility in opening hours on Sundays and some statutory holidays, while protecting retail workers who would rather not work expanded hours. The proposed Sunday shopping changes would:

- expand the hours retail businesses could be open on Sundays, under a municipal bylaw, by an additional three hours in the morning, extending Sunday shopping hours to 9 a.m. to 6 p.m.;
- apply expanded hours to Louis Riel Day, Victoria Day, and Thanksgiving Day (shopping restrictions on Good Friday, Easter Sunday, Canada Day, Labour Day, Remembrance Day, Christmas Day and New Year's would remain the same);
- affirm that retail workers have the right to refuse work on Sundays, provided they give their employer at least 14 days' notice; and
- authorize employment standards officers to order an employer to compensate or reinstate an employee penalized for exercising his or her right to refuse work on a Sunday.

Under the proposed changes, municipalities would not be required to pass a bylaw to establish or expand Sunday shopping hours but would have the right to do so between 9 a.m. and 6 p.m. Currently, *The Retail Businesses Holiday Closing Act* does not allow retailers to open on Sundays or certain holidays unless a municipality has passed a bylaw allowing it. If such a bylaw is in place, stores that regularly operate with four or more people can only be open from noon to 6 p.m. on Sundays. Current exemptions, such as those for stores that operate with fewer than four employees, will remain in place.

Bill 35 received first reading on May 23, 2012.

Bill 36: *The Human Rights Code Amendment Act*

Bill 36 amends *The Human Rights Code* by expanding the list of protected characteristics under the Code to include social disadvantage and gender identity. Proposed changes to the Code would specifically prohibit discrimination based on:

- gender identity, further protecting transgendered individuals; and
- social disadvantage, further protecting individuals who are, or are perceived to be undereducated, underemployed, homeless, or living in inadequate housing.

Other changes to *The Human Rights Code* would improve and streamline services to the public by:

- expanding mediation provisions;
- allowing for joint Manitoba Human Rights Commission proceedings on similar complaints; and
- allowing the Commission to sit in smaller panels to make decisions.

The time allowed for filing a complaint or starting a prosecution under the Code will be increased, as will fines under the Code.

Bill 36 received first reading on May 23, 2012.

Saskatchewan

Bill 4: *The Pension Benefits Amendment Act, 2011*

Bill 4 amends *The Pension Benefits Act, 1992* and addresses multi-jurisdictional plans and agreements.

Bill 4 received first reading on December 8, 2011, second reading on March 19, 2012, third reading on May 9, 2012, and Royal Assent on May 16, 2012, upon which day it came into force.

Bill 23: *The Occupational Health and Safety Amendment Act, 2011*

Bill 23 amends *The Occupational Health and Safety Act, 1993* to focus on increased duties of employers and supervisors, suppliers, and general contractors to prevent violence in the workplace. As well, the Bill proposes larger penalties for violations of the Act.

A first reading copy of the Bill can be found at http://docs.legassembly.sk.ca/legdocs/Bills/27L1S/Bill27-23.pdf.

Bill 23 received first reading on December 13, 2011, second reading on April 25, 2012, third reading on May 9, 2012, and Royal Assent on May 16, 2012. The effective date has not yet been proclaimed.

CASE COMMENT

Oilfield Employee Free To Compete With Former Employer

— By April Kosten of Fraser Milner Casgrain LLP. © 2012 Fraser Milner Casgrain LLP. Reproduced with permission.

The recent Alberta decision of *ADM Measurements Ltd. v. Bullet Electric Ltd.* provides a useful summary of post-employment obligations and the extent to which ex-employees may compete with their former employer.

ADM is an instrumentation business for oilfield companies. As the business grew, ADM decided to hire Gregory Young, through Young's company Bullet Electric Ltd. ["Bullet Electric"] to help manage the business. The relationship between the parties eventually broke down and Young and a business partner formed a new competing company, Bullet Energy (Canada) Inc. ["Bullet Energy"]. Bullet Energy became more and more successful and ADM faltered. ADM commenced an action against Bullet Electric and Young for breach of fiduciary duty. ADM further made a claim against Bullet Energy, Young and his business partner for unjust enrichment and unfairly interfering with ADM's contractual relations with its customers and employees.

In reaching its decision to dismiss ADM's claim, the Court considered a number of issues, as discussed below.

