



McKERCHER LLP BARRISTERS & SOLICITORS

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McKercher LLP Labour and Employment Law

## ARBITRATION BOARD RULES THAT SASKATCHEWAN EMPLOYER CAN AMEND PENSION PLAN

In *University of Saskatchewan v. CUPE, Local 1975*, 2017 CanLII 85017 (SK LA), a labour arbitration board chaired by Richard Hornung, Q.C. ruled that the University of Saskatchewan had the authority to amend its defined benefit pension plan in accordance with the terms of the plan and is not required to negotiate the changes with the union. David Stack, Q.C. and Kelsey O'Brien of McKercher LLP represented the Employer in this arbitration.

The majority of the board determined that the pension plan was incorporated into the collective agreement. The collective agreement indicated that the plan was to be administered in accordance with its terms, and the pension plan expressly provided that the employer “retains the right to amend, modify or terminate the plan...”. The majority of the arbitration board ruled that the Employer, therefore, had the right to unilaterally amend the pension plan in accordance with the terms of the plan. The majority found that the collective agreement did not remove the Employer’s right to amend the plan and noted that “this arbitration cannot serve to provide it [the Union] with what it failed to achieve for itself at the bargaining table.”

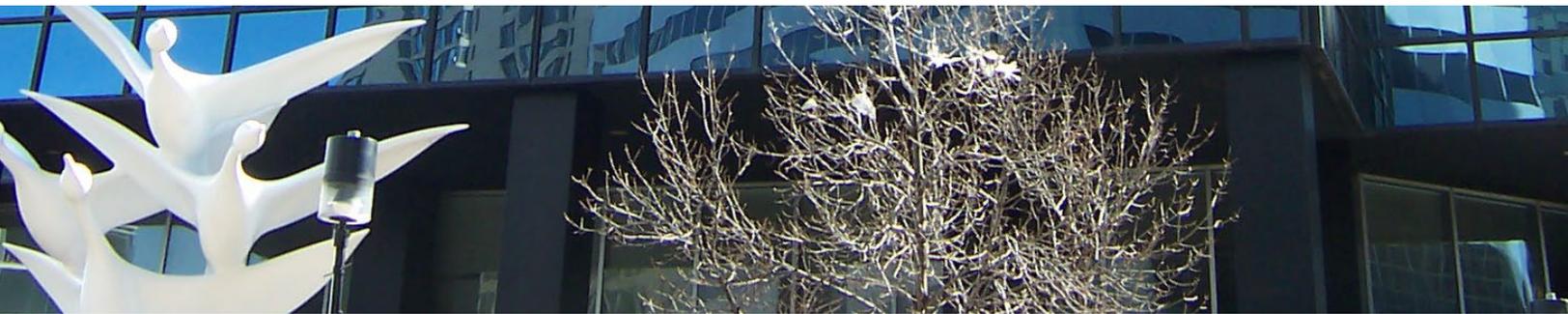
This case stands in contrast to the recent arbitration decision in *The City of Saskatoon v. The Amalgamated Transit Union, Local 615*. In that case, Arbitrator Hood determined that the term “negotiations” as it appeared in the collective agreement limited the employer’s right to unilaterally amend the pension plan. In that case, there was also evidence of significant past practice that was inconsistent with the Employer maintaining a right to unilaterally amend the plan. 

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## WORKPLACE HARASSMENT LAWS PROHIBIT DISCRIMINATION BY THIRD-PARTIES, SAYS SUPREME COURT OF CANADA

The Supreme Court of Canada’s (the “SCC”) decision in *British Columbia Human Rights Tribunal v. Schrenk* 2017 SCC 62 has expanded the scope of protections against discrimination in the workplace. In that case, the SCC found that discrimination had taken place as between employees of different companies working on the same construction project. This discrimination took the form of humiliating comments about race, religious belief, and sexual orientation.

The SCC held that the British Columbia Human Rights Code should be read broadly and purposively, and that the phrase “A person must not... discriminate against a person regarding employment or any term or condition of employment” was broad enough to apply to discriminatory conduct by a third-party as long as there is a sufficient nexus to the employment context. This nexus is determined on a case-by-case basis by examining factors such as whether the respondent was integral to the complainant’s workplace; whether the impugned conduct occurred in the complainant’s workplace; and whether the complainant’s work performance or work environment was negatively affected.

