Bridging the Gap Between Employment Law + the Modern Workplace

RG Workplace Law Summit

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Bridging the Gap Between Employment Law + the Modern Workplace

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Outline

What we will cover
- Modern workplace trends
- Outdated employment standards legislation
- Modernizing the ESA
- Amending unrealistic ESA liabilities
- Managing within the current ESA

Modern Workplace Trends

- The modern workplace is characterized by:
  - More and more workers are independent contractors
  - More part-time or contracted staff
  - Many employees in service jobs are subject to "just in time" scheduling
Modern Workplace Trends
- Pressures outside work (to care for other family members) have increased
- Work requires some employees to be “always available” with 24/7 communication
- Employers are frustrated that laws do not sync with the pace of modern business

Outdated Employment Standards Legislation
• Makes an “all or nothing” distinction between employees and contractors with no protection for contractors
• Does not mandate fair or “equal” pay and benefits for part-time and contract workers
• Sets sometimes unrealistic minimum scheduled shifts, but does not compensate employees for last minute shift changes
• Provides some work/family flexibility but is it enough?

Outdated Employment Standards Legislation
• Does not have a flexible solution for, or even recognize, the common “just checking email” scenario, where employee deals briefly with business outside regular hours
• Does not provide common sense flexibility for creative and consensual scheduling options to avoid overtime costs, or in the scope of overtime exemptions
Modernizing the ESA

- Fortunately, other Canadian and foreign jurisdictions and now BC will be looking to modernize the ESA as part of a broad review of the ESA. Areas for reform may include:
  - Recognizing an intermediate class of “dependent contractors” and offering some basic ESA rights to them e.g. vacation time off and pay.
  - Rules giving part-time or contracted workers equal pay and/or benefits after working for a defined period of time
    - But employers will want to ensure such rules only apply if productivity is equivalent

Modernizing the ESA

- Rules on minimum notice of major work schedule changes, and requiring compensation for last minute reductions in shifts
- Introducing new or extended care leave rights including, the right of parents (but in practice mainly mothers) to take a total of up to 18 months maternity leave
- Creating a statutory right to request “Flexible Work Arrangements”

Amending Unrealistic ESA Liabilities

- Employers should seize the opportunity of a review of the ESA to seek key amendments that reduce unrealistic ESA liabilities in the modern workplace such as:
  - Expanding overtime exemptions
  - Ensuring that requiring an employee to respond briefly to emails outside of regular hours does not trigger onerous minimum pay obligations
Amending Unrealistic ESA Liabilities

- Allowing employees to agree to more flexible pay averaging of working hours over longer periods without paying overtime
- Ensuring leave reinstatement obligations are realistic
- Eliminating any vacation pay accrual over longer statutory leaves

Managing within the Current ESA

- Until the law changes, employers can manage these workplace pressures and risks by:
  - Limiting employees obliged to be “always connected” to overtime exempt occupations
  - Hiring contractors who meet the legal test where maximum flexibility is needed
  - Carefully considering requests for flexible work arrangements
  - Weigh the risk of new staffing arrangements with one eye on possible future changes in the law
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Geoffrey is a partner* at Roper Greyell where he provides strategic and practical advice on employment and labour law and represents clients in employment-related litigation.

Geoffrey has extensive experience representing both employers and employees in all aspects of the employment relationship, including employment agreements, termination of employment and human rights issues such as discrimination and duty to accommodate. Geoffrey also has considerable experience advising employers on benefit plans, including pension, disability and group insurance coverage and regulatory compliance issues. He also advises companies and owners on shareholder disputes arising out of termination of employment.

Geoffrey’s clients, typically in high-tech, life sciences, biotech, mining, retail and professional services, come to him for his expertise in managing relations between employers and non-union executives. His work frequently touches on stock options, restricted stock units (RSU), pensions, bonuses, shareholder agreements and constructive dismissals. He also advises and represents clients in disputes over post-employment competition arising from non-compete agreements and restrictive covenants.

When working with his clients, Geoffrey combines regular client communication and follow-up, with a cost-effective and creative approach to resolve employment problems and labour litigation claims. He is responsive, practical and aims to ensure that there are never any surprises for his clients.

Geoffrey also speaks and writes on a wide range of employment law topics, including authoring articles for a variety of publications and delivering training seminars to clients, managers and professionals on workplace issues.

Outside of work, teammates count on Geoffrey to put the ball in the net as a forward for his field hockey team, the Greyhawks. He also enjoys biking, hiking, tennis and recovering from it all with yoga.

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Education
LL.B., University of British Columbia

Year of call
Ontario, 1989
British Columbia, 1994

Membership/Affiliations
Chartered Professionals in Human Resources of British Columbia and Yukon (CPHR)
Canadian Bar Association
American Bar Association

Listings/Rankings
Lexpert-Ranked Lawyer, 2017
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Gavin is a partner at Roper Greyell where he practises labour, employment and workplace human rights law with an emphasis on building lasting client relationships. He regularly advises on matters of occupational health and safety, labour relations and crisis management.

Gavin takes pride in providing clients with a focused, strategic and business-oriented approach to workplace law. A team player, he supports his clients by tailoring his advice and solutions. Understanding a client’s needs is always Gavin’s first step. From there, he develops a menu of options on a continuum of risk for his clients.

Rather than taking the generic route towards workplace dispute resolution and crisis management, Gavin ensures that solutions address the specific results that clients want. His professional relationships with clients and colleagues always come with a sense of humour.

Gavin regularly advises and represents clients in employment litigation, injunctive relief, collective bargaining and strategic advice. He is highly sought after for wrongful dismissal and other workplace legal disputes, including enforcement of restrictive covenants and post-employment obligations, workplace human rights, and administrative law and labour relations issues such as contract negotiation. Gavin has effectively represented clients in every level of court in British Columbia and all British Columbia workplace administrative tribunals, as well as the federal Human Right’s Tribunal and Canada Labour Relations Board. Gavin is a frequent and sought-after speaker, offering continuing legal education and professional development seminars for a variety of professions.

Gavin spends his time away from work cycling, mountain biking and skiing with (and usually far behind) his two boys, Sam and Oliver. He loves the mountains and spends as much time as he can on them.

Education
B.A., University of Toronto
LL.B., University of British Columbia
MSc. London School of Economics

Year of call
British Columbia, 1998

Membership/Affiliations
Canadian Bar Association
Canadian Pension and Benefits Institute
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Canadian Association of Counsel to Employers
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Rankings/Listings
Carswell, Canada’s Top Employment Lawyers, 2006
Who’s Who Legal, 2016, 2017 – Labour, Employment and Benefits
Lexpert-Ranked Lawyer, 2016, 2017