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THROUGH THE PRIVACY PRISM: RETHINKING STANDARD PRACTICES

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In the last decade, privacy interests have become part of the everyday parlance of human resource professionals across Canada. This is the case even in those jurisdictions, of which there are still many, that lack a statutory framework of employee privacy protections. The Canadian landscape is very much a patchwork of legislated personal information protection, personal health information protection, and torts as well as common law rights. Employers in the federal jurisdiction, British Columbia, Alberta, and Quebec have comprehensive statutes in place that prescribe how employees' personal information may be collected, used and disclosed. Many provinces have privacy statutes that create the tort of invasion of privacy. These statutes generally provide that to wilfully and without a claim of right to violate the privacy of another constitutes a tort without proof of damages. Saskatchewan, Manitoba, and Newfoundland and Labrador have such statutes and, as a result, employers in these jurisdictions could face actions from employees if they were to use or disclose their personal information without consent. A number of provinces, including Saskatchewan and Ontario, have specific statutory protections for personal health information that can apply to employees.

In addition to the statutes that criss-cross the country, a general common law right of privacy is developing. In a 2006 decision, the Ontario Superior Court of Justice held that "it is not settled law in Ontario that there is no tort of invasion of privacy".¹ Although the double negative does not sound like a ringing endorsement, the statement does reflect the Court's desire to recognize invasion of privacy as a tort in its own right. Interestingly, this case arose out of a credit check undertaken by an employer of an existing employee who sought a promotion, without the consent of the employee. Although the employer attempted to have the claim struck on a preliminary basis, arguing that the tort of invasion of privacy disclosed no reasonable cause of action, it was unsuccessful and this aspect of the claim was allowed to proceed.

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Despite the hodge-podge of protections, most employers, and certainly most employees, consider privacy to be a basic employment right. As a result, employers generally seek consent before using or disclosing an employee's personal information for any purpose not apparent when the employee first entrusted it to the employer. This is a practice that should be encouraged irrespective of the presence or absence of statutory requirements.

At the same time, as privacy rights continue to develop, greater consideration needs to be given to the impact of privacy on existing processes that involve the disclosure of personal information. One area in which this has become apparent is background checking. In 2005, the Office of the Information and Privacy Commissioner of Alberta ("OIPC") released an investigation report that should give pause to employers who routinely require credit checks as a condition of employment.² The case involved an applicant for an administrative assistant/receptionist position who was asked to consent to a credit check when she applied for employment with a software company. The applicant signed the consent, but, after she was not hired, filed a complaint alleging that the collection of

the data was unreasonable. The software company's policy was to run a credit check on all job applicants and the administrative assistant/receptionist position included responsibility for managing petty cash. Despite this rationale, the OIPC determined that the collection of credit information was unreasonable and not necessarily effective in assessing the applicant's suitability to manage petty cash. The OIPC noted it would have been more reasonable for the employer to have contacted previous employers for references as to whether the applicant was proficient in managing finances. The OIPC did acknowledge that collecting credit information might be necessary for certain positions, but obviously it has greatly limited the scope of these positions. It is important to note that even express written consent will not automatically cure a breach of privacy rights. As a result of this decision, careful consideration must be given before credit checks are required on hiring or promotion.

Other areas to consider include when criminal records checks are required, and whether such a check is reasonable and can be genuinely related to the position. Whether and in what circumstances drug testing can be required also remains a contentious and ongoing pre-employment and pre-site access issue.

During employment, processes that are, by their very nature, privacy invasive, can be triggered quite routinely. These processes should be examined to ensure that they can pass the reasonableness test and that a less privacy-invasive method is not an option. For example, is an independent medical examination really warranted by an employee's absence? If so, does your consent form identify the medical professional conducting the test and the specific tests required? Are the tests required directly related to job function? Does your form provide an express consent to release relevant information obtained in the course of the examination to you? With today's global economy, personal information may be transferred internally quite routinely. If your human resources information system involves data transfer outside your jurisdiction, have you notified employees of this? Have you limited the personal information that is transferred to the greatest extent possible? Have you ensured that the data will be safeguarded at the end destination in an appropriate manner consistent with privacy principles? If personal information is allowed to leave your premises, via laptop, remote Internet connection, or memory stick, is it adequately protected?

