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Vancouver Labour Arbitration & Policy Conference

November 21, 2024



Vancouver Labour Arbitration and Policy Conference

Thursday, November 21, 2024



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8:00 a.m.	Breakfast
9:00 a.m.	Introduction
9:05 a.m.	<p>Panel 1 Current and Critical: Experts examine recent cases and legislative developments</p>
10:35 a.m.	Break
10:50 a.m.	<p>Panel 2 New Rules for Return to Work: The duty to cooperate and maintain employment under the Workers Compensation Act</p>
11:45 a.m.	Break
11:55 a.m.	<p>Keynote Dr. Chris Stewart-Patterson - Invisible Disability in the Workplace</p>
12:30 p.m.	Lunch
1:25 p.m.	<p>Panel 3 Different Roads to Resolution: Conducting effective investigations or making the most of ADR</p>
2:30 p.m.	Break
2:45 p.m.	<p>Panel 4 Beliefs and Boundaries: Reconciling employee freedom of speech and legitimate employer concerns</p>
4:00 p.m.	Closing remarks

Continuing Professional Development



This program has been approved by **CPHR Alberta** for **5.25 Continuing Professional Development hours**.



This program has been approved by **CPHR BC & Yukon** for **5.25 Continuing Professional Development hours**.



- This program has been approved by the **Law Society of British Columbia** for **5.25 Continuing Professional Development hours**.
Event ID: LH101122102

Panel 1 - Current and Critical: Experts examine recent cases and legislative developments

November 21, 2024, 9:05 a.m. – 10:35 a.m. PT

Panelists

Jitesh Mistry, Labour Arbitrator/Mediator, Mistry ADR

Lindsie Thomson, Employer Counsel, Harris & Company LLP

Carolyn Janusz, Union Counsel, GoodWin Law LLP

In this panel, experts will address recent cases and legislative developments impacting federally and provincially regulated workplaces.

Panelists will discuss the latest cases on the following topics:

- Discipline and dismissal;
- Discrimination, harassment, and accommodation;
- Workplace investigations;
- Privacy and computer access;
- Refusal to vaccinate;
- Remote work; and
- Collective bargaining and the right to strike.

Panelists will also examine recent legislative initiatives:

- An increase in B.C.'s minimum wage;
- Amendments to workers' rights to strike under B.C.'s *Labour Relations Code*;
- Employers' and workers' duties under B.C.'s *Workers Compensation Act*;
- Gig workers' rights in B.C.;
- Employers' obligations under the federal *Accessible Canada Act*, and
- Changes to the *Canada Labour Code* regarding termination and the right to disconnect.

Break

10:35 a.m. – 10:50 a.m. PT

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Panel 1 – Current and Critical: Experts examine recent cases and legislative developments

1. Discipline and Dismissal

- 1.1 "Dismissal upheld for employee's use of offensive language during training session," *Telecommunications Workers Union, USW Local 1944 v. Telus Communications Inc.*, 2024 CanLII 29328 (BC LA), Lancaster's *Discharge and Discipline*, eAlert No. 311
- 1.2 "Arbitrator upholds dismissal of IT technician who downloaded cryptocurrency mining software on employer's computers," *Saskatchewan Government and General Employees' Union, Local 4039-03 v. North West College*, 2024 CanLII 34864 (SK LA), Lancaster's *Discharge and Discipline*, eAlert No. 312
- 1.3 "B.C. Human Rights Tribunal summarily dismisses teacher's complaint alleging religious discrimination following dismissal for posting videos on YouTube expressing views against abortion, homosexuality, and non-Christian religions," *Glebov v. Fraser International College*, 2024 BCHRT 19 (CanLII), Lancaster's *Human Rights in Employment*, eAlert No. 387
- 1.4 "Employer was entitled to dismiss employee for non-culpable absenteeism after four-year absence, B.C. labour board confirms," *Regional District of Central Okanagan v. Canadian Union of Public Employees, Local 338*, 2023 BCLRB 180 (CanLII), Lancaster's *Disability and Accommodation*, eAlert No. 320
- 1.5 "Labour board dismisses firefighter's DFR complaint due to prematurity," *RL v. Prince George Fire Fighters Association, Local No. 1372*, 2023 BCLRB 150 (CanLII), Lancaster's *Labour Board Law*, eAlert No. 172

See also: Claire Wanhella, Kristen Shaw, & Melanie Harmer, "BC Court of Appeal Improves Predictability for Employers Relying on Termination Provisions," McMillan LLP, June 19, 2024, online: <https://mcmillan.ca/insights/publications/bc-court-of-appeal-improves-predictability-for-employers-relying-on-termination-provisions/>

See also: Rhonda Levy et al., "20 Key Developments in Canadian Labour and Employment Law in 2023," Littler Mendelson P.C., January 2, 2024, online: <https://www.littler.com/publication-press/publication/20-key-developments-canadian-labour-and-employment-law-2023>

2. Discrimination, harassment, and accommodation

- 2.1 "Employee's disability was a factor in employer's decision to discontinue his benefits, Tribunal rules, but not in the decision to terminate his employment," *Mynett v. Associated Engineering (B.C.) Ltd.*, 2024 BCHRT 123 (CanLII), Lancaster's *Disability and Accommodation*, eAlert No. 324
- 2.2 "Requirement that employee in safety-sensitive job be clean-shaven at all times was a *bona fide* occupational requirement, arbitrator rules," *International Brotherhood of Electrical Workers, Local 213 v. Fortis BC Energy Inc.*, 2024 CanLII 33103 (BC LA), Lancaster's *Labour Arbitration*, eAlert No. 343
- 2.3 "Human rights tribunal declines to summarily dismiss complaint as supervisor's comments could indicate that anti-Black racism contributed to employee's dismissal," *Fyffe v. University of British Columbia*, 2024 BCHRT 88 (CanLII), Lancaster's *Human Rights in Employment*, eAlert No. 390
- 2.4 "B.C. Supreme Court amends class definition in WestJet class action to provide that class period ends when collective begins," *Lewis v. WestJet Airlines Ltd.*, 2023 BCSC 1921 (CanLII), Lancaster's *Gender, Equity and Work-Life Balance*, eAlert No. 178
- 2.5 "Human rights tribunal awards \$25,000 for injury to dignity to 13-year-old Black employee who resigned after discriminatory accusation of theft," *Young Worker v. Heirloom and Another*, 2023 BCHRT 137 (CanLII), Lancaster's *Human Rights in Employment*, eAlert No. 384
- 2.6 "Employee's sexual harassment of subordinate at 'lower end of spectrum,' did not amount to just cause for dismissal, appeal court confirms," *Cho v. Café La Foret Ltd.*, 2023 BCCA 354 (CanLII), Lancaster's *Wrongful Dismissal and Employment Law*, eAlert No. 591
- 2.7 "Arbitrator upholds correctional institute's decision to place pregnant security officer on unpaid leave until she could complete use-of-force training following her pregnancy," *BCGEU v. Government of British Columbia*, 2023 CanLII 88236 (BC LA), Lancaster's *Public Service and Crown Agency Employment Law*, eAlert No. 190

See also: *Ms. L v. Clear Pacific Holdings Ltd. and others*, 2024 BCHRT 14 (CanLII), online: <https://canlii.ca/t/k2qhb> [Editors' Note: The B.C. Human Rights Tribunal awarded a personal executive assistant \$170,241.53 in compensation, lost wages, and expenses after finding her employer liable for discrimination based on sex and disability.]

