

CLIENT UPDATE

January 2008

The Year in Review – 2007 Labour and Employment Legislation

For the past number of years, we have been providing you with a year end wrap-up of legislative developments affecting Atlantic Canadian employers.

Our Labour and Employment Group also saw changes this past year. In Prince Edward Island, our partner Eugene Rossiter, Q.C. was appointed to the Tax Court of Canada. We are pleased that Murray Murphy has joined our Charlottetown office as a partner and that Perlene Morrison has become a partner. In Newfoundland and Labrador, we saw Michael Harrington, Q.C. appointed a judge of the Supreme Court, Trial Division. In Nova Scotia, Peter McLellan, Q.C. joined us as a partner and Jennifer Ronalds was hired as our most recent associate. Donald McDougall, Q.C., after 35 plus years of practice, became Counsel to the Firm.

1. NOVA SCOTIA

The Nova Scotia legislature had busy spring and fall sessions resulting in a number of legislative changes including legislating workplace breaks, addressing workplace violence, and re-introducing holidays for retail workers. In addition, legislative changes which include elimination of mandatory retirement, additional human rights protections and a detailed process for class action proceedings will come into effect this year.

(a) *Labour Standards Code*

- Work Breaks Required

Section 66B of the *Labour Standards Code* now requires employers to provide employees with an unpaid rest or eating break of at least 30 minutes, scheduled at intervals so that employees are not required to work more than five consecutive hours without a break. Employees who work more than 10 consecutive hours are also entitled to additional rest or meal breaks totalling at least 30 minutes for each five consecutive hours of work. Breaks are not required where there has been an accident or unforeseeable or unpreventable circumstance, where there is urgent work, where it is unreasonable for an employee to take a meal break, where there is a collective agreement or where prescribed by regulation.

Clients Updates are distributed to our clients and other members of the business community on a variety of current legal developments which we believe may be of interest and importance to our readers. These Client Updates do not constitute specific legal advice and may not address specific aspects of a legal development relevant to readers' circumstances. We encourage you to contact us to discuss your particular situation. The names and contact information for lawyers in your area are found on the final page.

STEWART MCKELVEY

When results count.

- Employment of Children Allowed

Effective April 1, 2007, Section 68(1)(da) of the *Code* allows children, at least 14 years old, to work in restaurants if they are trained, are not operating cooking equipment and are adequately supervised.

- Reserve Leave Available

Section 60H permits an employee who has been employed for at least one year to take an unpaid leave of absence to actively serve or train with the Canadian Forces Reserves. Employers are entitled to at least 90 days' notice in writing (may be less in cases of emergency) of the date such leave will begin and the anticipated date of return and a certificate from a Reserves official specifying that the employee is a member and, if possible, setting out the dates for the leave.

The period of service in the Reserves cannot be longer than 18 months in a three-year period and breaks between periods of service must be at least one year.

- Minimum Wage Increased

On May 1, 2007, the general minimum wage rate increased from \$7.15 to \$7.60 an hour, while the rate for inexperienced workers (less than three months' service) increased from \$6.70 to \$7.15 an hour.

The minimum wage rate for workers subject to the *Minimum Wage Order (Construction and Property Maintenance)* was raised on May 1, 2007 from \$7.15 to \$7.60 an hour. The minimum wage rate for workers subject to the *Minimum Wage Order (Logging and Forestry Operations)* is the same as those in Construction and Property Maintenance; however, the minimum rate for employees subject to this Order, who are paid on a basis other than time, was raised to \$1488.50 from \$1400.00 monthly.

(b) *An Act Respecting the Elimination of Mandatory Retirement*

This *Act* amends both the *Human Rights Act* and the *Labour Standards Code* to remove an employer's ability to require an employee to retire from employment unless the employer can prove that mandatory retirement is "established by the employer on the basis of a *bona fide* occupational requirement for the position in which that person is employed".

Although the amendments have been proclaimed, they will not come into effect before July 1, 2009.

(c) *Occupational Health and Safety Act – Workplace Violence Regulations*

On April 4, 2007, new Regulations that focus on prevention of violence in high risk sectors were approved. Implementation will occur in two phases. Employers in sectors identified in the Regulations had until October 4, 2007 to complete workplace violence hazard assessments and now have until April 4, 2008 to have a violence prevention plan and statement in place.

More information on these Regulations is contained in our May 2007 *Client Update* available at www.smss.com under "Publications" in the "2007 Archive" section or by request.

