

Agenda

HUMAN RIGHTS LAW CONFERENCE 2017 (10141917)

Thursday, November 30 and Friday, December 1, 2017 – Pan Pacific Hotel

Course Chairs: **Sandra F. Guarascio** – Roper Greyell LLP, Vancouver
Lindsay M. Lyster – Moore Edgar Lyster, Vancouver

Planning Committee: **Tonie Beharrell** – Legal Counsel, Health Sciences Association of BC, Vancouver
Jon Chapnick – Senior Advisor, Workplace Mental Health, University of BC, Vancouver
Devyn Cousineau – BC Human Rights Tribunal, Vancouver
Robyn Durling – Former Co-Director, BC Human Rights Clinic, Vancouver
Christopher M. McHardy – McCarthy Tétrault LLP, Vancouver
Laura Track – Community Legal Assistance Society, Vancouver
Robyn P.M. Trask – BC Teachers' Federation, Vancouver
David G. Wong – Fasken Martineau DuMoulin LLP, Vancouver

CLEBC Program Lawyer: **Genevieve Chang**

Day 1: Thursday, November 30, 2017

- 9:00 – 9:10 CONFERENCE OPENING AND INTRODUCTION
COAST SALISH WELCOME: **Wes Nahanee** – Squamish Nation Cultural Ambassador, Squamish
Sandra F. Guarascio – Roper Greyell LLP, Vancouver
Lindsay M. Lyster – Moore Edgar Lyster, Vancouver
- 9:10 – 10:00 CONDUCTING WORKPLACE INVESTIGATIONS
- when and why to investigate
 - who should conduct the investigation
 - procedural fairness
 - legal privilege
 - privacy and confidentiality
 - cases demonstrating flawed investigations
- Tonie Beharrell** – Legal Counsel, Health Sciences Association of BC, Vancouver
Donovan G. Plomp – McCarthy Tétrault LLP, Vancouver
- 10:00 – 10:15 BREAK
- 10:15 – 11:20 UPDATE ON ACCOMMODATION OF FAMILY STATUS AND FAMILY EMERGENCIES
- evolution of the test for prima facie discrimination based on family status in BC and the federal jurisdiction
 - the role of the employer, the union, and the employee in exploring accommodation
 - boundaries of family status: is there a duty to accommodate personal emergencies, outside of Ontario's statutory right to personal leave?

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- caregiving relationships and caregivers are being recognized in the cases and who is missing from the jurisprudence
- the role of human rights law in the search for work-life balance

Kirsten Hume Scrimshaw – Ally Workplace Law Corporation, Vancouver

Krista James – National Director, Canadian Centre for Elder Law, Vancouver

11:20 – 12:10

A REVIEW OF THE SCOPE OF THE HUMAN RIGHTS CODE: SECTIONS 8, 10 AND 13

- discussion of the Schrenk case and/or decision before the SCC
- review of the consideration of how relationships impact the question of jurisdiction
- consideration of the extent of and limits to the applicability of the Code to tenancy, services customarily available to the public, and employment

Katherine A. Hardie – BC Human Rights Tribunal, Vancouver

David G. Wong – Fasken Martineau DuMoulin LLP, Vancouver

12:10 – 1:25

NETWORKING LUNCH WITH FEATURED SPEAKER: THE NEVSUN AND TAHOE CASES: LITIGATION IN CANADA ALLEGING ABUSES IN OVERSEAS OPERATIONS

- review of BC lawsuit by Eritrean refugees against Vancouver-based Nevsun Resources alleging they were forced labourers at Nevsun's mine in Eritrea, including claim of direct liability, traditional common law torts, and torts in violation of customary international law (i.e.: slavery, forced labour, torture, and crimes against humanity)
- review of BC lawsuit by Guatemalans against BC's Tahoe Resources alleging they were injured when security personnel opened fire on a peaceful protest
- review of applications by Nevsun and Tahoe to stay BC cases under the doctrine of *forum non conveniens*

Matt Eisenbrandt – Special Consultant, Camp Fiorante Matthews Mogerman, Victoria

1:25 – 2:25

TRC CULTURAL COMPETENCY TRAINING

Patricia M. Barkaskas – Academic Director, Indigenous Community Legal Clinic, and Instructor, Peter A. Allard School of Law, University of BC, Vancouver