An analysis that considers less privacy-invasive alternatives before adopting a privacy-invasive process will be critical to justifying processes that do involve some privacy infringement. This is very much the case when it comes to installing Global Positioning Systems in company vehicles, or biometric hand scanners, or fingerprint recognition technology, or mandating drug testing for safety-sensitive positions. The "solutions" offered by technology will only

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be real “solutions” if the degree to which they invade privacy is thought to be proportional to the organization’s legitimate objective and if there is no less invasive alternative available. Not contravening any human rights laws in the process, of course, is also key. The same analysis is required in assessing any kind of employee monitoring, from surveillance cameras to keystroke logging software. The individual analysis and consideration of impact and alternatives is, in many respects, very similar to that required when an employer is asked for accommodation.

Canadian adjudicators require thoughtful, documented, and careful consideration on the part of employers before any right is abrogated. This is the case whether the right is enshrined in our *Canadian Charter of Rights and Freedoms* or any human rights statute and whether it is an amorphous privacy right developing at common law. Either way, employers are expected to justify their processes. The days of doing things the way they’ve always been done because they have always been done that way are long gone. The privacy prism adds another element to consider and employee “rights” of privacy should be a central consideration as old processes are adapted and new processes are introduced. Failure to consider the privacy impact will leave employers exposed on a variety of fronts.

This article originally appeared in FOCUS ON CANADIAN EMPLOYMENT AND EQUALITY RIGHTS, Vol. 8, No. 17, dated May 2008.

Notes:

¹ *Somwar v. McDonald’s Restaurants of Canada Limited* (2006), 79 O.R. (3d) 172 (S.C.).

² PIPA Investigation Report P2005-IR-008, *SAS Institute (Canada) Inc.*, Alberta Information and Privacy Commissioner (August 24, 2005).

PROGRESS OF LEGISLATION

British Columbia

Reservist Leave in Force

Amendments to the *Employment Standards Act* that protect the jobs of members of the reserve force of the Canadian Forces have received Royal Assent and are now in force.

As was reported in LABOUR NOTES 1354, dated May 12, 2008, under the relevant provisions of Bill 43, now the *Miscellaneous Statutes Amendment Act (No. 2), 2008*, S.B.C. 2008, c. 42, employees who are reservists are entitled, on written request, to an unpaid leave of absence from their civilian employment if deployed for overseas operations, including pre- and post-deployment duties related to the operation, or domestic emergencies. The employee is,

where possible, required to give at least four weeks’ notice to the employer before the day on which the leave is to begin, and of the anticipated length of the leave. The employer may request proof of the leave of absence, and is not required to continue benefit and pension contributions while the employee is on leave.

Bill 43 received first reading on April 30, 2008, second reading on May 15, and third reading and Royal Assent on May 29. The relevant provisions of the Bill came into force on Royal Assent.

New Brunswick

Construction Industry Common Employer Provisions Introduced

On May 28, 2008, Bill 76, *An Act to Amend the Industrial Relations Act*, was introduced in the New Brunswick Legislative Assembly. The Bill, if passed, would amend the *Industrial Relations Act* to include common employer provisions which would apply to the construction industry. The provisions would provide the Labour and Employment Board with additional powers to look behind the scenes of a corporate structure to determine if a construction industry employer has established a new business for legitimate business purposes, or to avoid collective agreement obligations. If the new business was found to have been created to avoid the terms and conditions of a collective agreement, the Board would have the authority to issue a common employer declaration applying the terms and conditions of the existing collective agreement to the newly created company. The proposed amendments include a grandfather clause exempting construction companies actively engaged in the construction industry prior to the introduction of the Bill.

The aim of the amendments is to discourage the industry practice of double-breasting, i.e., the running of two affiliated companies, one union and one non-union, which gives the enterprise the ability to bid on work that must be unionized (and employees paid at union rates) while preserving the option of bidding on non-union work free of any collective agreement.

The Bill has made swift progress, receiving second and third reading on May 30, 2008. Readers will be informed when the Bill receives Royal Assent.

Prince Edward Island

Human Rights Act Amendments in Force

Bill 13, now *An Act to Amend the Human Rights Act*, S.P.E.I. 2008, c. 18, received third reading, Royal Assent, and came into force on May 22, 2008. As was discussed most recently in LABOUR NOTES, No. 1355, dated May 27, 2008, the Bill:

- adds the requirement that the Human Rights Commission prepare an annual report for the Minister, and that the Minister lay the annual report before the Legislative Assembly;
- authorizes a Human Rights Panel to allow a complainant to withdraw a complaint; and
- repeals provisions setting compensation limits on political belief discrimination complaints that were filed by casual employees in the civil service before June 1, 1999. The Supreme Court–Appeal Division in *Government of Prince Edward Island v. Condon et al.* (2006 CLC ¶230-024) had ruled that these provisions violated the employees’ right to freedom of association under paragraph 2(d) of the *Canadian Charter of Rights and Freedoms*, and declared them to be of no force and effect.