3. Workplace investigations

- 3.1 "Tribunal summarily dismisses human rights complaint, ruling that employer's investigation and settlement offer adequately resolved complaint," *Salanguit v. Parq Vancouver and Another*, 2024 BCHRT 119 (CanLII), Lancaster's *Workplace Investigations*, eAlert No. 9
- 3.2 "Employer's investigation into union steward's statements at union meeting constituted unfair labour practice, labour board rules," *British Columbia Teachers' Federation (North Vancouver Teachers' Association) v. Board of School Trustees of School District No. 44*, 2024 BCLRB 16 (CanLII), Lancaster's *Workplace Investigations*, eAlert No. 8

4. Privacy and computer access

- 4.1 "*Charter* applies to public school boards, Supreme Court rules, finding principal's search of teacher's laptop raised issue of *Charter* protection against unreasonable search and seizure, which should have been addressed by arbitrator," *York Region District School Board v. Elementary Teachers' Federation of Ontario*; Supreme Court of Canada; 2024 SCC 22 (CanLII), Lancaster Priority Alert, June 21, 2024 [*Editors' Note*: For a copy of the full decision, please see: <https://canlii.ca/t/k5cq6>.]
- 4.2 "Arbitrator declines union's request for interim order prohibiting airline's use of hair strand drug testing," *CUPE, Air Canada Component v. Air Canada*, 2024 CanLII 46083 (CA LA), Lancaster's *Workplace Privacy Law*, eAlert No. 63
- 4.3 "Accountant's surreptitious recording of co-workers was cause for dismissal, appeal court confirms," *Shalagin v. Mercer Celgar Limited Partnership*, 2023 BCCA 373 (CanLII), Lancaster's *Wrongful Dismissal and Employment Law*, eAlert No. 594
- 4.4 "Court of Appeal confirms employer's vicarious liability in class action for breach of insured motorists' privacy by employee who sold their personal information," *Insurance Corporation of British Columbia v. Ari*, 2023 BCCA 331 (CanLII), Lancaster's *Workplace Privacy Law*, eAlert No. 60

5. Refusal to vaccinate

- 5.1 "Employer's decision to place remote worker on unpaid leave for failure to comply with COVID-19 vaccine mandate unreasonable, arbitrator rules," *Ontario Public Service Employees Union, Local 110 v. Fanshawe College*, 2024 CanLII 11422 (ON LA), Lancaster's *Labour Arbitration*, eAlert No. 340
- 5.2 "Employer's 'automatic application' of its 'vaccine or test' policy to terminate the employment of two non-compliant employees was unreasonable, arbitrator rules," *Unifor, Local 594 v. Consumers' Co-Operative Refineries Ltd.*, 2023 CanLII 88216 (SK LA), Lancaster's *Discharge and Discipline*, eAlert No. 306

- 5.3 "Arbitrator upholds dismissal for refusal to comply with vaccinate-or-test policy," *Amalgamated Transit Union, Local 569 v. Edmonton (City)*, 2023 CanLII 69574 (AB GAA), Lancaster's *Health and Safety/Workers' Compensation Law*, eAlert No. 279
- 5.4 "Community health worker who refused to be vaccinated against COVID-19 for religious reasons was unjustly dismissed, arbitrator holds," *United Food & Commercial Workers Local 1518 v. Island Health*, 2023 CanLII 2827 (BC LA), Lancaster's *Human Rights in Employment*, eAlert No. 377
- 5.5 "B.C. labour board denies union request for interim injunction against employers' mandatory vaccination policies, holding that breach of statutory obligation to consult could be addressed by other remedies," *Canadian Office and Professional Employees' Union, Local 378 v. Insurance Corporation of British Columbia and Others*, 2021 BCLRB 181 (CanLII), Lancaster's *Labour Board Law*, eAlert No. 153

See also: *Glenda Roselle*, 2024 BCLRB 111 (CanLII), online: <https://canlii.ca/t/k6dhm> [Editors' Note: The B.C. Labour Relations Board held that the union failed to fulfil its duty of fair representation because it withdrew the applicant's grievance of her suspension for not complying with the employer's COVID-19 vaccination policy.]

See also: *Hoogerbrug v. British Columbia*, 2024 BCSC 794 (CanLII), online: <https://canlii.ca/t/k4k62> [Editors' Note: The B.C. Supreme Court examined the constitutionality of COVID-19-related restrictions imposed by the Provincial Health Officer under the *Provincial Health Act*.]

See also: *Croke v. VuPoint System Ltd.*, 2024 ONCA 354 (CanLII), online: <https://canlii.ca/t/k4h1m> [Editors' Note: The Ontario Court of Appeal upheld a motion judge's decision that an employee's failure to comply with his employer's vaccination requirements amounted to a frustration of contract, disentitling him to wrongful dismissal damages at common law.]

See also: *London Health Sciences Centre v. Unifor Local 27*, 2024 CanLII 48714 (ON LA), online: <https://canlii.ca/t/k4xkw> [Editors' Note: The arbitrator held that because the employer's vaccination policy was reasonable and the grievor refused to follow it, some discipline was warranted for the grievor's failure to comply.]