Existence of an Employment Relationship

The first issue considered was whether Young was an employee of ADM. Young clearly provided services to ADM through Bullet Electric; however, the Court found that Young was an employee of ADM, rather than an independent contractor, based on the following factors:

- Young's management activities were clearly subject to ADM's direct control;
- Young assigned work to and supervised other ADM employees and independent contractors, suggesting integration into the business of ADM;
- Young used ADM's office infrastructure and supplies rather than supply his own;
- Young contracted for his services alone, no subcontractors were used to provide services to ADM; and
- Young received a fixed monthly salary from ADM without any associated risk of expenses.

Post-Employment Obligations

Once it was determined that Young was an employee of ADM, the Court considered whether Young owed any post-employment obligations to ADM and if so, whether he breached those obligations. The Court found no evidence of any contract prohibiting Young from opening a competing business. The Court also held that Young was not a fiduciary of ADM: Young did not possess the necessary control over ADM typical of a key employee. Finally, the Court held that ADM had constructively dismissed Young, and that even if Young had contractual non-competition obligations or fiduciary obligations, the wrongful termination ended those obligations.

Interference with Contractual Relations & Causation

The Court went on to consider whether any damages could be awarded against Young, Warnock and Bullet Energy for interference with contractual relations, as a result of former customers and employees of ADM moving to Bullet Energy. Firstly, the Court determined that there was no interference with contractual relationships between ADM and its customers given the precarious nature of the customer relationships in the industry. Contracts were made for individual "piece-work" tasks and any long-term interaction was informal and not contractual. Young and his business partner, through Bullet Energy, were simply willing to compete with ADM and did so in an aggressive manner. The Court further accepted that while a new employer may be liable for damages caused by interfering with an employee/employer relationship of a competitor, such liability would not be found without extensive evidence. More must be proven than employee migration from the old company to the new one; instead, the old company must prove that the employee migration was due to inappropriate solicitation of former employees. ADM failed to supply any evidence to support such an argument.

The Court further dismissed ADM's argument that ADM's shrinking revenues were directly caused by Bullet Energy taking its business. Rather, the Court found that while ADM's revenue was clearly shrinking, Bullet Energy's success was most likely caused by Bullet Energy "out hustling" ADM rather than "stealing work" from ADM.

In the result, Young and his new company, Bullet Energy, were entitled to freely compete with ADM.

Reference: *ADM Measurements Ltd. v. Bullet Electric Ltd.*: http://canlii.ca/t/fqhgj.

April Kosten is an associate in the Employment & Labour Group of the Calgary office of Fraser Milner Casgrain LLP. April has experience with a variety of employment matters, including human rights, privacy, workplace health and safety, and labour issues. She has appeared before the Provincial Court of Alberta and the Court of Queen's Bench.

FMC is one of Canada's leading business and litigation law firms with more than 500 lawyers in six full-service offices located in the country's key business centres. The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

RECENT CASES

Employer's Reduction of Retirees' Post-Retirement Benefits was Breach of Contract

Supreme Court of British Columbia, March 9, 2012

The plaintiffs were retired salaried employees of the defendant Weyerhaeuser, or its predecessor MacMillan Bloedel Limited (MB), who retired between 1991 and 2000. MB voluntarily introduced fully funded retirement health benefits as

part of its benefits package in 1973. MB's initial communications about the retiree benefits — a handbook and subsequently a benefits summary — described the retiree health benefits as consisting of employer-paid premiums for provincial health plans and extended health insurance coverage for the lifetime of retirees and their spouses. The extended health insurance coverage was provided under group insurance contracts, giving the insurer the right to terminate the contracts on notice. In 1994, MB replaced the handbook and summary with a binder, which provided that MB reserved the right to make benefits changes from time to time. With respect to the pension plan, MB specifically reserved the right to modify, amend, or terminate the plan at any time. With respect to the retirement health benefits, the binder stated that on retirement, MB would continue to pay the costs, if any, of the provincial health care plan, and that retirees and their spouses would be entitled to extended health coverage. In addition to the binder, MB provided retirement seminars at which employees were told that the retirement health benefits would be continued for the lifetime of the employee and his or her spouse at the company's expense. Similar language was used in letters to employees at retirement setting out the terms of retirement. Weyerhaeuser acquired MB in 1999, terminated the insurance contract in 2002, and proceeded to self-insure retiree extended health coverage. In October 2009, Weyerhauser advised retirees that it was freezing its contributions to the costs of the provincial health plan and the extended health coverage at 50 per cent of current premiums, and that any future premium increases would be borne solely by retirees. The company explained that the changes were necessary, as continuing the retiree health benefits on a premium -free basis meant that future retirees would not be able to have that benefit. The retirees challenged the right of Weyerhaeuser to reduce the retirement health benefits. The retirees brought an action for damages for breach of contract.