(d) *Retail Business Designated Day Closing Act - S.N.S. 2007, c. 32*

The new *Retail Business Designated Day Closing Act* came into effect on December 13, 2007. It prohibits defined retail operations from carrying on business on the following holidays: Boxing Day, Canada Day, Christmas Day, Good Friday, Easter Sunday, Labour Day, New Year's Day and Thanksgiving Day. Bill No. 72 provides a number of exemptions including stand alone drugstores and retailers whose principal business is selling groceries in premises with less than 4,000 square feet.

(e) *Labour Standards Code – Compassionate Care – General Regulations*

Under the *Labour Standards Code*, an employee with at least three months' service who needs to take care of a seriously ill family member who has a high risk of dying within 26 weeks can take an unpaid eight week compassionate care leave. Effective January 17, 2008, the definition of "family member" under the *Code* General Regulations will be significantly expanded to include, among others, a person whom the employee "considers" to be like a family member.

(f) *Pension Benefits Act - S.N.S. 2007, c. 49*

Amendments to the *Pension Benefits Act* ensuring that all pension plans are fully funded when a company leaves the province or winds down its pension plan, is retroactive to May 1, 2007. This legislation came into effect on December 21, 2007.

(g) *Public Bills in Progress*

(i) *Class Proceedings Act – S.N.S. 2007, c. 28 – not yet in force*

This new legislation provides a detailed process for class proceedings, paralleling statutes of various Canadian jurisdictions. The *Class Proceedings Act* was passed during the fall session and will come into effect on a later date by proclamation. Key aspects of the legislation are:

- An application is necessary to certify a proceeding as a class proceeding and to appoint a representative plaintiff for the class. It must be brought within 120 days of the date a proceeding is commenced.
- A defence to a class proceeding is not required to be filed until 45 days after certification is issued. Five criteria must be met for a proceeding to be certified as a class proceeding. Where conditions for certification are no longer satisfied, a decertification order can be granted.
- A single judge must hear all applications under a class proceeding, subject to availability, and may also preside at the trial of the common issues.
- The legislation is based on an "opt-out" model. Both Nova Scotia residents and non-residents alike may bring an action under the *Act* and may be included as class members. Class members may opt-out of the proceeding in accordance with the terms of the certification order or with leave of the Court. Ultimately, a

judgment on common issues binds every member who has not opted-out of the proceeding.

- Once commenced, a class proceeding may be settled or discontinued only with Court approval. Where a settlement of the class or of common issues is approved by the Court, that settlement is binding on every class or sub-class member who has not opted out of the proceeding.
- Any limitation period is suspended in favour of a class member on the commencement of the proceeding. A limitation period only resumes running upon refusal of certification, opting-out of the class member, issuance of a decertification order or the approved discontinuance or settlement of the proceeding.
- Costs may be awarded in accordance with the *Civil Procedure Rules*. In the normal course, the unsuccessful party will be responsible for costs. However, the court has discretion to award costs as it determines appropriate.

(ii) *Human Rights Act – S.N.S. 2007, c. 41 – not yet in force*

Under this legislation, the *Act* will be amended to include the following definitions:

- “harass” means to engage in a course of vexatious conduct or comment that is known or ought reasonably to be known to be unwelcome;
- "marital status" means the status of being single, engaged to be married, married, separated, divorced, widowed or two people living in the same household as if they were married;
- “physical disability or mental disability" means an actual or perceived condition of being mentally impaired;
- The word "previous" has been struck out from the first line of s. 3(1)(vii) so that it now reads: “dependency on drugs or alcohol”. This is significant as it expands the definition of disability in terms of drugs and alcohol protecting both previous and current dependency on drugs and alcohol.

After defining harassment, the legislation provides a new human rights protection in section 5, namely that: “No person shall harass an individual or group with respect to a prohibited ground of discrimination”.

The legislation also provides limitation periods. It requires that complaints be made within 12 months of the date of the action or conduct complained of, or within 12 months of the last instance of the action or conduct if the conduct is ongoing. The amendment allows the Director “in exceptional circumstances” to waive a time limit when it is in the public interest.

The legislation requires that a Board render a final written decision within six months of conclusion of the hearing. If a Board does not, an application may be made to the Chief

Judge of the Provincial Court who may fix a time for a final written decision or may revoke the appointment of the Board and appoint a new Board of Inquiry. Currently, there is no time limit for providing a final written decision by a Board of Inquiry.