The Bill also makes a number of neutral language amendments to the preamble and definitions sections of the *Human Rights Act*, and amendments to specify certain discriminatory grounds in several provisions to make them consistent with the rest of the Act.

Bill 13 received first reading on April 8, 2008 and second reading on May 8.

Recent Cases

NOTE: The full text of these cases can be found in the “New Matters” tab division of Volume 5 at the paragraph number indicated at the end of each summary.

Employee’s refusal to sign new contract did not end employment relationship

• • • **Ontario** • • • Wronko worked for Western Inventory for 17 years, and in February 2000 he was promoted to the position of Vice-President of National Accounts and Marketing. Following this promotion, he signed a written employment contract, dated December 20, 2000, which contained a termination provision providing for two years salary plus bonus to be paid on termination. In June 2002, Wronko was given a new employment contract to sign, which reduced his entitlement to notice of termination from two years to three weeks notice or pay in lieu for each year of employment, to a maximum of 30 weeks. Wronko refused to sign this new contract. On September 9, 2002, Wronko was given a memo from Western giving him 104 weeks, or two years, notice that the termination provision in the employment contract would be changed to entitlement to only three weeks notice or pay in lieu for each year worked up to a maximum of 30 weeks. Two years later, Wronko was sent the new agreement by e-mail and was asked to sign it. The e-mail stated that if he did not want to accept the new terms and conditions of employment, then Western did not have a job for him. Wronko still did not accept the new contract, so he understood his

employment to be terminated. In an action for wrongful dismissal, the trial judge determined that Western had the right to impose a fundamental change to the contract of employment as long as it provided reasonable notice, which it did in this case. As a result, the trial judge found that it was Wronko who had ended the employment relationship. Wronko appealed.

The appeal was allowed. The Court of Appeal disagreed with the trial judge’s conclusion that Wronko ended the employment relationship. The employer’s intention to terminate Wronko was clearly set out, as he was told that if he did not accept the change to his employment contract then they did not have a job for him. When an employer attempts to unilaterally change a fundamental term of a contract of employment, an employee may accept the change, reject it and sue for damages, or let the employer know that he or she rejects the change, at which point the employer may terminate the employee and offer re-employment on the new terms, or allow the employee to continue to work on the terms of the original contract. In this case, the trial judge erred in treating the case as though the employee had chosen to reject the changes and bring a constructive dismissal claim. The unilateral change did not have an immediate impact on Wronko, so it actually fell within the third option. Wronko refused to accept the new termination provision, but he was allowed to continue to work under the existing terms of his contract. Therefore, the termination that occurred two years later meant that he was entitled to two years termination pay, pursuant to his existing employment contract.

Wronko v. Western Inventory Service Ltd.,
2008 CLC ¶210-020 (Ont. C.A.)

Statutory overtime entitlement was not an implied term of contract

• • • **British Columbia** • • • E Care Contact Centers was a payday loan business that employed Macaraeg. On hiring, Macaraeg signed an “Offer of Employment” setting out her rate of pay, vacation entitlement, and group benefits; but it did not mention overtime. Macaraeg worked long hours, but was told that the company did not pay for overtime. She was terminated without cause 30 months after starting work, and was given two weeks’ pay in lieu of notice. Macaraeg brought a wrongful dismissal action, and claimed overtime pay. The trial judge determined that payment for overtime in accordance with the mandatory provisions of the *Employment Standards Act* was an implied term of her employment contract, and that the legislation did not preclude an employee from pursuing a civil action to recover minimum employment benefits that employers were statutorily required to provide in employment contracts, such as overtime payments (see 2007 CLC ¶210-001). E Care appealed.

The appeal was allowed. The general rule is that there is no cause of action at common law to enforce statutorily-conferred rights, except when the court concludes that the legislators intended the statutorily-conferred right to be enforced by civil action. In determining the intent of the legislators, an important indication is whether the legislation provides effective enforcement of the right conferred by statute, in which case there would be no need for enforcement by a civil cause of action outside the statute. If the statutory remedy was inadequate, a court could infer that the legislature intended the right to be enforceable by civil action. The trial judge in this case erred by concluding as a general proposition that rights in employment standards legislation were implied by law into employment agreements. The *Employment Standards Act* provided a comprehensive administrative scheme for the granting and enforcement of employee rights, and there was no intention that such rights could be enforced in a civil action. Accordingly, the employee was not entitled to a civil action to enforce her statutory right to overtime pay, and the minimum overtime pay requirements of the *Employment Standards Act* were not implied terms of the contract of employment.