6. Remote work

- 6.1 "Employer's limitations on remote work breached collective agreement, arbitrator rules," *Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO) v. The Crown in Right of Ontario (Ministry of Children, Community and Social Services)*, 2024 CanLII 8294 (ON GSB), Lancaster's *Labour Arbitration*, eAlert No. 342

See also: Daisy Xiong, "As B.C. companies urge in-office returns, HR pros say hybrid work here to stay," *BIV RSS Newsletter*, Business Intelligence for B.C., June 11, 2024, online: <https://www.biv.com/biv-rss-newsletter/as-bc-companies-urge-in-office-returns-hr-pros-say-hybrid-work-here-to-stay-9069815>

7. Collective bargaining and the right to strike

- 7.1 "Parliamentary privilege does not preclude the application of the *Labour Relations Code* to special provincial constables employed by the Legislative Assembly, court confirms," *British Columbia (Legislative Assembly) v. Illi*, 2023 BCSC 1671 (CanLII), Lancaster's *Collective Bargaining*, eAlert No. 147
- 7.2 "Federal government introduces legislation to ban the use of strike replacement workers," Bill C-58, *An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012*, Lancaster's *Federal Labour and Employment Law*, eAlert No. 162 [*Editors' Note*: For the text of the legislation, see: Bill C-58, *An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012*, 1st Sess., 44th Parl., Canada, 2024 (assented to on June 20, 2024), online: <https://www.parl.ca/legisinfo/en/bill/44-1/c-58.>]
- 7.3 "ILO refers issue of right to strike to International Court of Justice," Convention No. 87, *Freedom of Association and Protection of the Right to Organise Convention, 1948*, Lancaster's *Labour Law News*, eAlert No. 519 [*Editors' Note*: For the full text of the Convention, see: Convention No. 87, *Freedom of Association and Protection of the Right to Organise Convention, 1948*, International Labour Organization, online: https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_IL O_CODE:C087:NO.]

8. Legislative Updates

- 8.1 "British Columbia government launches review of B.C. *Labour Relations Code*," *Labour Relations Code Review 2024*, Government of British Columbia, Lancaster's *Labour Law News*, eAlert No. 522 [*Editors' Note*: For an overview of the review process, see: "Labour Relations Code Review 2024," Government of British Columbia, online: [https://engage.gov.bc.ca/govtogetherbc/engagement/labour-relations-code%20review/#:~:text=Appointed%20in%20January%202024%2C%20the,protections%20enjoyed%20by%20other%20Canadians0/.](https://engage.gov.bc.ca/govtogetherbc/engagement/labour-relations-code%20review/#:~:text=Appointed%20in%20January%202024%2C%20the,protections%20enjoyed%20by%20other%20Canadians0/)]
- 8.2 "Federal employers now required to provide employees with free menstrual products," *Regulations Amending Certain Regulations Made Under the Canada Labour Code (Menstrual Products)*, S.O.R./2023-78, Lancaster's *Labour Law News*, eAlert No. 522 [*Editors' Note*: For the news release on these regulations, see: "Menstrual products now available at no cost to employees in federally regulated workplaces," *News Release*,

Employment and Social Development Canada, Government of Canada, December 15, 2023, online: <https://www.canada.ca/en/employment-social-development/news/2023/12/menstrual-products-now-available-at-no-cost-to-employees-in-federally-regulated-workplaces.html>.]

- 8.3 "British Columbia introduces new obligations for injured workers and employers," Bill 41, *Workers Compensation Amendment Act (No. 2), 2022*, Lancaster's *Labour Law News*, eAlert No. 521 [*Editors' Note*: For the full text of the legislation, see: Bill 41 – 2022, *Workers Compensation Amendment Act (No. 2), 2022*, 3rd Sess., 42nd Parl., British Columbia, 2022 (passed third reading on November 23, 2022), online: <https://www.bclaws.gov.bc.ca/civix/document/id/bills/billsprevious/3rd42nd:gov41-3>.]
- 8.4 "Federal legislation requiring disclosure of measures to prevent forced labour and child labour in supply chains in force as of January 1, 2024," Bill S-211, *Fighting Against Forced Labour and Child Labour in Supply Chains Act, 2022*, Lancaster's *Labour Law News*, eAlert No. 521 [*Editors' Note*: For the full text of the legislation, see: Bill S-211, *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff, 2022*, 1st Sess., 44th Parl., Canada, 2023 (assented to May 11, 2023), online: <https://www.parl.ca/DocumentViewer/en/44-1/bill/S-211/third-reading>]

See also: "Employment Standards Act and Regulation amendments," *Guide to the Employment Standard Act and Regulation*, Government of British Columbia, September 2, 2024, online: <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/forms-resources/igm/updates>

See also: Isaac Phan Nay, "Hope, skepticism as B.C. gig-worker regulations come into force," *CBC News*, August 28, 2024, online: <https://www.cbc.ca/news/canada/british-columbia/bc-gig-worker-regulations-1.7306709>

See also: Katy Allen, "Coming Soon: BC Employment Standards for Gig Workers," *Labour and Employment Law Blog*, Lawson Lundell LLP, July 12, 2024, online: <https://www.lawsonlundell.com/labour-and-employment-law-blog/coming-soon-bc-employment-standards-for-gig-workers>

See also: Duncan Burns-Shillington, "Changes to labour relations laws in British Columbia and Manitoba," *GENIE*, DLA Piper, June 26, 2024, online: <https://knowledge.dlapiper.com/dlapiperknowledge/globalemploymentlatestdevelopments/2024/changes-to-labour-relations-laws-in-british-columbia-and-manitoba>

See also: Maria Constantine, "2024: Employment law mid-year update," *our insights*, Cassels Brock & Blackwell LLP, June 3, 2024, online: <https://cassels.com/insights/2024-employment-law-mid-year-update/>

See also: Dianne Rideout & Gemma Walsh, "Legislative watch: New and proposed amendments to provincial legislation," *our insights*, Cassels Brock & Blackwell LLP, April 18, 2024, online: <https://cassels.com/insights/legislative-watch-new-and-proposed-amendments-to-provincial-legislation/>

See also: Michael Watt, "BC Legislative Updates: Minimum Wage Hike & Labour Relations Code Amendment Related to Picketing," *Labour + Employment Law Blog*, Alexander Holburn Beaudin + Lang LLP, March 28, 2024, online: <https://www.ahbl.ca/bc-legislative-updates/>

See also: Michelle McKinnon, "Federally regulated employers to publish accessibility plans by June 1, 2024," *our insights*, Cassels Brock & Blackwell LLP, March 7, 2024, online: <https://cassels.com/insights/federally-regulated-employers-to-publish-accessibility-plans-by-june-1-2024/>

See also: "Newly Introduced Bill C-69 Includes Important Amendments to the Canada Labour Code Stemming from Federal Government's Budget 2024," Emond Harnden LLP, online: <https://ehlaw.ca/newly-introduced-bill-c-69-includes-important-amendments-to-the-canada-labour-code-stemming-from-federal-governments-budget-2024/>

