Employment & Labour – Top Ten Decisions Of 2025

This year has introduced important changes across the employment and labour landscape. We have highlighted below the ten Canadian decisions from 2025 that we consider most significant for employers.

1. ***Titus Steel Limited v. Hack*, 2025 ONCA 693**

Breach of fiduciary damages available only where damages proven

Summary: We previously wrote about the Ontario Court of Appeal's decision in *Hack* here. In that decision, the plaintiff Employer discovered that a former Employee had, while still employed, downloaded its confidential business records and used them in a new, competing company. The Court refused to find that the Employee had been a fiduciary, rather finding him liable for the tort of conversion on the basis that he had breached his employment duties of good faith, loyalty and fidelity by misappropriating the Employer's business records upon his resignation. Ultimately, as the Employer could not show it had suffered any losses from the misappropriation, the Court declined to award damages and instead ordered the Employee to return the records within seven days.

Key takeaway: While this Ontario Court of Appeal decision is persuasive rather than binding in Atlantic Canada, it supports the principle that where an employee breaches their common law duties of good faith, loyalty, and fidelity, an employer must establish that it suffered damages in order to recover for the breach.

2. ***Brocklehurst v. Micco Companies Limited*, 2025 NSSC 192**

Clear and unambiguous contractual language required to limit post-termination entitlements

Summary: The Nova Scotia Supreme Court held that in order to limit an employee's termination entitlements to those set out in the Nova Scotia *Labour Standards Code* (and thus oust any higher common law entitlements), a termination clause must be "clear, express, and unequivocal." Because the termination clause in question referenced both "minimum notice of termination" and "severance pay," which was not a

legislative concept, the Court found that such clause was "ambiguous and unclear" and held that the employee was therefore entitled to common law reasonable notice including eight months' pay (in lieu), commissions, benefits, and a car allowance.

Key takeaway: This decision represents the adoption of the Ontario Court of Appeal's commentary in *Waksdale v. Swegon North America Inc.,* 2020 ONCA 391 ("***Waksdale***") in Atlantic Canada, holding that where a termination clause does not sufficiently comply with or specifically reference the applicable employment standards legislation of the relevant jurisdiction, it will be ineffective to displace an employee's substantially greater common law entitlements on termination.

3. ***Saint Mary's University v. Nova Scotia Human Rights Commission*, 2025 NSSC 107**

Referral to Board of Inquiry more than a "rubber stamp"

Summary: This decision arose from a discrimination complaint filed by a former Saint Mary's University student under the *Nova Scotia Human Rights Act* after a university professor published an article critiquing academic policies and referring (anonymously) to an Indigenous student whom the complainant recognized as herself. Saint Mary's University and the Society for Academic Freedom and Scholarship (which published the article) applied for judicial review of the Commission's decision to refer the complaint to the Board of Inquiry on the basis that the referral was procedurally unfair, and there was no evidence of discrimination. Judge Boudreau of the Nova Scotia Supreme Court dismissed the discrimination complaint and quashed the referral, holding that being upset or offended is not the same as discrimination and there was therefore insufficient evidence to justify proceeding to the Board of Inquiry stage.

Key takeaway: The Court emphasized that the Commission's screening role is not a merely a "rubber stamp," and requires a fair and careful assessment of whether a matter should proceed. While outside the employment law context, this decision may nonetheless have implications for employers confronting human rights complaints arising from employment relationships.

4. ***Dorrington v. A J Acheson Sales Ltd. o/a Canadian Tire*, 2025 CanLII 114860 (NS HRC)**

Employer's failure to participate in human rights proceeding attracts heightened damages

Summary: In this decision, the Nova Scotia Human Rights Board of Inquiry found that the complainant, Charla Dorrington, was discriminated against in the provision of services on the basis of race and color. While shopping at a Canadian Tire store, Ms. Dorrington, who is of mixed Black and Indigenous ancestry, was singled out and treated with suspicion by a store employee without any legitimate reason. The Board concluded that the employee's conduct constituted racial profiling, describing it as a classic example of differential treatment rooted in racial stereotypes rather than evidence of wrongdoing. The respondent did not participate in the hearing, which the Board considered an aggravating factor. As a remedy, the Board awarded $20,000 in general damages, emphasizing that racial profiling in retail environments is a serious violation of the *Nova Scotia Human Rights Act*.

Key takeaway: Racial profiling of customers in retail settings constitutes a serious

violation of human rights law, and businesses will be held accountable for discriminatory conduct by their employees. The decision also highlights that failing to participate in human rights proceedings may aggravate liability and increase damages, reinforcing the importance for employers to respond proactively to discrimination complaints and ensure staff are properly trained to provide services without bias.

5. ***University Of New Brunswick v. Canadian Union of Public Employees*, Local 3339, 2025 NBKB 231**

Human Rights Commission out of luck with respect to interpretation of collective agreements

Summary: On Judicial Review, the New Brunswick Court of King's Bench overturned a decision of the New Brunswick Human Rights Commission (the "**Commission**") which found it had jurisdiction to consider the Employee's complaint based on the alleged discriminatory nature of a mandatory retirement clause in her collective agreement. Rather, based on a provision of the New Brunswick *Industrial Relations Act* requiring that any disputes regarding the "interpretation, application, administration or an alleged violation" of a collective agreement be referred to arbitration, the Court confirmed that the Commission does not possess concurrent jurisdiction over such matters.

