

★★★ TOP BOUTIQUES ★★★



The changing workplace

Labour & employment boutiques are well positioned to provide value as the law and social norms evolve

By Mallory Hendry

There are a lot of changes in the labour and employment law market these days — both already happened and on the horizon — but Howard Goldblatt of Goldblatt Partners LLP, which made our new Top 5 Union-side Labour and Employment Boutiques list, says that's par for the course.

"It's very viable. There are new issues arising all the time — it keeps it interesting."

There's been an overall legislative review of workplace legislation in a number of provinces. Alberta implemented Bill 17: The Fair and Family-friendly Workplaces Act in June 2017, and there's a review coming for British Columbia's workplace legislation. Ontario's Bill 148: The Fair Workplaces, Better Jobs Act, mirroring similar changes to Alberta, received royal assent in November 2017, with the bulk of the changes in effect this month.

Keith Murray, Western Canada managing partner at Mathews Dinsdale & Clark LLP, says there's certainly a lot of focus on legislative change. One of the more notable — and controversial — changes in Ontario, Alberta and federally is "a real swing back" to card-based certification, making it easier for unions to organize.

"In B.C., the issue of whether they'll go to card-based certification is very much still in play," he says, noting the NDP government wants to follow Alberta, Ontario and federal changes but the Green party, whom the NDP doesn't have votes to do it without, aren't currently in favour. However, he does expect changes in B.C. as well.

"I think it's fair to say the labour board in both Alberta and B.C. have been quiet for a number of years but I think we'll see a significant shift and a real increase in activity at the two labour boards again."

Michael Sherrard of Sherrard Kuzz LLP in Toronto says Ontario's minimum wage jump — to \$14 starting in 2018 and up to \$15 in 2019 — is causing the most amount of tension and while a lot of clients are already at the \$14 benchmark, the real impact will be in what he terms "compression."

Employees used to being \$3 or \$4 above minimum wage will see it jump to almost their current pay, and Ontario employers will have to look at how to deal with that, Sherrard says. It's not complex labour and employment law, he notes, but it will affect everybody.

Craig Rix, partner at Hicks Morley Hamilton Stewart Storie LLP in Toronto and member of the firm's executive committee, says Bill 148 "has been an absolute spotlight on labour and employment in 2017," noting the firm has run "about a dozen" sessions for clients and could probably run a dozen more.

"The benefits of a boutique is the ability to partner with our clients and in partnering with our clients they're reaching out to us to help them get ready to comply," he says.

"The relationship work that we have as a specialized boutique, that's really where those relationships get leveraged because we know our client's business and we're helping them



get ready for this change in the legal landscape."

Sherrard thinks there'll be a significant increase in employment standards compliance work for employment lawyers, and he also expects more activity for labour lawyers providing services to federally regulated employers in the wake of recent Canada Labour Code changes.

Goldblatt says another area that's on the rise is harassment, discrimination and conflict generally within the workplace.

"Regrettably, there seems to be a number of cases that have to deal with that. It's a good thing in a sense that there's a much more knowledgeable workforce and people are much more prepared to come forward. One wonders with respect to what's going on in Hollywood and politics in terms of sexual harassment and sexual assaults — whether that might give rise to a number of issues amongst our clients. We don't know, we'll wait to see how that plays itself out."

"I think most of the firms have experienced significant increase in harassment complaints within their clients," says Sherrard, including the investigation of complaints and advice surrounding the outcome.

Though there has been recent legislation in Ontario dealing with the issue, Sherrard agrees with Goldblatt in that it may be a societal shift causing the increase.

"If we watch the press in the last three months, there's clearly an uptick in terms of what appears to be people getting a little bit more comfortable making the claims than in last decade. I think all sides — trade union lawyers, employee lawyers and management-side lawyers — I think all of us are spending more time with our clients looking at proactive policies to try and get ahead of this issue."

Similar to Ontario, Murray says there is "certainly now a heightened awareness or sensitivity to issues of harassment in the workplace, both sexual harassment and general bullying" in Western Canada as well.

His firm has seen an increased interest from employers for training and education, and an increase in complaints from employees that they've been exposed to inappropriate behaviour resulting in more investigation work.

"There's nothing new on the legislative front out here in that area, so I think it's being driven by the greater media attention being placed on the issue," Murray says, adding he too thinks people are more comfortable speaking up and bringing forward complaints than they have been in the past.

There are other areas of change as well. For Rix, technology

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"I've seen this year, more than any other year before, we're getting called out and working across the country more and more. We're being pulled into fire interest arbitrations, we're being pulled into collective bargaining negotiations, we're being brought in as strategic advisers ... when people are looking for specific expertise they're clearly prepared to bring us to where they are in order to get that advice. Technology has made it significantly more accessible for us to be able to do that."

In another hot area of upcoming change, Sherrard cites "how we all manage with the changes to legalization of marijuana."

While everybody will continue to say that people can't be impaired in the workplace, legalizing the drug will "start to

put challenges into the system," he says.

"People are already consulting with counsel with respect to their current workplace policies in terms of how they deal proactively. Most people want to communicate effectively in advance of things like this, to communicate expectations with their employees and their workplace partners. People are already being consulted today and I think there will only be a significant increase in that as we move into 2018."

Legislative changes usually result in employers and unions seeking more advice and managing more disputes while the meaning of the legislation is worked out, Murray says.

"With all the legislative change, I think it'll be a busy upcoming few years for labour and employment lawyers — I think all the boutiques will be busy."



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