2:25 – 2:40

BREAK

2:40 – 3:30

MENTAL DISABILITY: CASES, STRATEGIES, AND ENABLING INSIGHTS

- review of notable 'mental disability' decisions from the past year; discussion of themes and common issues
- exploration of strategies and insights to help human rights practitioners navigate 'mental disability' matters: i.e.: identifying and contesting stereotypical assumptions and generalizations; responding to 'pushback' and 'workplace morale problems'
- exploration of the tools and insights provided by a 'trauma-informed' framework

Jon Chapnick – Senior Advisor, Workplace Mental Health, University of BC, Vancouver

Kelsey Lavoie, JD, MA – Advocate, Vancouver Island Human Rights Coalition, Victoria

3:30 – 4:30

JUDICIAL REVIEW UPDATE

- review and update of significant BC Supreme Court, BC Court of Appeal, and Supreme Court of Canada cases

Devyn Cousineau – BC Human Rights Tribunal, Vancouver

Stephanie D. Gutierrez – Fasken Martineau DuMoulin LLP, Vancouver

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CLEBC Program Lawyer:	Genevieve Chang

Day 2: Friday, December 1, 2017

9:00 – 9:10	WELCOME AND INTRODUCTION Sandra F. Guarascio – Roper Greyell LLP, Vancouver Lindsay M. Lyster – Moore Edgar Lyster, Vancouver
9:10 – 10:20	CASE LAW UPDATE <ul style="list-style-type: none">• key cases• analysis and trends• effects on practice Christopher M. McHardy – McCarthy Tétrault LLP, Vancouver Ryley M. Mennie – McCarthy Tétrault LLP, Vancouver
10:20 – 10:35	BREAK
10:35 – 11:10	APPLICATIONS TO DISMISS FOR COMPLAINTS FILED OUT OF TIME <ul style="list-style-type: none">• the parameters for dismissal under section 27(1)(g) of the Code• review of recent case law Eleni Kassaris – Blake, Cassels & Graydon LLP, Vancouver

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- 11:10 – 12:00 LIMITED RETAINERS: BENEFITS, RISKS & ETHICAL CONSIDERATIONS
- when to consider using limited retainers
 - how limited retainers can increase access to justice
 - practical tips for drafting limited retainers
 - the risks involved in acting on a limited retainer
 - ethical considerations, including when disclosure of a limited retainer is required
- Sara Hanson** – Moore Edgar Lyster, Vancouver
Kevin Love – Community Legal Assistance Society, Vancouver
- 12:00 – 1:05 NETWORKING LUNCH
- 1:05 – 1:55 THE DUTY TO ACCOMMODATE DOESN'T HAVE TO BE "UNDULY" HARD!
- the responsibilities of the employer, the union, and the employee in the duty to accommodate
 - the benefits of having a cooperative approach
 - success stories
- Mark E. Colavecchia** – Harris & Company LLP, Vancouver
Brett Matthews – Hastings Labour Law Office LLP, Vancouver
- 1:55 – 2:10 BREAK
- 2:10 – 3:00 CASE LAW UPDATE ON THE PROVISION OF SERVICES UNDER SECTION 8
- procedural issues in section 8 cases, including anonymization, representative complaints, and jurisdiction
 - characterization of the service being offered
 - is the service customarily available to the public?
 - the interaction between section 8 and constitutional freedoms
 - bona fide reasonable justification, duty to accommodate, and applications to dismiss in the context of provision of services cases
 - other interesting section 8 cases since 2011
- Carolyn M. MacEachern** – Young Anderson, Vancouver
Chanelle C.O. Wong – Norton Rose Fulbright Canada LLP, Vancouver
- 3:00 – 4:10 ETHICS FACT PATTERNS
- what would/should you do?
 - discussions in context
- Shona A. Moore, QC** – Moore Edgar Lyster, Vancouver
Gabriel M.A. Somjen, QC – Borden Ladner Gervais LLP, Vancouver
- 4:10 – 4:15 CLOSING REMARKS
- Sandra F. Guarascio** – Roper Greyell LLP, Vancouver
Lindsay M. Lyster – Moore Edgar Lyster, Vancouver