These amendments were passed by the legislature and become law on a future date by proclamation.

(iii) *Small Claims Court Act – S.N.S. 2007, c. 53 – not yet in force*

New legislation increases the amount of a claim for general damages in Small Claims Court from \$100 to \$2,500.

Currently, the *Act* provides an adjudicator with the broad power to admit any document, report, opinion or other evidence whether or not the author is available to give evidence or be cross-examined. Since the *Act* increased its monetary jurisdiction to \$25,000 there has been concern with the less formal rules of evidence used in the Small Claims Court. This legislation provides an adjudicator with discretion to determine admissibility based on relevance and weight. However, it expressly says that an adjudicator is not bound by the rules of evidence applicable in a judicial proceeding.

The amendments were passed by the legislature and will come into effect upon proclamation.

(iv) *Civil Service Collective Bargaining Act – S.N.S. 2007, c. 33 – effective February 2, 2008*

Amendments were made to this *Act* that narrow the exclusion of casual employees, seasonal employees and students from the *Act*. These amendments come into effect on February 1, 2008.

(v) *Public Service Superannuation Act – S.N.S. 2007, c. 51 – not yet in force*

Among a number of other things, this legislation amends the *Act* to clarify pension limits, provide for the apportionment of payments to a surviving spouse where two persons are surviving spouses as defined by the *Act*, clarify that all employee contributions must be matched by the employer, and amends the definition of "allowance earned during the marriage" to include any allowance earned during any continuous period of cohabitation immediately preceding a marriage. These amendments were passed by the legislature and come into effect on a later date by proclamation.

2. PRINCE EDWARD ISLAND

(a) *Employment Standards Act*

The *Employment Standards Act* was amended with two new sections providing employees with the right to refuse work on Sundays and job protection for members of the Canadian Forces.

Effective March 17, 2007, Section 16.1 allows employees employed before that date to refuse to work on Sunday and prohibits employers from penalizing employees who refuse Sunday work.

Effective November 2, 2007, Section 23 provides job protection for reserve members of the Canadian Forces. Employees who have worked for an employer for at least six months and who are in the reserve force are able to take unpaid leaves to participate in military training or active service. To do so, employees must give reasonable notice of their intention to take this leave and must be reinstated on their return from military service or training. There is no requirement for employers to pay pension benefits during such leaves.

(b) *Retail Business Holidays Act*

Effective March 17, 2007, Section 1 allowed retail operators in Prince Edward Island to open on Sundays from the Victoria Day weekend until Christmas. Shopping is prohibited between 12:00 a.m. and 11:59 a.m. (i.e., Sunday shopping is not permitted in the morning).

Effective April 27, 2007, Section 1.1 was added providing that where Remembrance Day or Christmas Day falls on a Sunday, the entire day is a holiday.

(c) *Labour Act Regulations*

These regulations were amended effective November 10, 2007. In addition to substantive changes, numerous changes were made to incorporate gender neutral language and to eliminate duplication. A number of forms were also amended. The amendments include:

- Expanding the definition of “unfair labour practice” to mean any labour practice or act prohibited by any section of the *Act* or the Regulations.
- Section 3 eliminating the requirement to file a copy of the union’s constitution and other duplicate documents with each certification application where that information is already on file with the Board. It also allows for inspection by the parties of certain materials listed under Section 3(2)(c) (i.e., constitution, rules, by-laws). However, inspection of a list of officers is only available with the consent of the Board (s. 3(2)(d)).
- Section 23 giving the Chief Executive Officer or each member of the panel jurisdiction to sign Board decisions.
- Section 28 eliminating the need for unions to file their constitution or collective agreement when making a jurisdictional dispute complaint when that information is already on file with the Board.
- Section 32 ensuring that a failure to file an intervention in respect of an application for accreditation does not prevent a party from having a continuing interest in an application; rather, the party’s failure to file an intervention by the terminal date may be deemed by the Board as abandonment of any claim for intervention in the proceeding.
- Section 37 requiring the Board’s Chief Executive Officer to provide a copy of a complaint to the respondent in respect of a complaint by an employer against an employer’s organization, and giving the respondent seven days to reply.