**Panel 2 - New Rules for Return to Work:
The duty to cooperate and maintain employment under the *Workers
Compensation Act***

November 21, 2024, 10:50 a.m. – 11:45 a.m. PT

Panelists

Jackie Christofferson, Counsel, WorkSafeBC

Elise Kobylanski, Manager Client Services, Return to Work Services, WorkSafeBC

Amanda Alberti, Employer Counsel, Harris & Company LLP

Peter Eastwood, Union Counsel, HHBG Lawyers

In this session, panelists will examine recent amendments to B.C.'s *Workers Compensation Act* which introduce a new "duty to cooperate" and "duty to maintain employment." Speakers will address questions including:

- What new obligations are imposed on workplace parties under the "duty to cooperate" and "duty to maintain employment"? When and to whom do these duties apply?
- What changes should employers consider making to workplace policies in order to ensure compliance with these duties? What unique challenges may arise in fulfilling these duties in a unionized workplace? What role exists for unions in the implementation and enforcement of these duties?
- Must an employer or worker file a complaint with WorkSafeBC in order to trigger an investigation into the parties' compliance with these duties? Or can WorkSafeBC initiate an investigation into parties' compliance on its own initiative?
- Where a breach of the duties has been alleged or is being investigated, what rights do parties have to provide and receive information, make submissions, and challenge any determination reached?
- What consequences may follow if WorkSafeBC determines that a party has failed to comply with its obligations under these provisions?
- Should claims relating to an employee's return to work be advanced through labour arbitration, a human rights tribunal proceeding, or through WorkSafeBC? Can parties expect to face procedural arguments that WorkSafeBC has exclusive jurisdiction over aspects of their claim?

Break

11:45 a.m. – 11:55 a.m. PT

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Panel 2 – New Rules for Return to Work: The duty to cooperate and maintain employment under the Workers Compensation Act

1. Introduction to the Duty to Cooperate and Duty to Maintain Employment

a) What new obligations are imposed on workplace parties under the "duty to cooperate" and "duty to maintain employment"? When and to whom do these duties apply?

See: *Workers Compensation Act*, R.S.B.C. 2019, c. 1, online: <https://canlii.ca/t/984d> [Editors' Note: See Part 1, Division 3, Part 3, Division 3.1, and s.191(1), 192(1), and 209.]

- 1.1 "British Columbia introduces new obligations for injured workers and employers," *Workers Compensation Amendment Act (No. 2)*, 2022, S.B.C. 2022, c. 37, Lancaster's *Labour Law News*, eAlert No. 521
- 1.2 Excerpts from: *Rehabilitation Services & Claims Manual, Volume II*, WorkSafeBC, October 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from [Current Rehabilitation Services and Claims Manual, Volume II](#) (October 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials.]
 - Re: Introduction to Return to Work Obligations, Item: C5-35.00
 - Re: Duty to Cooperate, Item: C5-35.10
 - Re: Duty to Maintain Employment, Item: C5-35.20

- Re: Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment, Item: C5-35.30

- 1.3 "Practice Directive #C5-6 (INTERIM) – Return to Work Obligations: Duty to Cooperate and Duty to Maintain Employment," WorkSafeBC, January 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/compensation-practice-directives/return-work-obligations?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from [Compensation Practice Directive: #C5-6 \(Interim\)](#) (January 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials.]
- 1.4 "Practice Directive #C5-7 (INTERIM) – Administrative Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment," WorkSafeBC, January 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/compensation-practice-directives/administrative-penalties-failure-comply-duty-cooperate-duty-maintain-employment?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from [Compensation Practice Directive: #C5-7 \(Interim\)](#) (January 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials.]

See also: "Employers: Duty to cooperate and duty to maintain employment," Bill 41: *Amendments to the Workers Compensation Act*, WorkSafeBC, online: <https://www.worksafebc.com/en/law-policy/workers-compensation-law/amendments/bill-41-amendments-to-the-workers-compensation-act/employers-duty-to-cooperate-duty-to-maintain-employment>

See also: "Employers: Return-to-work information," WorkSafeBC, online: <https://www.worksafebc.com/en/claims/return-to-work/employers-return-to-work-information>

See also: "Workers: Duty to cooperate and duty to maintain employment," Bill 41: *Amendments to the Workers Compensation Act*, WorkSafeBC, online: <https://www.worksafebc.com/en/law-policy/workers-compensation-law/amendments/bill-41-amendments-to-the-workers-compensation-act/workers-duty-to-cooperate-duty-to-maintain-employment>

See also: "Workers: Return-to-work information," WorkSafeBC, online: <https://www.worksafebc.com/en/claims/return-to-work/workers-return-to-work-information>

See also: Gary Clarke, David Price, & Cameron Penn, "New Year, New Obligations in British Columbia to Maintain Employment for (Some) Injured Workers," Stikeman Elliott LLP, January 2, 2024, online: <https://www.stikeman.com/en-ca/kh/canadian-employment-labour-pension-law/new-year-new-obligations-in-british-columbia-to-maintain-employment-for-some-injured-workers>

See also: Cole Mailloux, "Employer alert: New requirements under the BC *Workers Compensation Act* in effect Jan. 1, 2024," Gowling WLG, December 12, 2023, online: <https://gowlingwlg.com/en-ca/insights-resources/articles/2023/new-requirements-under-bc-workers-compensation-act>

See also: Eleni Kassaris & Rachel Au, "New updates to British Columbia's *Workers Compensation Act*," Dentons, December 5, 2023, online: <https://www.dentons.com/en/insights/alerts/2023/december/5/new-updates-to-british-columbias-workers-compensation-act>

b) What consequences may follow if WorkSafeBC determines that a party has failed to comply with its obligations under these provisions?

See also: *Workers Compensation Act*, R.S.B.C. 2019, c. 1, online: <https://canlii.ca/t/984d> [Editors' Note: See s.154.2(4)-(6), 154.3(8)-(12), 154.5, and 209.]

See also Document 1.2: Excerpts from: *Rehabilitation Services & Claims Manual, Volume II*, WorkSafeBC, October 1, 2024, pp. 341–374, online: <https://www.worksafebc.com/en/resources/law-policy/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from *Current Rehabilitation Services and Claims Manual, Volume II* (October 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials]

- Re: Duty to Cooperate, Item: C5-35.10, pp. 2–3, 6–9
- Re: Duty to Maintain Employment, Item: C5-35.20, pp. 2–4, 11–13

See also Document 1.3: "Practice Directive #C5-6 (INTERIM) – Return to Work Obligations: Duty to Cooperate and Duty to Maintain Employment," WorkSafeBC, January 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/compensation-practice-directives/return-work-obligations?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from *Compensation Practice Directive: #C5-6 (Interim)* (January 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials.] [Editors' Note: See pp. 11–12 and 18.]

