



LABOUR RELATIONS - LEGAL

WorkSafeBC Investigations Lack Criminal Protocol

McCarthy Tetrault – The investigative report prepared by WorkSafeBC (WSBC) into the Burns Lake Sawmill explosion has precluded the Crown from pressing criminal charges against the owners of the sawmill.

The WSBC investigative procedures do not require obtaining warrants or instructing individuals on their Charter Rights. So WSBC investigators entered the Sawmill without a warrant and when they conducted interviews did not review Charter Rights with those questioned. The BC Criminal Justice Branch is declining to pursue charges against the Burns Lake Sawmill owner due to the inadmissibility of significant portions of Worksafe's report.

WSBC has announced they will review their investigative procedures and may institute a parallel investigative procedure where there are potential criminal charges.

Federal Court - Landmark Decision on Family Status

CCPartners – In a recent decision by the Federal Court, the test for establishing a prima facie case for family status discrimination is at odds with the most recent British Columbia Court of Appeal analysis.

A Canada Border Service Agency (CBSA) employee twice requested fixed day shifts to allow her to arrange for childcare for her two young children. Full time shifts were constantly changing at the workplace with unpredictable hours. Only part time status offered fixed shifts. The employee wished to keep her full time status in order to maintain her pension and benefits.

The CBSA did not believe that childcare fell into family status discrimination and therefore did not see a duty to accommodate.

The Canadian Human Rights Tribunal held that the employee's complaint was substantiated. On appeal, the Federal Court upheld the Tribunal's decision and went further to establish the test: there is a case for family status discrimination when an employment rule interferes with an employee's ability to fulfill "substantial parental obligations...in any realistic way."

This decision is at odds with the BC Court of Appeal test which states there must be a "serious interference" with the parental duty before a case of discrimination can be made.

**SCC Ruling Presents Immediate
Relevance for Employment Contracts**

McCarthy Tetrault – On December 13, 2013, the Supreme Court of Canada (SCC) published a decision ruling that pension benefits should not be used to reduce wrongful dismissal damages.

An employee of IBM Canada with 42 years tenure was fired without cause and given two months notice. The employee sued for 24 months notice. IBM Canada insisted pension benefits be deducted during the notice period. The BC Supreme Court held that the employee was entitled to 20 months notice with no deductions to pension benefits during that time. The BC Court of Appeal dismissed IBM's appeal. The SCC upheld the Court of Appeal decision.

In 1997, a decision by the SCC allowed disability benefits collected during the notice period to be deducted from the severance in lieu of notice.

The SCC distinguished the cases on three points but of interest was the distinguishing factor that it is impossible to collect disability benefits and employment income at the same time but it is possible to receive both pension payments and employment income in certain circumstances.

The Court noted that pension payments made during the notice period can be deducted if it is expressly written into the employment contract or pension plan.