

Employment

Lenczner Slaght provides expert counsel in employment litigation to organizations of all sizes, acting on their behalf in disputes and helping to establish effective corporate policies and practices.

Our lawyers' deep grasp of current employment issues and emerging trends is backed by their successful track record in presenting cases at all levels of the courts, before regulatory bodies and in mediation or arbitration.

We understand the priorities of human resources professionals and are ready to deliver prompt, practical advice in the face of rapidly developing challenges. We also draw upon our extensive litigation experience to identify potential issues before they become problems, minimizing the risk of future legal action. And in the event that a dispute does arise, we have the negotiation and courtroom skills to guide the matter to a successful resolution – while respecting the unique values and culture of a client's organization.

Our focus is on complex employment law disputes, including terminations of executives, employee fraud, disputes involving departing employees who take confidential information to a competitor, and employment law class actions. However, working with a wide range of Canadian employers, as well as U.S.-based and other international companies operating in Canada, Lenczner Slaght provides expert support across the spectrum of employment issues, including:

- Employment strategy, policies and practices – proactive guidance on all aspects of planning and implementation, including analysis of specific hiring and firing scenarios, with the goal of minimizing litigation risk
- Employment standards – advice on current legal requirements, as well as representation before regulatory tribunals
- Restrictive covenants – assessment and litigation of non-solicitation and non-competition obligations for departing employees
- Confidentiality – address the misappropriation of corporate confidential information, including coordination of electronic forensic investigations
- Wrongful dismissal – expert counsel through every stage of a dispute, from initial response to courtroom proceedings
- Workplace management – preemptive guidance in all areas that

have legal ramifications, including investigations of misconduct and resulting disciplinary actions; human rights, sexual harassment and discrimination issues; disability and other insurance claims; and occupational health and safety concerns, including violence in the workplace.

RECOGNITION

- **Best Lawyers in Canada (2024-2025)**
Ones to Watch – Corporate & Commercial Litigation, Labour & Employment Law
- **Best Lawyers in Canada (2023)**
Ones to Watch – Labour & Employment Law
- **Best Lawyers in Canada (2023-2025)**
Ones to Watch – Class Action Litigation, Corporate & Commercial Litigation, Health Care Law, Labour & Employment Law, Medical Negligence, Securities Law
- **The Legal 500 Canada (2022-2023)**
Labour and Employment (Recommended Lawyer)
- **Chambers Canada (2020-2025)**
Construction; Employment & Labour: Non-Unionised Employees; Healthcare: Contentious (Nationwide – Canada)
- **The Legal 500 Canada (2020-2025)**
Dispute Resolution (Leading Partner), Insolvency and Restructuring (Recommended Lawyer), Labour and Employment (Recommended Lawyer) (2018, 2020)
- **The Legal 500 Canada (2018-2023)**
Labour and Employment (Recommended Lawyer)
- **The Legal 500 (2017-2018)**
Labour and Employment (Tier 5)
- **Best Lawyers in Canada (2014-2025)**
Corporate & Commercial Litigation, Health Care Law, Labour & Employment Law, Medical Negligence
- **The Legal 500 Canada (2018)**
Labour and Employment (Recommended Lawyer)

SELECT CASES

- **Unifor, Local 975 v Enbridge Gas Inc** – Counsel to Enbridge Gas Inc responding to a related business and an unfair labour practice application brought by Unifor before the Ontario Labour Relations Board. Successfully brought a motion to dismiss the sale of business aspect of the related business application and the unfair labour practice application.
- **Mittra v Royal Bank of Canada et al** – Counsel to RBC in this \$10 million wrongful dismissal claim. After a three-week trial, the Court held that RBC had just cause to dismiss the plaintiff without notice. Reported at 2024 ONSC 636.
- **Ratz-Cheung v BMO Nesbitt Burns Inc** – Counsel to the defendants, Bank of Montreal, against a former employee in a matter involving damages for breach of contract and wrongful dismissal.
- **Grant Edey v Khan Resources** – Counsel to former CEO and director for breach of employment agreement, and defence to counterclaim alleging unauthorised transactions.
- **Wyse Meter Solutions Inc v Carma Corp** – Counsel to the responding

parties in successfully obtaining the dismissal of a motion brought by an employer seeking an interlocutory injunction to prevent a former employee from continuing to work for their competitor.