Key takeaway: Any issue concerning the interpretation, application, or administration of a collective agreement lies exclusively within the jurisdiction of labour arbitrators. Consequently, at least in New Brunswick, it appears that employees are now precluded from forum shopping between human rights proceedings and grievance arbitration.

6. ***Metrolinx v. Amalgamated Transit Union*, Local 1587, 2025 ONCA 415**

Off-duty conduct not off-limits: after-hours behaviour may justify discipline

Summary: Metrolinx dismissed employees for cause after an internal investigation revealed they had exchanged lewd and derogatory WhatsApp messages about a female colleague, suggesting she had traded sexual favours for professional advancement. Although no formal complaint was filed, Metrolinx investigated the incident under its policy covering off-duty and social media conduct affecting the workplace. An arbitrator initially ordered reinstatement, finding the messages private, off-duty, and not manifested in the workplace, raising procedural concerns. The Divisional Court overturned this, and the Ontario Court of Appeal upheld the ruling, stressing that employers must investigate harassment under Ontario's *Occupational Health and Safety Act*, that off-duty conduct can be disciplined if it harms the workplace, and that privacy does not shield misconduct that creates a hostile environment or undermines trust.

Key takeaway: There are a couple of takeaways from this decision. First, employers need to be aware of whether their jurisdiction's occupational health and safety legislation requires them to investigate harassment even without a formal complaint. Second, off-duty conduct is not off-limits; harassment in private chats or on social media can still create a toxic workplace, and employers must take action if its effects are felt in the workplace.

7. *Finkle v. Nova Scotia Health Authority*, 2025 NSSC 373

Failure to follow harassment prevention policy requirements nullifies physician discipline

Summary: On October 20, 2025, the Nova Scotia Supreme Court set aside disciplinary decisions issued by the Nova Scotia Health Authority ("**NSHA**") against two physicians after finding that the Employer failed to meet its duty of procedural fairness during a workplace harassment investigation. Despite policy requirements, NSHA did not conduct an initial screening or attempt informal resolution, did not provide the physicians with the written complaints against them, and imposed sanctions without giving them an opportunity to respond. Given the significant impact these decisions could have on the physicians' professional standing and the absence of any internal appeal mechanism, the Court concluded that a higher level of procedural fairness was required and had not been met.

Key takeaway: Strict adherence to harassment and respectful workplace procedures is essential. When disciplinary decisions may impact an employee's reputation or career, employers must provide full procedural fairness or risk having those decisions overturned.

8. *Ghazvini et al v. Canadian Imperial Bank of Commerce*, 2025 ONSC 5218

Failure to meet "just cause" standard voids entire termination clause

Summary: A "For Cause" termination clause allowing an employer to terminate employment without notice or pay in lieu for a broad range of reasons was held to be illegal because it attempted to contract out of the statutory "Just Cause" protections under section 229.1 of the *Canada Labour Code*. The Court found the clause overly broad, encompassing acts that would not constitute just cause and not requiring that the acts be serious. As a result, the entire termination clause was void, and the employees were entitled to reasonable notice rather than the reduced contractual amount under the "Without Cause" provision.

Key takeaway: Similar to *Brocklehurst*, this decision represents the extension of *Waksdale* to federally regulated employers and holds that termination clauses must be carefully drafted to align with statutory requirements; otherwise, the entire termination clause may be null and void, and employees may be entitled to higher damages based on common law "reasonable notice." Here, we caution against the use of multi-jurisdictional employment contracts without jurisdiction-specific termination provisions.

9. *Adrain v Agricom International Inc.,* 2025 BCSC 1842

Legal action during working notice triggers repudiation and reduced damages

Summary: The Court in *Adrain v. Agricom International Inc.* was tasked with determining whether an employee who initiated legal action during her working notice could be terminated for just cause. After 30 years of service, the employee received 13 months' notice and responded by demanding 24 months' severance and suing for wrongful dismissal. The Court rejected the employer's just cause claim, finding that pursuing legal remedies while on notice was reasonable. However, applying the repudiation doctrine, it held that she forfeited 11.5 months of unworked notice,

reducing her total compensation to 7 months after accounting for notice already paid and a mitigation adjustment.

Key takeaway: Employees who initiate legal action during their working notice may give up the right to continue working through that period, which can substantially limit their compensation even in a successful wrongful dismissal decision.

10. *Falkenberg v Stephen Avenue Securities Inc*, 2025 ABKB 485

Substance over form: appellate court rejects "casual employee" finding

Summary: This decision arose from an appeal of an Applications Court ruling that awarded an employee six months' notice. The employee had 24 years of service and was terminated upon the sale of her employer entity to new owners. Despite a highly irregular compensation history (including unpaid periods, missing T4 slips, and receiving artwork in place of salary), on appeal, the Court increased the notice period to 18 months. The Applications Judge had limited the award to six months on the basis that the employee was a "casual" employee; however, on appeal, the Court of King's Bench rejected that characterization. The Court instead emphasized the substance of the employment relationship, highlighting the employee's roles as a compliance officer and registered representative, which were inconsistent with casual employment regardless of the irregularity in her pay.

Key takeaway: Part-time status does not influence the length of reasonable notice; it only impacts the calculation of damages. Further, Courts will look to the totality of the employment relationship and often resolve ambiguities in the employee's favour where employment arrangements lack clear documentation.

This article was written with contributions by Kelsey Moore, an articled clerk at Cox & Palmer.

Author: Claire Dowden

Cox & Palmer