(d) Occupational Health and Safety Act General Regulations

The *Occupational Health and Safety Act General Regulations* have been amended, but these amendments will not take effect until October 31, 2008. The amendments include:

- Section 8 providing a definition of “noise exposure limit” and explaining the meaning of the noise terminology and measurements used in the regulations. Employers are required to measure the noise exposure of workers in certain situations and inform workers of the results. It also requires employers to reduce noise levels, and workers to wear hearing protection where the noise exposure of a worker in the workplace exceeds a noise exposure limit. Finally, this section requires an employer to ensure workers are given hearing tests if they have a noise exposure that exceeds a noise exposure limit.
- Section 13.1 amending the definition of “confined space” to mean:

...an enclosed or partially enclosed space (a) not designed or intended for human occupancy; (b) with restricted access or exit; and (c) that is or may become hazardous to a person entering it because of its design, construction, location, atmosphere or the materials or substances in it or other conditions...

Section 45.12 (Hearing Protection) is revoked.

3. NEW BRUNSWICK

(a) Occupational Health and Safety Act

Effective June 1, 2007 several Joint Health and Safety Committee (“JHSC”) or health safety representative provisions were amended:

Under section 14.1, an employer must ensure that all new JHSC members have attended training within twelve months after being elected or designated. Employers are responsible for wages and benefits during training. Although current JHSC members are exempt from the new training requirement, the legislation allows current members who have not received JHSC training to request such training.

Under subsections 14.2 – 14.5, different requirements for the structure and operation of JHSCs on construction project sites apply, based on size and duration of each project.

Under section 9, employers must develop a monthly inspection program for their JHSC (or health and safety representative where one exists), and share the results of each inspection with the JHSC or health and safety representative.

(b) An Act to Amend the Employment Standards Act - Reservist Leave

This legislation came into effect on December 20, 2007 and allows reservists to take up to 18 months unpaid leave and return to their previous job or a similar position. The leave can be taken by any employee with at least six months of employment with their current employer who provide sufficient notice of their leave.

Employees intending to exercise reserve leave must provide “reasonable notice” of their intention to take the leave and of their anticipated start of leave and return to work dates. Employers may require such notice in writing and where there is no “reasonable notice” of the date of return to work, an employer may defer the employee’s return by up to two weeks.

Employers may require employees to provide an official certificate indicating that the employee’s service is required.

On return from reservist leave, the employer must return the employee to the position held immediately before the commencement of the leave or an equivalent position, with no decrease in pay and no loss of benefits accrued to the leave commencement.

(c) *Employment Standards Act – Minimum Wage Regulations*

- The Regulation increased the minimum wage to \$7.25 per hour effective July 1, 2007.
- For hours worked in excess of 44 per week, the minimum wage rose to \$10.88 per hour effective July 1, 2007.
- The minimum wage, for employees whose weekly hours of work are unverifiable and not strictly employed on a commission basis, rose to \$319.00 per week effective July 1, 2007.

(d) *Employment Standards Act – Employees in Crown Construction Work Regulation*

Section 4 of this Regulation came into force on July 1, 2007 regulating the minimum wage for employees who perform work or supply services under a contract awarded by the Province of New Brunswick. The minimum wage is set in accordance with a schedule that divides employees into categories and, where an employee does not fall within one of the specified categories, the employee’s minimum wage shall not be less than the minimum wages specified for a labourer. The Regulation also provides for an increase in the minimum wage rates effective June 1, 2008.

(e) *Occupational Health and Safety – Training and Designated Trades Regulation*

Effective June 1, 2007, section 2-3 of this Regulation was amended to prescribe the content and delivery or the JHSC training required for designated trades. It also designates certain trades for the purpose of the composition of a JHSC on construction sites with 500 or more employees working at any time.

(f) *Bill in Progress*

Pension Benefits Act – not yet in force

The *Pension Benefits Act* will be amended to provide that, if a pension plan is wound up in full or in part and plan assets are less than the plan’s solvency liabilities as of the wind-up date, an employer who is not insolvent will be required to make up the deficiency. In a partial wind-up, the deficiency is that amount attributable to the part of the plan being

wound up. In such situations, the employer would be required to establish a payment schedule for paying off the deficiency over a maximum period of five years.

Section 65(1.1) does not apply to defined benefit pension plans established under a collective agreement or trust agreement where the employer's contributions are limited to a fixed amount.

Section 65 will come into force upon proclamation.