Employers should ensure that company policies dealing with harassment, violence, and discrimination in the workplace allow them to effectively discharge their obligations to protect employees, even when the source of harassment is a third-party who is not directly employed by the employer, such as a contractor or customer. *m*

## MEDIUM SIZED SASKATOON BUSINESS WITH 47 EMPLOYEES FINED \$420,000 FOR 2015 EMPLOYEE DEATH

Shercom Industries Inc. was fined \$420,000, inclusive of victim surcharge, with regard to an 18-year-old employee who was killed after three weeks on the job.

The employee was operating a tire shredder when his arm became entangled in the conveyer system. Tragically, the employee was unable to turn the machine off and died of his injuries. While imposing the fine, the judge was critical of the employer on a number of fronts and concluded that “safety concerns were considered secondary to profit.” In 2014, the government increased the maximum fine for contraventions of the *Saskatchewan Employment Act* from \$300,000 to \$1,500,000, signaling to the court that penalties must be increased to address an unacceptable level of workplace injuries and deaths which are occurring in the province. *m*

## NEW LABOUR RELATIONS BOARD CHAIRPERSON APPOINTED

Susan Amrud, Q.C., has been appointed as the Chairperson of the Labour Relations Board, effective March 7, 2018.

Amrud practiced law with the Ministry of Justice for 34 years, most recently as Associate Deputy Minister. During her career, she has advised the government in numerous areas, including constitutional, human rights, trade, and Aboriginal issues. She was also involved in the development, drafting and publication of legislation. *m*



## ONTARIO GOVERNMENT OVERHAULS EMPLOYMENT STANDARDS REGIME WITH BILL 148

In recent months, the Government of Ontario has introduced significant changes to the employment and labour standards regimes in that province with the introduction of Bill 148. The key changes under the *Employment Standards Act* that have already been implemented include:

- Increased minimum wage to \$14 for most employees;
- One additional week of vacation leave for employees with at least 5 years' service;
- New measures to prosecute employers that treat workers as independent contractors when they are actually employees;
- Additional leave provisions for persons experiencing personal emergencies, family medical issues, domestic or sexual violence, the death of a child, and pregnancy.
- Employers are now prohibited from requiring a worker to wear elevated heels, with limited exceptions.

More changes are to come in Ontario, including:

- Equal pay provisions (April 1, 2018);
- Significant changes to work scheduling, such as three-hour minimum reporting pay; three-hour minimum on-call pay; and three-hour minimum shift cancellation pay (January 1, 2019);
- Changes to the *Labour Relations Act* which are designed to make it easier for unions to certify in the private sector (January 1, 2019). *AM*

## IMPORTANT EMPLOYMENT INSURANCE BENEFIT CHANGES HAVE TAKEN EFFECT

The Federal Budget 2017 announced changes to Employment Insurance benefits.

As of December 3, the following changes were made to the Employment Insurance (EI) program:

- Caregivers providing care to a critically ill or injured adult family member have access to a new benefit of up to 15 weeks.
- Immediate and extended family members of critically ill children have access to up to 35 weeks of benefits.
- Both medical doctors and nurse practitioners can now sign medical certificates for the existing and new family caregiving benefits.
- Parents can choose between: standard parental benefits (taken over 12 months) or extended parental benefits (taken over 18 months).
- Eligible pregnant workers can receive EI maternity benefits earlier, up to 12 weeks before their due date.

The *Canada Labour Code* has also been amended to provide employees in federally regulated sectors with job protection while they receive maternity, parental and caregiving benefits under the EI program. *AM*



## Employment & Labour Law

Our Firm actively advises clients on labour-related matters and routinely represents clients in appearances before the courts, the Labour Relations Board and various arbitration and human rights tribunals. We represent both Federally and Provincially regulated clientele.

Our experience covers all aspects of labour and employment law, including unjust dismissal disputes, collective bargaining disputes and human rights complaints.

Our lawyers are experienced in advising workplaces regarding the rights and duties of all parties as set out by the occupational health and safety regulations as well as advising on the federal or provincial labour codes that are applicable depending on the sector involved.

We have experience across many industries from construction and non-profit to educational institutions and national retail outlets.

### EXPERIENCE IN:

- Collective Bargaining Issues
- Labour Disputes
- Grievance Arbitration
- Termination Disputes
- Human Rights Issues
- Occupational Health and Safety
- Pension Law

### PRIMARY PRACTITIONERS:

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McKercher LLP enjoys a reputation for integrity, experience and innovation. Our lawyers, collectively and individually, strive to preserve and promote that reputation, committing themselves and their considerable talents to meeting the complex needs of local, provincial, national and international clients.



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