See also Document 1.4: "Practice Directive #C5-7 (INTERIM) – Administrative Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment," WorkSafeBC, January 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/compensation-practice-directives/administrative-penalties-failure-comply-duty-cooperate-duty-maintain-employment?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from *Compensation Practice Directive: #C5-7 (Interim)* (January 1, 2024 version).

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2. Investigations

a) How are investigations into parties' compliance engaged?

See: *Workers Compensation Act*, R.S.B.C. 2019, c. 1, online: <https://canlii.ca/t/984d> [Editors' Note: See s.154.2(4), 154.3 (7) and (10)–(11), 341, and 346.]

See also Document 1.2: Excerpts from: *Rehabilitation Services & Claims Manual, Volume II*, WorkSafeBC, October 1, 2024, pp. 341–374, online: <https://www.worksafebc.com/en/resources/law-policy/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from *Current Rehabilitation Services and Claims Manual, Volume II* (October 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials]

- Re: Duty to Cooperate, Item: C5-35.10, p. 2 and 6
- Re: Duty to Maintain Employment, Item: C5-35.20, pp. 2–4 and 11–12
- #98.00 Investigation of Claims

b) Where a breach of the duties has been alleged or is being investigated, what rights do parties have to provide and receive information, make submissions, and challenge any determination reached?

See: *Workers Compensation Act*, R.S.B.C. 2019, c. 1, online: <https://canlii.ca/t/984d> [Editors' Note: See s.122-125, 127-128, 131, 153-154, 154.2(1)(c)-(d), (2)(c), & (4)-(6), 154.3(7)-(11), 154.5(1)-(2), 267-276, 287-315, and 338-349.]

See also Document 1.2: Excerpts from: *Rehabilitation Services & Claims Manual, Volume II*, WorkSafeBC, October 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from *Current Rehabilitation Services and Claims Manual, Volume II* (October 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials]

- Re: Duty to Cooperate, Item: C5-35.10, pp. 1–2 and 6–7
- Re: Duty to Maintain Employment, Item: C5-35.20, pp. 2–3 and 11–12

- Re: Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment, Item C5-35.30, p. 2
- #97.00 Evidence
- #97.10 Evidence Evenly Weighted
- #97.30 Medical Evidence
- #98.00 Investigation of Claims
- #98.20 Conduct of Inquiries
- #99.00 Disclosure of Information
- #99.10 Disclosure of Issues Prior to Adjudication
- #99.20 Notification of Decisions
- #99.30 Disclosure of Claim Files
- Reviews and Appeals – Workers' Compensation Appeal Tribunal, Item: C13-102.00
- Changing Previous Decisions – General, Item: C14-101.01
- Changing Previous Decisions – Reconsiderations, Item: C14-103.01

See also Document 1.3: "Practice Directive #C5-6 (INTERIM) – Return to Work Obligations: Duty to Cooperate and Duty to Maintain Employment," WorkSafeBC, January 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/compensation-practice-directives/return-work-obligations?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from [Compensation Practice Directive: #C5-6 \(Interim\)](#) (January 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials.] [*Editors' Note:* See pp. 7–10 and 17.]

See also Document 1.4: "Practice Directive #C5-7 (INTERIM) – Administrative Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment," WorkSafeBC, January 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/compensation-practice-directives/administrative-penalties-failure-comply-duty-cooperate-duty-maintain-employment?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from [Compensation Practice Directive: #C5-7 \(Interim\)](#) (January 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials.] [*Editors' Note:* See pp. 1–3.]

3. What changes should employers consider making to workplace policies in order to ensure compliance with these duties? What unique challenges may arise in fulfilling these duties in a unionized workplace? What role exists for unions in the implementation and enforcement of these duties?

See: *Workers Compensation Act*, R.S.B.C. 2019, c. 1, online: <https://canlii.ca/t/984d> [Editors' Note: See s.154.4.]

See also Document 1.2: Excerpts from: *Rehabilitation Services & Claims Manual, Volume II*, WorkSafeBC, October 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from *Current Rehabilitation Services and Claims Manual, Volume II* (October 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials]

- Re: Duty to Cooperate, Item: C5-35.10, pp. 2 and 4
- Re: Duty to Maintain Employment, Item: C5-35.20, pp. 3–4

See also Document 1.3: "Practice Directive #C5-6 (INTERIM) – Return to Work Obligations: Duty to Cooperate and Duty to Maintain Employment," WorkSafeBC, January 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/compensation-practice-directives/return-work-obligations?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from *Compensation Practice Directive: #C5-6 (Interim)* (January 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials.] [Editors' Note: See p. 4.]

4. How do these obligations relate to and differ from parties' obligations under human rights legislation?

See: *Workers Compensation Act*, R.S.B.C. 2019, c. 1, online: <https://canlii.ca/t/984d> [Editors' Note: See s.154.3(5).]

See also Document 1.2: Excerpts from: *Rehabilitation Services & Claims Manual, Volume II*, WorkSafeBC, October 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from *Current Rehabilitation Services and Claims Manual, Volume II* (October 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials]

- Re: Introduction to Return to Work Obligations, Item C5-35.00, pp. 1–2 and 4
- Re: Duty to Cooperate, Item C5-35.10, p. 1
- Re: Duty to Maintain Employment, Item C5-35.20, pp. 1–2, 4, and 9–10

See also Document 1.3: "Practice Directive #C5-6 (INTERIM) – Return to Work Obligations: Duty to Cooperate and Duty to Maintain Employment," WorkSafeBC, January 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/compensation-practice-directives/return-work-obligations?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from *Compensation Practice Directive: #C5-6 (Interim)* (January 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials.] [Editors' Note: See pp. 4, 13, 16–18, and 21.]

See also: "Words and phrases used in human rights," *Glossary*, B.C. Human Rights Tribunal, online: <https://www.bchrt.bc.ca/law-library/glossary/> [Editors' Note: See "duty to accommodate" and "undue hardship."]