- **7912854 Canada Inc v Sunprotection Group Inc et al** – Counsel to leading window coverings designer and manufacturer, Altex, in a commercial action in the Superior Court of Canada, related to intentional interference with contractual relations, and misappropriation of confidential and proprietary information.
- **Aon Reed Stenhouse Inc v Iannetta** – Counsel to the successful corporate Defendant in an action seeking injunctive and other extraordinary relief arising from the departure of a former employee of the Plaintiff. Successfully obtained costs against the Plaintiff and resisted the injunctive and other relief as against the corporate Defendant.
- **Carras v Altus Group Limited** – Counsel to the Respondent real estate information software company in successfully opposing a former executive's application for breach of contract in respect of the exercise of disputed stock options.
- **Fiera Private Debt Inc et al v Private Debt Partners et al** – Counsel to the defendants (plaintiffs by counterclaim) in an action alleging conspiracy and breach of fiduciary duties by former employees of a company. The counterclaim alleges that the plaintiffs have engaged in constructive dismissal and promulgated defamatory comments.
- **Nelson v Her Majesty The Queen in Right of Ontario** – Counsel to the Defendant, Her Majesty the Queen in Right of Ontario, on a successful motion to strike an action by an employee on the basis that the Court lacked jurisdiction over employment disputes that arise under collective agreements. The motion Judge's decision was upheld by the Court of Appeal of Ontario.
- **Andersson v Aquino** – Counsel to the plaintiff in oppression proceedings concerning the alleged fraudulent execution of a share transfer agreement. Successfully obtained an order setting aside a finding of contempt of court.
- **Cambridge Elevating v Niagara Belco** – Counsel to the plaintiff employer in an action and an injunction to restrain former employees from the misuse of misappropriated confidential information.
- **Ravago Americas LLC v Vinmar International Ltd** – Counsel to the defendant employer in an action and injunction concerning allegations of the misuse of confidential information by a former employee.
- **PearTree Financial Services Ltd v Brownstein** – Counsel to PearTree Financial Services involving the unlawful use of confidential client information by a departing employee and former venture partner.
- **Warkentin v BMO Nesbitt Burns Inc** – Counsel to BMO Nesbitt Burns in the successful defence at trial of an action by a former investment advisor involving allegations of deceit and breach of contract.
- **Canadian National Railway Company v Canadian Pacific Railway Company and Shnerer** – Counsel to CN in respect of an injunction seeking non-solicitation and non-use orders against a departing employee who removed and misused confidential information.
- **Rosen v BMO Nesbitt Burns Inc; Wade v BMO Nesbitt Burns** – Counsel to BMO Nesbitt Burns Inc. in an overtime class actions brought in Ontario and Nova Scotia by BMO NBI investment advisors.
- **RBC Dominion Securities Inc v Merrill Lynch Canada Inc** – Counsel to RBC on injunction, trial, appeal and at the Supreme Court of Canada in respect of an action against departing investment advisors for a

competitor.