The action was allowed. The retirees were entitled to damages in the amount of all premiums paid to the date Weyerhaeuser reduced its contributions. Based on objective evidence, the retirement health benefits were intended as a form of deferred compensation. The offer to continue to provide those benefits was a term of a contract between MB and its employees and was enforceable. The fact that MB offered the retirement health benefits unilaterally did not detract from a unilateral offer becoming enforceable when the employee accepted the offer by continuing to work. The issue of whether the retiree health benefits vested at retirement required a review of the language of MB's communications. The written documents describing the retirement health benefits contained no explicit reservation of the employer's right to terminate the health benefits, while there was explicit reservation language regarding the pension benefits. Nowhere in any MB communications made up until the dates when the retirees retired was there any mention of a sweeping right to terminate or discontinue benefits. The representation of the benefits being of lifetime duration was not qualified. The binder's purported reservation right was a limited right to make changes from time to time to the benefits program. That term was not enforceable against the retirees, to the extent that the right to make changes could operate to restrict the benefits provided to the retirees. The right to make changes did not extend to changing the terms of an employee's retirement health coverage after the employee's retirement. Also, fully funded retirement health benefits were not simply changed, they were terminated. Applying the *Employee Retirement Income Security Act* ("ERISA") and the U.S. case law interpreting that Act, to advance a presumption against the vesting of retirement benefits, was inappropriate. Termination provisions in the insurance contracts in force at the time of the retirees' retirement did not mean retirees' rights were not vested. MB's obligation to provide lifetime extended health coverage was not limited to a particular insurance policy. Prior Supreme Court of Canada jurisprudence regarding a test for whether an entitlement vested did not clearly apply to vesting of rights other than statutory rights. Finally, the principle of intergenerational equity advanced in case law to defeat claims of vesting were inapplicable to common-law contracts of employment. The retirees did not claim inequitable distribution of any trust or fund, and employers were not obliged at common law to treat current employees in the same manner as those of an earlier generation.

Lacey v. Weyerhaeuser Co. Ltd., 2012 CBPG ¶8477

Severance Pay Is a Contingent Right Requiring a Crystallizing Event During a Collective Agreement

Court of Appeal for Saskatchewan, February 28, 2012

A lawful strike and subsequent lockout terminated three collective bargaining agreements. After failing to reach an agreement with the union, the employer made an offer to re-employ all the employees on terms that were substantially less favourable than those provided for in the collective agreements. When that offer was rejected, the employer closed the plant permanently, and terminated all 85 permanent employees. All three collective bargaining

agreements contained a provision for the payment of severance of two weeks' regular pay for each year of service. The union brought a grievance, alleging that the employees were entitled to severance pay, since their right to severance vested prior to the termination of the respective agreements. The arbitrator found that the severance pay provisions were a contingent and not a vested right, and dismissed the grievance. An application for judicial review was dismissed. The union appealed.

The appeal was dismissed. Where there is no express clause that continues a collective bargaining agreement following its expiration, eligibility for severance pay requires a crystallizing or triggering event, namely, the severance or termination of employment by the employer during the current collective agreement. Unlike pay for services rendered, which is completed and not contingent on any other event to be enforced, severance is an entitlement due or payable only in the event of termination during the collective agreement.

The arbitrator did not have the jurisdiction to enforce the common law right to severance arising out of the termination of the employees. The collective bargaining scheme remained in place, even though the collective bargaining agreements were terminated. As a result, the individual contracts of employment were not revived. The common law right to severance was outside of the collective bargaining agreement, and outside of the jurisdiction of the arbitrator, who had no independent power.

CEPU, Local 721-G v. Mercury Graphics, 2012 CLLC ¶220-022

Q & A

Does an Employee on Short-Term Disability Still Accrue Vacation Days?

The vacation entitlement year that qualifies an employee for vacation time includes active and inactive employment. For example, the right to vacation time is earned even when an employee spends time away from work because of

- layoff;
- sickness or injury; or
- approved leaves under an employment contract or collective agreement, such as maternity, parental, or emergency leave.