See also: "Employment," *Human Rights and Duties*, B.C. Human Rights Tribunal, last updated May 21, 2024, online: <https://www.bchrt.bc.ca/human-rights-duties/employment/>

See also: "What is the Duty to Accommodate?," Canadian Human Rights Commission, modified November 17, 2021, online: <https://www.chrc-ccdp.gc.ca/en/about-human-rights/what-the-duty-accommodate>

5. How does an ongoing claim with WorkSafeBC relating to an employee's return to work or termination impact a party's decision to advance a matter through labour arbitration or a human rights tribunal? Can parties expect to face procedural arguments that WorkSafeBC has exclusive jurisdiction over aspects of their claim?

See: *Workers Compensation Act*, R.S.B.C. 2019, c. 1, online: <https://canlii.ca/t/984d> [Editors' Note: See s.122, 126–133, 154.4, 308–309, and 311.]

5.1 Mort Mitchnick & Brian Etherington, *Leading Cases on Labour Arbitration Online*, 2nd ed. (Toronto: Lancaster House, 2024, online),

- General – The Scope of the *Weber* Principle (1.3.1)
- Arbitration and Other Statutory Tribunals (1.3.4)

See also Document 1.2: Excerpts from: *Rehabilitation Services & Claims Manual, Volume II*, WorkSafeBC, October 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from *Current Rehabilitation Services and Claims Manual, Volume II* (October 1, 2024 version). WorkSafeBC provided

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- #2.10 Jurisdiction over Claims Adjudication

See also Document 1.3: "Practice Directive #C5-6 (INTERIM) – Return to Work Obligations: Duty to Cooperate and Duty to Maintain Employment," WorkSafeBC, January 1, 2024, online: <https://www.worksafebc.com/en/resources/law-policy/compensation-practice-directives/return-work-obligations?lang=en> [© Workers' Compensation Board ("WorkSafeBC"), reproduced with permission from [Compensation Practice Directive: #C5-6 \(Interim\)](#) (January 1, 2024 version). WorkSafeBC provided Lancaster House permission to reproduce these materials without modifications. Lancaster House is solely liable for the accuracy, quality, and reproduction of the Materials.] [*Editors' Note:* See p. 4.]

6. Further Resources

See: "Return to Work Consultation & Education Services Support Line," WorkSafeBC, online: <https://www.worksafebc.com/en/claims/return-to-work/employers-return-to-work-information/return-to-work-consultation-education-services-support-line>

Keynote by Dr. Chris Stewart-Patterson - Invisible Disability in the Workplace

November 21, 2024, 11:55 a.m. – 12:30 p.m. PT

Panelist

Dr. Chris Stewart-Patterson, CME Program Director, Harvard Medical School

Fibromyalgia, chronic fatigue syndrome, and increasingly long-COVID (Post COVID-19 Condition) are medical conditions that can have significant impairment that is not obviously visible in the workplace. There are no definitive objective tests that can demonstrate the severity of these conditions, so the question remains: how is impairment assessed in these conditions? If impairment is reliably established, then, if appropriate, what are some reasonable accommodations that can result in greater workplace satisfaction, attendance, and productivity for individuals with these conditions? The presentation aims to discuss current evidence and approaches to both issues.

Lunch

12:30 p.m. – 1:25 p.m. PT

Panel 3 – Different Roads to Resolution: Conducting effective investigations or making the most of ADR

November 21, 2024, 1:25 p.m. – 2:30 p.m. PT

Panelists

David Louie, Lawyer and Workplace Investigator, Southern Butler Price LLP

Heather Hettiarachchi, Employer Counsel, Integritas Workplace Law

Sonya Sabet-Rasekh, Staff Representative, Advocacy Department, B.C. General Employees' Union

When an employee files a complaint alleging workplace discrimination, harassment, violence, or other misconduct, an employer may take multiple pathways — short of arbitration — to resolve the complaint and restore workplace health and safety. Employers should be aware of the pros and cons of each option. In this panel, experts will explore:

- What is the difference between alternative dispute resolution (ADR), arbitration, mediation, and investigation?
- What makes an investigation effective?
- When is an employer's duty to investigate triggered? What are the pros and cons of using ADR to resolve a complaint?
- What is the role of the union in these processes? What criteria should employers focus on when selecting an appropriate mediator, ADR expert, or investigator? When is it appropriate to use an internal versus an external investigator?
- What does it mean to ensure that investigations, mediations, and other forms of ADR are conducted through a trauma-informed lens? Does it help to promote employee health, wellness, and safety?

Break

2:30 p.m. – 2:45 p.m. PT

Vancouver Labour Arbitration and Policy Conference

Thursday, November 21, 2024



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1. What is the difference between ADR, arbitration, mediation, and investigation?

1.1 Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online),

- Arbitration (11.3)
- Expedited Arbitration and Grievance Mediation (11.4)
- Investigation and Inspection (20.1.10)

1.2 Mort Mitchnick & Brian Etherington, *Leading Cases on Labour Arbitration, 2nd ed.* (Toronto: Lancaster House, 2024, online), The Rules of Natural Justice – General (1.1.1)

See also: "Choosing a Dispute Resolution Option," *Admin Law BC*, Justice Education Society of BC, September 2023, online: <https://www.adminlawbc.ca/choosing-a-dispute-resolution-option>

See also: Paul Godin, Steven Gaon, & David Bennett, "Mediating Workplace Complaints Prior to Investigations," *ADR Perspectives*, ADR Institute of Canada, December 14, 2021, online: <https://adric.ca/mediating-workplace-complaints-prior-to-investigations/>

See also: "Dispute Resolution Reference Guide," Government of Canada, modified August 25, 2022, online: <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/01.html>

See also: "Frequently Asked Questions," ADR Institute of Canada, online: <https://adric.ca/frequently-asked-questions/>

See also: "Why Use Alternative Dispute Resolution (ADR) Instead of Litigation," Stitt Feld Handy Group, online: <https://sfhgroup.com/why-use-alternative-dispute-resolution-adr-instead-of-litigation/>

2. What makes an investigation effective?

- 2.1 "Tribunal summarily dismisses human rights complaint, ruling that employer's investigation and settlement offer adequately resolved complaint," *Salanguit v. Parq Vancouver and Another*, 2024 BCHRT 119 (CanLII), Lancaster's *Workplace Investigations*, eAlert No. 9
- 2.2 "Employer does not owe a duty of care to employee when conducting a workplace investigation into alleged misconduct, court rules," *Salina v. Investors Group Financial Services Inc.*, 2023 BCSC 86 (CanLII), Lancaster's *Workplace Investigations*, eAlert No. 6
- 2.3 "Employer conducted a sufficient investigation into bullying and harassment complaint, appellate court confirms," *Ahluwalia v. British Columbia (Workers' Compensation Board)*, 2022 BCCA 165 (CanLII), Lancaster's *Health and Safety/Workers' Compensation Law*, eAlert No. 271

See also: Sarah Blanco, "10 steps to conducting a fair and effective workplace investigation," *Business in Vancouver*, December 28, 2022, online: <https://www.biv.com/news/commentary/10-steps-conducting-fair-and-effective-workplace-investigation-8270001>

See also: *BC Public School Employers Association/A Certain School District v. BC Teachers' Federation/ A Certain Teachers' Association*, 2022 CanLII 60950 (BC LA), online: <https://canlii.ca/t/jqf8n> [Editors' Note: In this case, the arbitrator held that the workplace investigation was conducted in a biased and misleading manner, thus leading to the grievor's improper dismissal.]