- **Thyssenkrupp Industrial Services Canada Inc v DBS Hearn Inc** – Counsel to employee defendants in an action alleging conspiracy and theft of confidential information.
- **IMP Group Ltd v Skyservice Business Aviation Inc** – Counsel to a group of employees in a dispute with their former employer in relation to their resignations and subsequent employment with another company.
- **Shaw v Healthcare of Ontario Pension Plan** – Counsel to the successful respondents in an appeal by a former Ontario Hospital Association senior executive seeking an enhanced pension based on a negotiated bonus shortly before retirement.
- **Polar Wireless Corporation v Roberts** – Counsel to the successful plaintiff on a motion for an interlocutory injunction preventing former fiduciaries from unfairly competing with their former employer using confidential business information.
- **Rowley v High Strength Plates & Profiles Inc** – Counsel to the defendant in a wrongful dismissal proceeding. The defendant was successful in resisting plaintiff's allegations of constructive dismissal.
- **Davies v Satellite Radio Inc** – Counsel for the plaintiff in a constructive dismissal trial.
- **Mackie Research Capital Corporation v Mackie** – Counsel for the plaintiffs in a dispute relating to the departure of investment advisors. The defendants were alleged to be in breach of their fiduciary duties as well as various contractual post-employment covenants.
- **Link v Venture Steel** – Counsel in a successful trial and appeal on behalf of the plaintiff for wrongful dismissal and payment for shareholdings and options.
- **Canadian National Railway Company v Holmes** – Counsel to CN in a complex dispute involving employee fraud, accounting of profits, abuse of process, defamation and negligent exercise of statutory dispute. In the course of the proceedings, obtained Anton Pillar and Mareva injunctions in order to protect evidence and assets related to the alleged employee fraud.
- **Road Trailer Rentals Inc v Robinson** – Counsel to a defendant in an employment matter. Successfully opposed a motion for an interlocutory injunction.
- **Motion Picture Distribution Inc v Loewy** – Counsel for the plaintiff on a motion for injunctive relief enjoining defendant from using confidential information, competing with or soliciting employees from the plaintiff.
- **Wadsworth v RBC Dominion Securities** – Counsel to the defendants on a successful motion for summary judgment in an employment matter. Counsel for the respondent on appeal.
- **CIBC World Markets Inc v Genuity Capital Markets** – Counsel to an investment bank in high profile action for breach of fiduciary duty, wrongful solicitation of employees and corporate conspiracy.
- **Allen v Bosley Real Estate** – Counsel to the defendant in the trial of a wrongful dismissal action.
- **Montreal Trust Co of Canada v Call-Net Enterprises Inc** – Counsel to Call-Net Enterprises in a successful defence at trial and on appeal of claim by former senior executives that they were entitled to benefits as a result of a change of control resulting from proxy battle.
- **Stevens v The Globe and Mail** – Counsel to the appellants in an appeal from a trial decision in which the trial judge refused to deduct statutory severance under the *Employment Standards Act* from an award of

damages for wrongful dismissal. The appellant was successful in overturning this aspect of the judge's decision, and this became a leading case on this issue.

- **Chann v RBC Dominion Securities Inc** – Counsel to RBC in a wrongful dismissal trial. This became a key case on the assessments of claims for discretionary bonus over the period of reasonable notice.
- **Larry v Triple M Metal Inc** – Counsel for the defendant at trial of wrongful dismissal claim. Successfully defended claim for portion of profit sharing plan.

SELECT PUBLICATIONS AND PRESENTATIONS

- **2024 Snapshot: Through the Lens of Lenczner Slaght** – Lenczner Slaght launches our *2024 Snapshot*, which highlights the most significant developments, decisions, and trends in litigation from the past year across 20 areas of expertise. Reflect on 2024 and look ahead to 2025 through the lens of our expert litigators.
- **Unique Labour and Employment Considerations for Federally Regulated Companies** – Nicole Naglie was invited to co-chair The Canadian Bar Association's program titled *Unique Labour and Employment Considerations for Federally Regulated Companies*. Nicole led a discussion on the complexities of employment law issues within federally regulated companies, including workplace investigations, harassment regulations, and severance pay entitlements.
- **2023 Snapshot: Through the Lens of Lenczner Slaght** – Lenczner Slaght launches our *2023 Snapshot*, a look at the most significant developments, decisions, business takeaways, and trends in litigation from the last year, across 15 practice areas. Revisit 2023 and look ahead to 2024 through the lens of our expert litigators.
- **New Rules Around Temporary Help Take Effect** – Nicole Naglie co-authored an article, published by the Canadian HR Reporter, on the new rules around temporary help. (*Prior to joining Lenczner Slaght*)
- **21st Annual Current Issues in Employment Law** – Colin Johnston will present at the OBA's 21st Annual Current Issues in Employment Law, an essential program for staying up to date on the latest developments in employment law. Colin will share his expertise on the panel *Best Practices for Conducting Workplace Investigations*.
- **Mastering Summary Judgment Motions** – Monique Jilesen shared her expertise at the OBA's Civil Litigation program *Mastering Summary Judgment Motions*. Monique shared her expert insights on the panel "Practice Perspectives: Commercial, Class Actions, Negligence, and Employment Law".
- **Surviving a Breakup: Dealing with Departing (and New!) Employees, Confidential Information, and IP** – Sana Halwani, Monique Jilesen, Brian Kolenda, and Sarah Millar presented at the GC Forum's Q3 event on October 3.
- **Beyond Contractual Borders: Managing the Recruitment and Departure of Senior Executives and Employees** – Matthew Sammon and Risa Kirshblum spoke at the 2018 National Conference & World Summit. This panel of employment litigators and experienced in-house counsel shared practical tips on topics including non-competition and non-solicitation provisions, confidentiality obligations, employees' duties to former employers and steps to respond to and manage improper departures.
- **The tricky timing of post-judgment mitigation** – Jaan Lilles article

appeared in the July 10, 2015 issue of the *Lawyers Weekly*. This article touches on post-judgment trust over employment income earned during the notice period in the event of a wrongful dismissal.