4. NEWFOUNDLAND AND LABRADOR

(a) *Labour Relations (Amendment) Act – S.N.L. 2006, c. 46*

A number of changes to the *Labour Relations (Amendment) Act* came into effect in 2007 as a result of late 2006 amendments to the *Act*. A new provision (s. 6(9)) allows an appointed member of the Labour Relations Board to continue in that position until reappointed or replaced. The *Act* also provides the Chair (or Vice-Chair when the matter has been referred to them) with exclusive authority to make decisions on uncontested applications to the Board, requests for extensions of time, or on preliminary questions of evidence or procedure. The Board was also given significant procedural powers under s. 18, including the power to order pre-hearing procedures (including pre-hearing conferences) and to compel, at any stage of the proceeding, the disclosure of documents or "things that may be relevant to a matter before it", after providing parties the opportunity to make representations.

Other significant changes provide that an application for review, rescission, amendment, alteration or variation of an order or decision of the Board or a panel must be made within six months of the making of the original order (or longer if the Board allows) (s. 19(3)). The Board was also given the power, on application of an employer or bargaining agent, to review the structure or composition of a bargaining unit to determine whether it remains appropriate for collective bargaining, as well as adding several remedial powers in this respect (s. 19.1).

Other changes include:

- an amendment to s. 30(4), dealing with investigation of complaints by an employee in relation to admission to a trade union, and the union and employee's contingent right to be heard and to cross-examine other witnesses;
- an amendment to s. 51.1, governing votes for revocation of a bargaining agent's certification or right to bargain;
- an amendment to s. 82, giving parties the right to call evidence and make representations with respect to settlement of terms and conditions of the first collective agreement;
- an amendment to s. 89(1), giving the Board the power to hear and make determinations regarding the question as to the existence of a collective agreement or the parties who are bound to it;

- an amendment to s. 130, which sets out the procedure to govern an employee's complaint concerning the bargaining agent's conduct.

(b) *Public Service Collective Bargaining (Amendment) Act – S.N.L. 2006, c. 53*

The *Public Service Collective Bargaining (Amendment) Act* was subject to several amendments in late 2006, many (though not all) of which were similar to those made to the *Labour Relations Act*. Subsection 10(3) was revised, giving the Labour Relations Board the power to hear and decide upon the issue of essential employees where a bargaining unit objects to an employer's statement regarding whom it considers to be essential employees. Subsection 11(1) was also changed, giving the Board the power, after an investigation and a hearing (where one was requested and deemed appropriate), to revoke a bargaining unit's certification or its right to bargain.

Other changes included a revision to s. 43 of the *Act*, which governs the procedure of an employee complaint to the Board about his or her bargaining unit's conduct, as well as the addition of s. 44.1, which gives a bargaining unit, an employee organization or an employer the right to apply to the Board for a determination regarding whether a binding collective agreement exists, as well as whether or not it governs a given employee or party.

(c) *Public Service Pensions (Amendment) Act, 1991; Pension Benefits (Amendment) Act, 1997; Teachers' Pensions (Amendment) Act; and Uniformed Services Pensions (Amendment) Act, 1991. – S.N.L. 2007, c. 7*

Effective May 26, 2007, these pension-related statutes were amended to reflect 2006 changes to the *Human Rights Code* wherein mandatory retirement at age 65 was eliminated (see below). The statutes no longer make reference to mandatory retirement and allow employees who work beyond the normal retirement age to continue to participate in the pension plan.

(d) *Human Rights Code (Amendment) Act – S.N.L. 2007, c. 4*

Effective May 26, 2007, the *Human Rights Code (Amendment) Act* was amended to eliminate mandatory retirement at age 65. While "good faith retirement or pension plans" are generally exempted from the discrimination provisions set out in s. 9 of the *Code*, this amendment ensures that this exemption should not be interpreted to allow retirement or pension plans to create a mandatory retirement age.

(e) *Labour Standards Regulations (Amendment)*

Two changes were made to the *Labour Standards Regulations (Amendment)* this year. The *Regulations* were amended to change both required minimum wage and overtime wage, in two stages. Effective October 1, 2007, the minimum wage was increased to \$7.50 per hour with an overtime wage of \$11.25 per hour. Effective April 1, 2008, the minimum wage will increase to \$8.00 per hour, while the overtime wage will be \$12.00 per hour.