See also: Sharaf Sultan, "Conducting effective workplace investigations," *Workplace Investigations*, Sultan Lawyers, January 6, 2022, online: <https://sultanlawyers.com/blog/conducting-effective-workplace-investigations/>

See also: Monica Jeffrey, "Overview of Workplace Investigation Law in Canadian Jurisprudence," Association of Workplace Investigators, online: http://www.awi.org/page/canada_jurisprudence

See also: "Conducting an employer investigation," *Incident Investigations*, WorkSafeBC, online: <https://www.worksafebc.com/en/health-safety/create-manage/incident-investigations/conducting-employer-investigation>

See also: *Imperial Limousine Service Ltd. (Re)*, 2005 CanLII 93819 (BC EST), online: <https://canlii.ca/t/jcpjm> [Editors' Note: In this case, the decision-maker held that investigations into complaints filed under B.C.'s *Employment Standards Act* must be conducted in an "unbiased and neutral fashion."]

3. When is an employer's duty to investigate triggered? What are the pros and cons of using ADR to resolve a complaint?

- 3.1 Peter Neumann & Jeffrey Sack, *Wrongful Dismissal & Employment Law eText* (Toronto: Lancaster House, 2024, online), Employer's Duty to Investigate Human Rights Violations (5.2.3.3)
- 3.2 Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online),
- Employer's Obligation to Maintain a Safe and Healthy Workplace (20.1.1)
 - Prohibition of Discrimination and/or Harassment (19.3.4)
 - Sexual Harassment (19.2.1)
 - Workplace Harassment (19.2.2)
 - Workplace Abuse and Violence (19.2.3)
- 3.3 Mort Mitchnick & Brian Etherington, *Leading Cases on Labour Arbitration, 2nd ed.* (Toronto: Lancaster House, 2024, online),
- Workplace Violence – Statutory Requirements (13.3.1)
 - Definition of Sexual Harassment (13.4.1)
- 3.4 "Award reinstating workers dismissed for workplace harassment was unreasonable, court holds," *Metrolinx v. Amalgamated Transit Union, Local 1587*, 2024 ONSC 1900 (CanLII), Lancaster's *Labour Arbitration*, eAlert No. 341

See also: "Investigations – Act Part 10, Section 76," *Employment Standards Act and Regulation*, Government of British Columbia, December 4, 2023, online:

<https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/forms-resources/igm/esa-part-10-section-76>

See also: "Choosing a Dispute Resolution Option," *Admin Law BC*, Justice Education Society of BC, September 2023, online: <https://www.adminlawbc.ca/choosing-a-dispute-resolution-option>

See also: Kimberly Okyere, "Advantages of alternative dispute resolution methods in the workplace," *Litigation and Mitigation*, Sultan Lawyers, August 30, 2022, online:

<https://sultanlawyers.com/blog/advantages-of-alternative-dispute-resolution-methods-in-the-workplace/>

4. What is the role of the union in these processes? What criteria should employers focus on when selecting an appropriate mediator, ADR expert, or investigator? When is it appropriate to use an internal versus an external investigator?

4.1 Mort Mitchnick & Brian Etherington, *Leading Cases on Labour Arbitration*, 2nd ed. (Toronto: Lancaster House, 2024, online),

- Duty Of Fair Representation – Scope Of The Duty: General (9.1)
- Union Representation and Other Protections: Is the Language Mandatory or Directory? (10.6.1)
- What Triggers the Right To Union Representation? (10.6.3)

4.2 Elaine Newman, *Preventing Violence and Harassment in the Workplace* (Toronto: Lancaster House, 2012),

- Should an employer use an internal or external investigator? (11.5)
- How should the employer choose an investigator? (12.1)

4.3 "Employer directed to appoint external investigator in order to satisfy impartiality requirement in workplace violence investigation," *Employment and Social Development Canada v. Canada Employment and Immigration Union*, 2018 OHSTC 11 (CanLII), Lancaster's *Health and Safety/Workers' Compensation Law*, eAlert No. 234

4.4 "Union representative entitled to attend informal meetings of management with school board employees to investigate harassment complaints against them, arbitrator holds," *Canadian Union of Public Employees, Local 4400 v. Toronto District School Board*, [2011] O.L.A.A. No. 64 (QL), Lancaster's *Education Employment Law*, eAlert No. 42

See also: Jenny Wang, "Workplace investigations: What employers should consider when choosing an investigator," *Workplace Investigations*, Dentons, June 20, 2022, online: <https://www.employmentandlabour.com/workplace-investigations-what-employers-should-consider-when-choosing-an-investigator/>

See also: "Considerations when choosing a workplace investigator," Rubin Thomlinson LLP, April 12, 2022, online: <https://rubinthomlinson.com/considerations-when-choosing-a-workplace-investigator/>

See also: Heather Shields, "Representative or witness? Be certain before you proceed," *Insights*, Rubin Thomlinson LLP, February 22, 2022, online: <https://rubinthomlinson.com/representative-or-witness-be-certain-before-you-proceed/>

See also: "Choosing a mediator," Government of British Columbia, September 14, 2021, online: <https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/mediation/about-meditation/choosing-a-mediator>

See also: John Hyde, "When should you hire an external workplace investigator?," *OHS Canada*, June 4, 2021, online: <https://www.ohscanada.com/opinions/hire-external-workplace-investigator/>

See also: Cate Moss, "Workplace Investigations a Union Perspective," *CAWI Blog*, Association of Workplace Investigators, May 15, 2017 (updated July 18, 2017), online: <https://www.awi.org/blogpost/1627978/280900/Workplace-Investigations-a-Union-Perspective>

5. What does it mean to ensure that investigations, mediations, and other forms of ADR are conducted through a trauma-informed lens? Does it help to promote employee health, wellness, and safety?