- **Social Media and Internet Law** – Matthew Sammon and Constanza Pauchulo spoke at the Ontario Bar Associations program on June 11, 2015. This program covered a wide range of important, and sometimes controversial, domestic and international intellectual property and technology issues relating to social media and the Internet.
- **Implied Obligations of Good Faith** – Eli Lederman spoke at Lexpert's conference on June 2, 2015 on the Supreme Court of Canada decision in *Bhasin v. Hrynew et al.* which relates to good faith contractual obligations.
- **Avoiding Allegations of Bad Faith: A Practical Guide to the Termination of Contracts** – Eli Lederman was joined by Elisabeth Presion, Chief Legal Officer for Allen-Vanguard Corporation, and Agnes Di Leonardi, General Counsel for Mazda Canada Inc. on a panel at the 2015 CCCA Spring National Conference. Eli Lederman led the panel discussion and provided the most current guidance and risk management advice on the termination of all types of contracts following the decision in *Bhasin v. Hrynew et al.*
- **Managing Employment Law Issues in the Digital Age** – Matthew Sammon co-chaired the OsgoodePD program *Managing Employment Law Issues in the Digital Age* on April 20, 2015, in which Jaan Lilles and Dena Varah will be speaking. This program will provide insight, advice and answers to your most pressing questions about digital issues in the HR environment.
- **Expanding the duty of good faith – SCC has blown wide open the grounds for a contractual dispute**
Eli Lederman's article appears in the January 30, 2015 issue of the *Lawyers Weekly* published by Lexis Nexis Canada Inc. This article discusses the Supreme Court of Canada decision in *Bhasin v. Hrynew et al.*
- **Bhasin v. Hrynew: The New Duty To Act Honestly** – Eli Lederman provided his insight in an Osgoode Professional Development webinar on the legal implications of *Bhasin v. Hrynew et al.*
- **Practical Tools to Reduce your Organization's Risk with Social Media Use** – Matthew Sammon, Jaan Lilles and Dena Varah conducted a webinar as part of the Canadian Corporate Counsel Association/Canadian Bar Association's Webinar Series on October 17, 2014 from 12:00pm to 1:30 pm.
- **The future of unconventional restrictive covenants** – Matthew Sammon's article *The future of unconventional restrictive covenants* appeared in the July 11, 2014 issue of the *Lawyers Weekly*.
"The recent case of *Rhebergen v. Creston Veterinary Clinic Ltd.* [2014] B.C.J. No. 417 of the B.C. Court of Appeal, provides a useful analysis of the state of the law regarding unconventional restrictive covenants, as well as an indication as to where the law in this area may be moving..."
- **Will social media kill the non-solicitation clause?** – Dena Varah's article appears in the May 23, 2014 issue of the *Lawyers Weekly* published by LexisNexis Canada Inc.
- **Social Media and Internet Law - Forms and Precedents** – Matthew Sammon co-authored a chapter published in *Social Media and Internet Law*.
- **Practical Tools to Reduce Your Company's Risk With Social Media** –

Seminar Date

Tuesday, March 25, 2014

Time

7:30 am - 8:00 am: Registration and Breakfast
8:00 am - 9:00 am: Presentation and Discussion

Location

Lenczner Slaght
130 Adelaide St W
Suite 2600
Toronto, ON
Canada M5H 3P5

Details

Join us for an interactive presentation on best practices related to social media in the workplace.

Specific issues that will be covered include:

- Regulating social media usage
- Ownership of professional social media profiles such as LinkedIn
- Employee statements on professional social media
- Solicitation of customers or clients through social media

PRESENTERS

Dena N. Varah
Jaan Lilles
Matthew Sammon

- **Defamation in Social Media and Employment** – Matthew Sammon presented at the 2012 HRPALaw Conference.
- **Defamation in Social Media and Employment** – Matthew Sammon presented his paper *Defamation in Social Media and Employment* at the 2012 HRPALaw Conference.
- **Leaving Gracefully** – Matthew Sammon is quoted in Michael Benedict's article in the November 5, 2010 issue of *The Lawyers Weekly* regarding departing lawyers.
- **Clarity and Confusion in Employment Law Remedies: A Case Comment on Honda Canada Inc. v. Keays** – Paul-Erik Veel's article *Clarity and Confusion in Employment Law Remedies: A Case Comment on Honda Canada Inc. v. Keays* appeared in Volume 67 of the *University of Toronto Faculty of Law Review*.