The second change to the *Regulations* was to give a specific definition to the term “family member” as it applies to sections 43.13 through 43.16 of the *Act* (i.e., the portions governing compassionate care leave). The definition is broad, including not only blood relations (parents, children, aunts, uncles), but also current or former foster parents or children, as well as spouses or common law partners of various persons with a family connection. The list of included persons is detailed and should be consulted directly where there is an issue involving compassionate care leave.

(f) *Labour Relations Board Rules of Procedure (Amendment)*

Section 27 of the *Rules* was amended to allow the Chair or Vice-Chair, before the commencement of the hearing, to direct parties to produce documents to the Board and each other on the terms they may require. This expands the documentary disclosure available before the Board, which has traditionally been limited.

In addition, s. 15.1 was added, creating a “presumed withdrawal” in certain circumstances. If the Board considers that a matter has been inactive for 12 months or more, it can notify the parties that it intends to consider the matter withdrawn. If there is no response within 30 days, the matter will be deemed withdrawn or abandoned. If the parties make timely representation within the allotted time that the matter should not be withdrawn, the Board may decide as appropriate.

5. FEDERAL LEGISLATIVE CHANGES

(a) *Bill C-12: Wage Earner Protection Program Act – S.C. 2007, c. 36 – not yet in force*

Bill C-12 amends the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*. It will provide priority claims for unpaid wages (including vacation pay arrears) and unpaid pension plan contributions ranking these ahead of all ordinary secured creditors. Priority will be given to employee claims for unpaid wages, salaries, commissions, or compensation for services provided during the six months immediately preceding bankruptcy. The legislation also gives priority rights to unpaid “normal costs” required to be paid by an employer for a defined benefit pension plan and any employer contribution for defined contribution plans. Farmers and fishers are exempt from its application. The legislation will become effective on a later date by proclamation.

(b) *Non-Smokers Health Regulations*

Effective October 25, 2007 sections that permit employers under federal jurisdiction to designate smoking rooms and smoking areas at their workplaces were repealed. Section 5 of the Regulation is a transitional provision for workplaces where smoking rooms were designated in accordance with a collective agreement or any other contractual arrangement prior to the Regulation.

(c) *Marine Personnel Regulations*

Regulations under the *Canada Shipping Act 2001* come into force the day section 2 of the *Canadian Shipping Act 2001* is proclaimed. The Regulations revise and update requirements for

qualifications, training and certification of crew members and the requirements for appropriate marine personnel on board vessels for safe and efficient operation. Part I prescribes the requirements for each certificate including experience, type of training, and required testimonials and examinations. Part II prescribes safe staffing requirements and for Canadian vessels and foreign vessels in Canadian waters. Part III establishes working conditions and requirements onboard vessels.

(d) *Regulations Amending the Canada Occupational Health and Safety Regulations – SOR/2007-271*

These regulations, in force on November 29, 2007, amend the Hazard Prevention Program portion of the *Canada Occupational Health and Safety Regulations*, to include ergonomic-related hazards. The amendments require federally regulated employers to develop a program for hazard identification and assessment to protect against ergonomic-related hazards in the workplace. Employers are required to take preventative measures such as the elimination of hazards through re-design or mitigating hazards using engineering controls, personal protective equipment, clothing or devices and administrative controls.

(e) *Bills in Progress*

(i) *Bill C-415: An Act to Amend the Canada Labour Code*

Bill C-415 is a Private Members bill that was placed on the order of precedence during the Fall 2007 session. If passed, it will amend various sections of the *Canada Labour Code* including prohibiting use of replacement workers in a strike or lock-out.

(ii) *Bill C-487: Workplace Psychological Harassment Prevention Act*

Bill C-487, a Private Member's bill, passed first reading in the House on November 28, 2007. It establishes the right of employees to be free of psychological harassment. Psychological harassment is defined in part as any hostile, inappropriate and unwanted conduct or verbal comments that affect an employee's dignity or psychological or physical integrity or any abuse of authority that is used to endanger or undermine an employee's job. If passed, this legislation will require employers to take action to put an end to psychological harassment within five days of becoming aware of the behaviour. An employee who thinks they have been subject to psychological harassment may file a complaint with the Commissioner. Bill C-487 imposes significant penalties on employers who do not prevent psychological harassment including compensation for lost salary, exemplary and punitive damages, legal and other expenses and compensation for loss of employment.