When an employee is away on one of the leaves set out above, his or her employment is deemed to be continuous. Therefore, upon the employee's return to work, the employee will not be treated like a new employee in terms of rights to paid vacation.

However, the right to vacation pay is usually affected, since vacation pay is usually calculated as a percentage of wages earned in the 12 months during which entitlement to the vacation accrued.

It should be noted that employees in Newfoundland and Labrador are required to have worked a certain percentage of the normal working hours in the year in order to be credited with a year's service; thus, employees on leave may not accrue a year's service for the year during which they take leave.

WORTH NOTING

The Government of Manitoba Is Preparing New Accessibility Legislation

Manitoba's Ministry of Family Services and Labour has been collecting public input for the development of legislation that will identify, prevent, and remove social and physical barriers for persons with disabilities. The goal of the legislation is to proactively address these barriers, which may exist in areas such as building design, information services, and hiring practices, by working with the public and private sectors to make long-range plans that ensure accessibility for everyone.

The Disabilities Issues Office has prepared a discussion paper on accessibility legislation which outlines a number of issues and proposals that will be considered. It is available online at www.gov.mb.ca/dio.

Interested parties can submit their comments to:

Disabilities Issues Office, 630-240 Graham Ave., Winnipeg, MB R3C 0J7
Email: accesscouncil@gov.mb.ca; Website: www.gov.mb.ca/dio
Phone: 204-945-7613 or toll-free at 1-800-282-8069, ext. 7613

The deadline for submissions is June 5. The Accessibility Council, made up of members of the disability community and other stakeholders, will review the suggestions and prepare a report later in June.

Saskatchewan Announces Review of Labour and Employment Legislation

The Government of Saskatchewan has announced that it is undertaking a comprehensive review of 14 employment and labour Acts, including *The Labour Standards Act*, *The Trade Union Act*, and *The Occupational Health and Safety Act*. It is also exploring the creation of a *Saskatchewan Employment Code*.

The purpose of the review is to modernize and simplify the Acts to ensure that they are clear, easy to use, and responsive to the needs of Saskatchewan's employers and employees. The topics under consideration include: essential services legislation; union financial disclosure; notice requirements; collection of employees' wages after business closure; variable hours of work to meet needs of both employers and employees; and indexation of the minimum wage.

Stakeholders and citizens are invited to participate in the consultation process, which will run from May to July 2012. A discussion paper that includes questions on a range of issues to assist stakeholders in developing feedback and to initiate discussion is available on the government's website at www.lrws.gov.sk.ca/modernizing-legislation.

Interested parties may submit their written comments to:

Ministry of Labour Relations and Workplace Safety
300–1870 Albert Street
Regina, SK S4P 4W1
Email: labourlegislationLRWS@gov.sk.ca

The deadline for submissions is July 31, 2012.

DID YOU KNOW . . .

. . . That the Mental Health Commission of Canada Has Released a New Guide To Address Workplace Mental Health?

On April 27, 2012, the Mental Health Commission of Canada released *Psychological Health and Safety: An Action Guide for Employers*, a new tool designed to protect the mental health of Canadian employees.

The Guide addresses the critical role of the workplace in maintaining Canadians' psychological health, and it recognizes that mental health concerns can impact the safety, productivity, and effectiveness of the workplace. It outlines a series of steps and 24 specific actions employers can take to address mental health in the workplace. The recommendations can be used by organizations of any size and location to promote a psychologically healthy and safe workplace.

The Guide will also inform the *National Standard of Canada for Psychological Health and Safety in the Workplace*, a voluntary standard for workplace mental health to be released later this year.

The Guide is available free of charge at www.mentalhealthcommission.ca.

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For CCH Canadian Limited

Shirley Spalding, B.A., Associate Editor
(416) 224-2224, ext. 6211
email: Shirley.Spalding@wolterskluwer.com

Rita Mason, LL.B., Director of Editorial
Legal and Business Markets
(416) 228-6128
email: Rita.Mason@wolterskluwer.com

Andrew Ryan, Marketing Manager
Legal and Business Markets
(416) 228-6158
email: Andrew.Ryan@wolterskluwer.com

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CCH Canadian Limited
300-90 Sheppard Avenue East
Toronto ON M2N 6X1
416 224 2248 · 1 800 268 4522 tel
416 224 2243 · 1 800 461 4131 fax
www.cch.ca