BLOG POSTS

- **The Duty of Good Faith Does Not Extend to Pre-Contractual Conduct** – Since it was recognized a little over a decade ago in *Bhasin v Hrynew*, the contours of the organizing principle of good faith and the duty of honest performance in contract law have been gradually clarified by Canadian courts. Most recently, in *Ocean Pacific Hotels Ltd v Lee*, the British Columbia Court of Appeal considered whether the duty of good faith applied to pre-contractual conduct. In particular, the question in this case was whether an employer's conduct before an employment

agreement was finalized could be scrutinized under the duty of honest performance. Answering that question with a resounding no, the Court of Appeal's decision provides critical insight into the evolving boundaries of good faith obligations in Canadian contract law.

- **Employers Emerge Victorious in Rule 21 Motion Regarding the Enforceability of an ESA-Minimum Termination Clause** – In *Bertsch v Datastealth Inc*, the Superior Court confirmed the enforceability of an ESA-minimum termination clause that excluded common law notice periods. This decision, resulting from a Rule 21 motion to strike, marks a welcome shift for employers in the court's longstanding reluctance to uphold termination provisions in employment contracts.
- **Default and the Interpretation of Termination Clauses: Navigating the Impact of Hypothetical ESA Breaches in Ontario Case Law** – The Court of Appeal for Ontario ("ONCA") will hear the appeal of *Dufault v The Corporation of the Township of Ignace* ("Dufault") this Friday. While Ontario courts previously recognized that creating jurisprudence based on hypothetical situations is a slippery slope, since the decision in *Waksdale v Swegon North America Inc*, courts in Ontario have repeatedly invalidated termination clauses in employment agreements by considering hypothetical breaches of employment standards legislation.
- **Court Puts Bankers on Notice: "Exceptional" Integrity and Honesty Required** – After a three-week trial, the Ontario Superior Court has held that the Royal Bank of Canada had after-acquired cause to terminate a senior banker, Aidan Mittra, and dismissed Mittra's \$10?million lawsuit.
- **On the Docket: Cases to Watch (Issue 1)** – Lynne McArdle published the first issue of *On the Docket: Cases to Watch*, which features a collection of cases that move the law forward in some meaningful way. The cases in this edition are diverse in that they arise in different areas of the law: fraudulent conveyances, securities law, class actions, employment law, discovery, and Crown law.
- **What's Control Got to Do With It: Construction Owners are Employers Under the OHSA** – On November 10, 2023, when the Supreme Court of Canada ("SCC") released their decision in *R v Greater Sudbury (City)*, the internet responded with widespread panic because, for the first time, the Court has confirmed that a project owner is an employer under Ontario's *Occupational Health and Safety Act* ("OHSA" or the "Act").
- **Same Titles, Different Jobs: The Challenges of Misclassification Class Actions** – Employment law misclassification class actions are becoming increasingly common. In those cases, the plaintiff says that employees have been misclassified by their employer in such a way as to render them ineligible for certain benefits under applicable provincial employment standards legislation which the employee claims that they should have been eligible for. The two most common categories of alleged misclassification are employees being allegedly misclassified as independent contractors, and ordinary employees being misclassified as managers. While some misclassification cases have been certified, courts have refused to certify many others due to a lack of sufficient commonality. The recent decision of the Ontario Superior Court of Justice in *Le Feuvre v Enterprise Rent-A-Car Canada Company* is an example of a case that falls into the latter category and was not certified.
- **Bonuses & Bad Faith: The Supreme Court Clarifies Terminated Employee's Entitlement To \$1M Incentive Payment** – Are terminated employees entitled to the payout of bonuses during their reasonable notice period? And should this assessment be informed or affected by an employer's bad faith or dishonest conduct that led to an employee's termination or constructive dismissal? These were some of the questions

before the Supreme Court of Canada in the eagerly anticipated decision in *Matthews v Ocean Nutrition Canada Ltd.* The case offered a unique opportunity for the Court to comment on the contractual duty of good faith outlined in *Bhasin v Hrynew* and its potential effects on employment relationships and exclusion clauses.