Macaraeg v. E Care Contact Centers Ltd.,
2008 CLC ¶210-021 (B.C.C.A.)

No treaty or aboriginal right to separate labour code established

• • • **Ontario** • • • The union applied for certification of employees at the Great Blue Heron Casino, which operated on the reserve of the Mississaugas of Scugog Island First Nation (the “Nation”). The Nation’s Band Council enacted its own labour code, claiming that it had the authority to do so by reason of either its aboriginal and treaty rights or its inherent right to self-government. When the Casino refused to negotiate with the union as a result of the Band Council’s labour code, a reference was made to the Ontario Labour Relations Board on the question of whether the labour code enacted by the Band Council superseded the provisions of the Ontario *Labour Relations Act*. The Board rejected the argument that there were ancestral customs, practices, and traditions related to “work-related activities” and “territorial access”, and determined that the labour code was not an exercise of an aboriginal or treaty right (see 2005 CLC ¶220-045). An application for judicial review was dismissed (see 2006 CLC ¶220-039). The Band appealed.

The appeal was dismissed. Provincial laws of general application apply to aboriginal persons, as long as they do not touch on the “core of Indianness” or violate an existing aboriginal or treaty right, including activities conducted on aboriginal lands. The right claimed by the Nation was the right to regulate labour relations on aboriginal lands. The Nation failed to satisfy any of the three elements required to support an aboriginal right to enact a labour

relations code applicable to aboriginal lands. First, there was no evidence of an aboriginal practice, custom, or tradition that supported the right to enact a labour code. Even accepting the Nation’s characterization of the right as an aboriginal practice to regulate work activities and access to aboriginal lands, such practice was not integral to the distinctive culture of the Nation’s pre-contact society. Finally, the Nation failed to establish reasonable continuity between the pre-contact practice, custom, or tradition and the current claim.

Mississaugas of Scugog Island First Nation v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 444, Great Blue Heron Gaming Company, and Ontario Labour Relations Board, 2008 CLC ¶220-031 (Ont. C.A.)

Religious exemption from union membership granted

• • • **British Columbia** • • • Dykstra, a member of the Canadian Reformed Church, informed the City of Abbotsford when he was hired that he would not be able to join the union for religious reasons. In order to join the union, an applicant was required to take an Oath of Obligation, and Dykstra felt that the oath, as well as potential tactics used by the union in a labour dispute, would be irreconcilable with his personal religious beliefs derived from the tenets of his church. Dykstra applied for an exemption from the requirement to join the union and sought to donate the equivalent of his union dues to a seniors’ long-term care facility. His application was denied by the union, so he brought an application before the Labour Relations Board.

The application was allowed. An individual may be exempted from union membership or the payment of dues if his or her religious beliefs cause him or her to object to joining trade unions or paying dues generally, as set out in section 17 of the Code. In determining whether to allow an exemption: (1) the Board must look subjectively at the applicant’s personal religious convictions, not the tenets of his or her religion; (2) the objection must be to trade unions generally rather than a specific trade union; and (3) the applicant’s convictions must be irreconcilable with membership in any and all trade unions. The Board accepted that the oath required to join the union created a potential fundamental conflict between Dykstra’s personal belief in subservience to God and his obligations to the union. In addition, his personal belief that he must remain subservient to the authority of his employer placed him in a potential conflict with his union obligations in the event of a labour dispute. Dykstra’s objections were not based on social, political, ethical, moral, or philosophical grounds, but were based solely on the irreconcilability of his religious beliefs with his potential obligations as a union member. In addition, the union did not have the authority to determine which charity the union dues would be

donated to, as long as the charity chosen by the employee was registered.

Dykstra v. City of Abbotsford and Canadian Union of Public Employees, Local 774, 2008 CLC ¶220-032 (B.C.L.R.B.)

Decertification application unduly influenced by employer

• • • **Saskatchewan** • • • The union was first certified to represent employees of Jordan Asbestos Removal in 1996. Paproski was hired by Jordan Asbestos Removal in October 2004, having had no prior work experience or training with asbestos or other hazardous material removal. Seven or eight months later, Paproski was made the “lead hand”, responsible for on-site supervision of a crew of employees and completing necessary paperwork. He was given this job despite the fact that he had not worked the required hours as set out in the collective agreement. Paproski and some of the other lead hands were also being paid more than the wage rate set out in the collective agreement. Paproski brought a decertification application, citing: lack of adequate training offered by the union; a union representative position left vacant for a period of time; no benefits guarantee; lack of notice for collective bargaining voting; no shop steward representative; and no benefit to being unionized in the industry. The union claimed that the decertification application was unduly influenced by the employer, as Paproski was a good friend of the owners of the company. In addition, the union claimed that the employer did not follow all of the provisions of the collective agreement, in order to improperly influence the views of the employees who supported the application; for example, the employer was paying some employees wages above those set out in the collective agreement.