- 5.1 "Tribunal's acceptance of testimony of sexual assault survivor despite faulty memory was reasonable, court rules, endorsing record-setting damages award," *Joe Singer Shoes Limited v. A.B.*, 2019 ONSC 5628 (CanLII), *Lancaster's Gender, Equity and Work-Life Balance*, eAlert No. 143
- 5.2 Becca Partington et al., "Trauma in organizations," *Workplace Strategies for Mental Health*, The Canada Life Assurance Company, January 1, 2016 (reviewed October 1, 2024), online: <https://www.workplacestrategiesformentalhealth.com/resources/workplace-trauma> [Reproduced with permission]

See also: Chris Osborn, "'Trauma-Informed' Mediation: 6 Key Strategies for Attorneys and Mediators," *Miles Mediation & Arbitration via JD Supra*, July 6, 2023, online: <https://www.jdsupra.com/legalnews/trauma-informed-mediation-6-key-7702576/>

See also: Katharine Manning, "We Need Trauma-Informed Workplaces," *Harvard Business Review*, March 31, 2022, online: <https://hbr.org/2022/03/we-need-trauma-informed-workplaces>

See also: Philippe Patry, "Taking a Trauma-Informed Approach in Workplace Conflict Resolution," *Global Mindful Solutions*, October 4, 2021, online: <https://globalmindfulsolutions.com/taking-a-trauma-informed-approach-in-workplace-conflict-resolution/>

See also: Angela Kambouris, "Trauma-Informed Workplaces Are the New Normal," *Entrepreneur*, September 24, 2021, online: <https://www.entrepreneur.com/article/386413>

See also: Nisha Sikka et al., "Trauma-Informed Legal Practice Toolkit," *Golden Eagle Rising Society*, September 2020, online: <https://www.goldeneaglerising.org/docuploads/Golden-Eagle-Rising-Society-Trauma-Informed-Toolkit-2020-10-18.pdf> [*Editors' Note*: Clicking on this link will download PDF onto your device.]

See also: Doug Thorpe-Dorward, "Five Tips for Conducting a Trauma Informed Interview," *Forte Workplace Law*, January 16, 2020, online: <https://fortelaw.ca/2020/01/16/five-tips-for-conducting-a-trauma-informed-interview/>

See also: Elder Roseann Martin, "Trauma Informed and Culturally Appropriate Approaches in the Workplace," Native Women's Association of Canada, April 2019, online:

<https://www.nwac.ca/wp-content/uploads/2019/04/Final-Trauma-Informed-Culturally-Appropriate-Approaches-in-the-Workplace-Final.pdf>

See also: Keith Rohman, Brenda Ingram, & Cathleen Watkins, "Trauma-Informed Interviewing in Workplace Investigations," Public Interest Investigations, Inc., July 30, 2018, online:

<https://piila.com/trauma-informed-interviewing-in-workplace-investigations/>

See also: Myrna McCallum, *The Trauma-Informed Lawyer*, online (podcast):

<https://thetraumainformedlawyer.simplecast.com/>

See also: "Being a Trauma-Informed Employer," *It's Your Business: A Domestic & Intimate Partner Violence Workplace Toolkit*, DIPV Workplace Committee of New Brunswick, online:

<https://www.toolkitnb.ca/fact-sheets/being-a-trauma-informed-employer/>

See also: "Trauma-Informed Interviewing for Lawyers and Human Resources," *Trauma Informed Interviewing*, Canadian Institute of Workplace Bullying Resources, online:

<https://instituteofworkplacebullyingresources.ca/trauma-informed-interviewing-for-lawyers-and-human-resources/>

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Panel 4 - Beliefs and Boundaries: Reconciling employee freedom of speech and legitimate employer concerns

November 21, 2024, 2:45 p.m. – 4:00 p.m. PT

Panelists

Najeeb Hassan, Associate Chair, Adjudication and Mediation Division, BCLRB

James Kondopulos, Employer Counsel, Roper Greyell LLP

E. Murphy Fries, Union Counsel, Koskie Glavin Gordon

How can employers balance freedom of expression under the *Charter* with the need to maintain a productive and respectful workplace? In this session, panelists will address:

- Do employees have the right to express their views on potentially controversial and/or political matters at work?
- What criteria should employers and unions consider when determining whether an employee's speech or actions pose a legitimate concern to the organization's reputation or operations? What actions should employers or unions take when employees' expressions may border on being disrespectful or offensive, but are not overtly harmful?
- Can employers monitor employee expressions outside the workplace or on social media? Can employers discipline employees for such expressions?
- What is the extent of a union's duty to represent members who face work-related consequences for potentially polarizing beliefs or actions? When will a union's decision not to represent a member constitute a breach of the duty of fair representation?
- How can employers and unions effectively communicate expectations regarding employee expression, appropriate workplace conduct, and appropriate off-work conduct?

Closing Remarks

4:00 p.m. PT

Vancouver Labour Arbitration and Policy Conference

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- 1.1 "Arbitrator rules that dismissal was excessive penalty for employee who wore a Confederate flag bandana at work," *Teamsters, Local Union 213 v. Coca Cola Canada Bottling Inc.*, 2021 CanLII 16916 (BC LA), Lancaster's *Discharge and Discipline*, eAlert No. 282
- 1.2 "Lecturer's flippant remark about welfare cheque in Indigenous Studies course did not warrant discipline, arbitrator rules," *Canadian Union of Public Employees, Local 3287 v. University of Saskatchewan*, 2017 CanLII 85788 (SK LA), Lancaster's *College and University Employment Law*, eAlert No. 106
- 1.3 "Teachers have a *Charter* right to display political materials in schools, appeal court rules," *British Columbia Teachers' Federation v. British Columbia Public School Employers' Association*, 2013 BCCA 241 (CanLII), Lancaster's *Education Employment Law*, eAlert No. 67

See also: *Zanette v. Ottawa Chamber Music Society*, 2024 HRTO 998 (CanLII), online: <https://canlii.ca/t/k5wr0> [Editors' Note: HRTO held that a request for a volunteer to remove a rainbow sticker from their name badge was not discriminatory.]

See also: Emily McCrary-Ruiz-Esparza, "How global companies handle political talk at work," BBC, May 9, 2024, online: <https://www.bbc.com/worklife/article/20240508-how-global-companies-handle-political-talk-at-work>

See also: Dexter Tilo, "The politics of discussing politics at work," Human Resources Director Canada, April 10, 2024, online: <https://www.hcamag.com/ca/specialization/employee-engagement/the-politics-of-discussing-politics-at-work/484544>

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