- **DNAonymous: SCC upholds Genetic Non-Discrimination Act, affirming individuals' right to privacy over genetic information** – An individual's genetic composition is arguably one of the most personal and private types of information out there. As science and technology continue to develop, the collection, use, and disclosure of genetic information has increased exponentially. Medical genetic testing has become a key tool in helping to diagnose and treat complicated illnesses and commercial genetic testing kits, such as 23andMe, have expanded in popularity. All of this has resulted in an exponential increase in the amount personal data being collected in our everyday lives.
- **Strict Requirements for Employers' Overtime Policies in New Employment Law Class Action Decision** – Is an employer obligated to pay overtime if they don't specifically direct an employee to work overtime? And can an employer's requirement that employees obtain pre-approval for any overtime they work shield them from the obligation to pay overtime if pre-approval isn't obtained? These are important issues for any employer.
- **Court of Appeal rates arbitration clause one star in proposed employment class action against Uber** – A frequently litigated issue in Canadian class actions is the extent to which parties can agree in advance to opt out of class actions in favour of private arbitration. In the context of consumer protection claims, provincial legislatures have generally eliminated the ability of defendants to defeat class actions through arbitrations by declaring clauses requiring the parties to submit such disputes to private arbitrations to be void. However, it has remained an open question as to whether and when courts would enforce arbitration clauses in other contexts, where the effect of such enforcement would be to defeat a proposed class proceeding.
- **When intention matters: assessing the enforceability of termination clauses** – An invalid termination clause is a former employee's golden ticket for employment litigation, increasing a notice period from the statutory minimum to what is reasonable at common law. The monetary difference can be substantial. Given the financial implications, there is a large and growing body of case law on when a termination clause will be deemed unenforceable.
- **Severing a Single Sentence: The Interplay of the Employment Standards Act and Severability Clauses** – Employers sometimes rely on severability clauses—which provide that any clauses that are found to be illegal or unenforceable are severed from the agreement and that the agreement otherwise remains in effect—to hedge against the risk that clauses in employment contracts could be found to run afoul of the *Employment Standards Act* and be unenforceable as a whole. However, in its recent decision in *North v Metaswitch Networks Corporation*, the Court of Appeal for Ontario signalled that these clauses have limited effect when parties include terms in agreements that contract out of minimum employment standards.
- **Practice and Policies: Discretion in Bonus Allocation** – Justice Diamond's decision in *Singer v Nordstrong Equipment Limited* provides valuable insight with respect to a terminated employee's entitlement to a bonus payment during the reasonable notice period.
- **Resignation or Termination? New Guidance on Navigating Constructive Dismissals** – In most cases, an employee who resigns

voluntarily from employment is not legally entitled to damages. However, the line between resignation and constructive dismissal has become increasingly blurred and is a common issue of contention in employment litigation. In the recent case of *Persaud v Telus Corporation*, the Ontario Court of Appeal provides useful guidance regarding the effect of conduct in determining whether a resignation is actually a constructive dismissal.

- **The Complexities of Summary Judgment under Simplified Procedure** – Rule 76 of the *Rules of Civil Procedure* provides a set of simplified rules for use in smaller and, in theory, less complicated matters. However, exactly how those rules apply in certain contexts is not always apparent. In *Singh v Concept Plastics Limited*, the Ontario Court of Appeal recently addressed the challenges of summary judgment motions in the context of the simplified rules.
- **Active Employment Clause Not Enough: Common Law Right to Damages Must be Ousted** – An “active employment” clause in a bonus plan is not sufficient to extinguish an employee’s right to damages for lost bonuses in a wrongful dismissal action. This principle was affirmed by the Ontario Court of Appeal in the recent decision of *Paquette v TeraGo Networks Inc.*
- **Can an employee refuse reinstatement and still claim damages for wrongful dismissal?** – It is well established that an employee who has been dismissed from his or her position has a duty to mitigate their damages by seeking reemployment. The central question is whether a reasonable person in the employee’s position would have accepted the offer of employment.
- **Supreme Court Clarifies the Test for Constructive Dismissal** – In *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10, the Supreme Court clarified and reformulated the law on constructive dismissal.