(iii) *Regulations Amending the Canada Occupational Health and Safety Regulations*

On December 15, 2007 amendments to the *Regulations* were proposed that would require employers to identify factors contributing to violence at their specific workplace, develop and implement systematic controls to eliminate or minimize workplace violence (or the risk of workplace violence) and develop and implement procedures in response to workplace violence. In addition, the proposed regulations would require employers to

designate an individual to investigate workplace violence, implement training sessions appropriate to the workplace and develop a workplace violence prevention policy. The proposed amendments would impose significant penalties for non-compliance with a maximum penalty of two years imprisonment and/or a fine of \$1,000,000.

Interested employers may make representations in writing concerning the proposed regulations by March 1, 2008.

We encourage you to contact any member of the Labour and Employment Law Group listed below with questions about the contents of this Client Update and/or any other matters on which they may be of assistance to you.

	Direct Dial	E-Mail Address
Halifax, NS	Tel: 902.420.3200	Fax: 902.420.1417
Peter McLellan, Q.C.	902.444.1717	pmclellan@smss.com
John Plowman	902.420.3322	jplowman@smss.com
Brian Johnston, Q.C.	902.420.3374	bjohnston@smss.com
David Farrar, Q.C.	902.420.3362	dfarrar@smss.com
Grant Machum	902.420.3330	ggmachum@smss.com
Lisa Gallivan	902.420.3392	lgallivan@smss.com
Rebecca Saturley	902.420.3333	rsaturley@smss.com
Rick Dunlop	902.420.3384	rdunlop@smss.com
Mark Tector	902.420.3358	mtector@smss.com
Level Chan	902.420.3389	lchan@smss.com
Rebecca Druhan	902.420.3355	rdruhan@smss.com
Melissa Grant	902.444.1700	mgrant@smss.com
Jennifer Ronalds	902.444.1712	jronalds@smss.com
Staff Lawyers:		
Alison Strachan	902.420.3387	astrachan@smss.com
Jamy-Ellen Klenavic	902.420.3321	jklenavic@smss.com
Counsel		
Donald McDougall, Q.C.	902.420.3312	dmcdougall@smss.com
Charlottetown, PE	Tel: 902.892.2485	Fax: 902.566.5283
Rosemary Scott, Q.C.	902.629.4503	rscott@smss.com
John Mitchell, Q.C.	902.629.4506	jmitchell@smss.com
Keith Boswell, Q.C.	902.629.4511	kboswell@smss.com
Tracey Clements	902.629.4538	tclements@smss.com
Murray Murphy	902.629.4558	mmurphy@smss.com
Perlene Morrison	902.629.4508	pmorrison@smss.com
Janet Clark	902.629.4562	jclark@smss.com
Kerri Carpenter	902.629.4527	kcarpenter@smss.com
Stephen Carpenter	902.629.4556	scarpenter@smss.com

	Direct Dial	E-Mail Address
St. John's, NL	Tel: 709.722.4270	Fax: 709.722.4565
Augustus Lilly, Q.C.	709.570.8842	aglilly@smss.com
Harold Smith, Q.C.	709.570.8895	hsmith@smss.com
Ian Wallace	709.570.8839	iwallace@smss.com
Rodney Zdebiak	709.570.8841	rzdebiak@smss.com
Twila Reid	709.570.8828	treid@smss.com
Isobel O'Shea	709.570.8854	ioshea@smss.com
Saint John, NB	Tel: 506.632.1970	Fax: 506.652.1989
William Goss, Q.C.	506.443.0152	wgoss@smss.com
James LeMesurier	506.632.2776	jlemesurier@smss.com
Catherine Lahey	506.632.8307	clahey@smss.com
Moncton, NB	Tel: 506.853.1970	Fax: 506.858.8454
André Richard, Q.C.	506.853.1962	arichard@smss.com
Christopher Stewart	506.383.2224	cstewart@smss.com
Jolène Richard	506.383.2222	jrichard@smss.com
Tracey DeWare	506.853.1971	tdeware@smss.com
Sacha Morisset	506.853.1942	smorisset@smss.com
Fredericton:	Tel: 506.458.1970	Fax: 506.444.8974
Gordon Petrie, Q.C.	506.443.0150	gpetrie@smss.com
Fred McElman, C.M., Q.C.	506.444.8979	fmcelman@smss.com
Richard Petrie	506.443.0155	rpetrie@smss.com
Clarence Bennett	506.444.8978	cbennett@smss.com
Counsel		
Gérard La Forest, C.C., Q.C.	506.443.0135	glaforest@smss.com