The plaintiff, Potter, was a lawyer employed as Executive Director of the defendant Legal Aid Services Commission. After the relationship between them deteriorated, the Commission placed Potter on an indefinite administrative leave with pay, without providing any reasons for doing so. Potter sued for damages for constructive dismissal – and lost.

However, Potter succeeded at the Supreme Court, with a unanimous result, although split 5-2 on the reasons for it. Wagner J., who wrote the main judgment, held that constructive dismissal of a non-unionized employee occurs if one of the following two branches (or tests) is satisfied:

1. *The employer makes a single unilateral change, thereby breaching an express or implied term of the employment, and this breach substantially alters an essential term of the contract.* For the purposes of the first part of this test, the employee is entitled to rely on matters known to the employer but unknown to the employee at the relevant time. Under the second part of the test, the court must determine whether the change made by the employer is reasonable from the standpoint of a reasonable person in the same circumstances as the employee. At this stage, only those facts which the employee actually knew or could reasonably have foreseen may be considered.
2. *A course of conduct engaged in by the employer, viewed in the light of all of the circumstances, would lead a reasonable person to conclude that the employer no longer intends to be bound by the contract.* Under this test, the employee is not required to point to any specific substantial change to an essential contractual term.

Wagner J. further held that, where an administrative suspension is at issue, the burden is on the employer to establish that the suspension was reasonable and justified.

Potter met the first branch of the test. First, the Commission made a unilateral change constituting breach of the employment contract by suspending him. The Commission failed to meet the basic requirement of good faith by withholding from Potter the reason for the suspension, and, as such, could not argue that it was acting under an implied contractual authority. The suspension was therefore not justified. Second, it was reasonable in the circumstances for Potter to perceive the unauthorized unilateral suspension to be a substantial change to the contract.

Potter also illustrates the importance of honesty and good faith in an employer's dealings with its employees. It establishes that an employer cannot avoid a finding of constructive dismissal merely by continuing to pay the employee. The suspending employer must ensure that it can show that the suspension has a legitimate business reason.

- **Court of Appeal makes certification of class actions for overtime pay more difficult** – Canadian Courts have been faced in recent years with a number of class actions in which employees allege that their employer improperly misclassified them as ineligible for overtime pay. The Ontario Court of Appeal's recent decision in *Brown v. Canadian Imperial Bank of Commerce* makes it more difficult for such claims to proceed as class actions.

SELECT NEWS ARTICLES

- **Lenczner Slaght Litigators Elected to The Advocates' Society's Leadership** – We are pleased to announce that Sahar Talebi, Aoife Quinn, Aaron Grossman, Christopher Yung, Paul-Erik Veel, and Andrew Parley will be serving prominent leadership positions at The Advocates' Society, a preeminent organization dedicated to promoting effective advocacy and access to justice.
- **Lenczner Slaght Stands Out as a Top-Tier Litigation Firm in Legal 500 Canada** – Canada's leading litigation firm is once again recognized as a "litigation powerhouse" according to *Legal 500 Canada*.
- **Lenczner Slaght Litigators Recognized as Best Lawyers in Canada** – In the latest edition of *Best Lawyers in Canada*, 41 of our expert litigators are recognized for their expertise across 24 practice areas. The following lawyers have also been recognized as "Lawyer of the Year" for receiving the highest overall peer-feedback in their practice areas in Toronto.
- **Lenczner Slaght Stands Out as a "Litigation Powerhouse" in Legal 500 Canada** – Canada's leading litigation firm is once again ranked in Tier 1 for Dispute Resolution by *Legal 500 Canada*.
- **Lenczner Slaght Ranked Band 1 in Chambers Canada for 5th Consecutive Year** – Canada's leading litigation firm and its expert litigators continue to be recognized in the latest edition of world-renowned directory, Chambers & Partners.
- **Lenczner Slaght Litigators Recognized Among the Best Lawyers in Canada** – In the latest edition of *Best Lawyers in Canada*, 39 of our expert litigators are recognized by their peers for their expertise across 24 practice areas.
- **Legal 500 Highlights Lenczner Slaght's Litigation Dominance** – Legal 500 recognizes Canada's leading litigation firm as "a regular fixture in the country's ground-breaking contentious cases".
- **Chambers Canada Recognizes Lenczner Slaght's Litigation Excellence** –

Canada's leading litigation firm and its expert litigators continue to advance their position in the latest edition of world-renowned directory, Chambers & Partners.

- **Benchmark Canada Recognizes Lenczner Slaght as a "Powerhouse"** – Canada's leading litigation firm continues to be recognized with the top tier ranking of "Highly Recommended in Ontario" for its Dispute Resolution practice.
- **Legal 500 Recognizes Lenczner Slaght's Top-Tier Litigation Expertise** – Canada's leading litigation firm is "recognized across the country as a force in complex disputes" according to Legal 500.
- **Best Lawyers in Canada Recognizes Lenczner Slaght's Litigation Expertise** – Lenczner Slaght is proud to announce that 33 of our expert litigators are recognized in *Best Lawyers in Canada 2021*. Our lawyers received a total of 128 rankings, up from 100 in 2020.
- **Lenczner Slaght is Named a Top-Tier Firm in Legal 500 Rankings** – Along with the firm's Tier 1 ranking in Dispute Resolution with four leading lawyers and one next generation lawyer recognized, Lenczner Slaght is also ranked in Intellectual Property, Labour and Employment, and Competition and Antitrust.
- **Three Lenczner Slaght cases featured in Lexpert's Top 10 Business Decisions of 2015** – Canada's leading litigation practice acted as counsel on the top case in Lexpert's annual ranking
- **20 Lenczner Slaght Lawyers Recognized in 2015 Lexpert Directory** – Recognized by Canadian Legal Lexpert® Directory as leading practitioners.
- **Did the Supreme Court clarify or muddy the duty of good faith?** – Eli Lederman was quoted in the May, 2015 issue of Lexpert Magazine in relation to his involvement and his insight into the decision in *Bhasin v. Hrynew et al.*
- **Lexpert Big Suits: Bhasin v. Hrynew et al.** – Eli Lederman, Jon Laxer and Constanza Pauchulo appellant counsel to Heritage Education Funds Inc. and Larry Hrynew in *Bhasin v. Hrynew et al.* were mentioned in Lexpert Magazine's February 2015 issue.
- **Premier practice comprised of Toronto's premier litigators** – Legal 500 Canada recommends Lenczner Slaght in Dispute Resolution, Intellectual Property, Labour and Employment Law.
- **Social Media in the Workplace** – Following the webinar on Practical Tools to Reduce your Organization's Risk with Social Media Use which took place on October 17, 2014, Matthew Sammon, Jaan Lilles and Dena Varah were quoted in an article in the Winter issue of the CCCA Magazine which highlights the key takeaways.
- **Contract law blockbuster leaves counsel with lingering questions - 'Good faith' duty will spur litigation, lawyers predict** – Eli Lederman was quoted in the Lawyers Weekly on November 28, 2014 in relation to his involvement in *Bhasin v. Hrynew et al.*
- **SCC establishes duty of honesty between contracting parties** – Eli Lederman provides insight on *Bhasin v. Hrynew et al.* in the November 24, 2014 issue of Law Times.
- **SCC establishes duty of honesty between contracting parties** – Eli Lederman was quoted in the Canadian Lawyer, Legal Feeds Blog on November 13, 2014 in relation to his involvement in *Bhasin v. Hrynew et al.*
- **Supreme Court of Canada imposes general duty of good faith in contract performance** – Eli Lederman, Jon Laxer and Constanza Pauchulo

were mentioned in the Financial Post on November 13, 2014 in relation to their involvement in a leading Supreme Court of Canada case on good faith in contracts (*Bhasin v. Hrynew et al.*)

- **Employment lawyers big on summary judgment** – Matthew Sammon was quoted in LawTimes on November 10, 2014 regarding summary judgment and employment law: Ontario lawyers are embracing summary judgment motions for a variety of matters, especially since the Supreme Court weighed in on the issue in *Hryniak v. Mauldin*.
- **Lenczner Slaght Welcomes Four New Associates** – Canada's leading litigation practice grows to 53 lawyers.
- **Lenczner Slaght Increases Rankings in 2014 Lexpert Directory** – Canada's leading litigation practice continues to add new names to the list.
- **Lenczner Slaght in Top Tier and 11 Lawyers Ranked as Stars** – Canada's leading litigation practice also wins two national impact cases.
- **Ex-Hydro Boss Pursuing \$33k "Monthly" Pension** – Alan J. Lenczner, Q.C. to appear in the Court of Appeal on behalf of former Hydro One Executive.