The decertification application was dismissed. In determining whether to grant a rescission vote, the Board must balance the rights of employees to choose whether to be represented by a union with the need to ensure the employer has not unduly influenced the decision by using its authoritative position. In this situation, Paproski’s reasons for bringing the application were not plausible, and he did not appear to act spontaneously in making the decertification application. Many of the concerns were not his own, and there was no evidence that the reasons were discussed with the employees themselves. Specifically, he did not attend the union meetings where the concerns he noted were raised, and he did not contact the union to find out more information about these issues before bringing the application. The Board was not satisfied that Paproski had an honestly held belief that the union had failed in its representation in the manner expressed. In addition, there was obviously a relationship between Paproski and management which led to him receiving special treatment in relation to other employees. He was given wage increases not set out in the collective agreement, was awarded a promotion before he had the required number

of hours, and he generally worked more hours per year than other employees. In addition, by not following the collective agreement with respect to union dues, hiring and salary, the employer created an anti-union environment that influenced the views of employees, and tainted their support.

Paproski v. International Union of Painters and Allied Trades, Local 739 and Jordan Asbestos Removal Ltd., 2008 CLC ¶220-033 (Sask. L.R.B.)

Disclosure requirements imposed on epileptic employee were excessive

• • • **Ontario** • • • DeSouza began experiencing epileptic seizures when he was eight years old, which would generally last for a few minutes and would involve him experiencing “blackouts”. DeSouza was hired as a certified tennis professional at the Joshua Creek Golf & Tennis (the “Tennis Club”), teaching junior players and providing private lessons to members as required. After working at the Tennis Club for a while, DeSouza suffered a couple of seizures while at work. He did not inform his employer that these seizures were the result of epilepsy, but his supervisor figured it out. DeSouza received a letter about the seizure incidents, asking for more information on how staff members should react if a seizure occurred on the job site. DeSouza took this letter to mean that his job was in jeopardy, but met with his supervisor and agreed to provide the Tennis Club with a letter from his doctor, some information for staff members about how to deal with the seizures, and an assurance that he was taking good medical care to prevent further seizures. DeSouza was also asked to approach the staff that he worked with to explain his condition and how to deal with the situation. DeSouza continued to work for the Tennis Club for the rest of the season, but he was not offered employment for the following tennis season. He brought a human rights complaint alleging discrimination on the basis of physical disability.

The complaint was allowed. An employer is entitled to make reasonable inquiries about an employee’s health status in order to ensure the safety of its employees and clients. It was reasonable for the employer in this case to seek information from DeSouza about how to deal with a seizure at work, especially because he was teaching young children who might be concerned or frightened by an unexpected seizure. However, it was not DeSouza’s responsibility to inform other staff members about his condition, or to educate them on how to deal with a potential seizure. The employer should have taken the lead in instructing staff who needed to know. Also, it was not reasonable to require DeSouza to inform all of his clients in advance about his epilepsy. This requirement was discriminatory on the basis of disability. With respect to his termination, the Tribunal found that DeSouza’s playing and teaching abilities did not meet the Club’s need to teach high calibre junior and adult players. Notwithstanding this

finding, however, it was reasonable for DeSouza to believe that his epilepsy was the sole or a significant reason for not being hired back because it was explicitly mentioned, along with other reasons, when he was terminated. In addition, the concerns about his teaching and playing abilities were not mentioned while he was working at the Tennis Club. As a result, DeSouza was found to have been discriminated against on the basis of disability, and was awarded \$15,000 in general damages.

DeSouza v. 1469328 Ontario Inc. o/a Joshua Creek Golf & Tennis and Young, 2008 CLC ¶230-019 (Ont. H.R.T.)

Standard was *bona fide*, but treatment of employee with multiple sclerosis was discriminatory

● ● ● **British Columbia** ● ● ● Cassidy was employed as a part-time Primary Care Paramedic (“PCP”) in Clearwater, B.C. and was a member of the union. He also suffered from multiple sclerosis (“MS”). In November 2003, Cassidy suffered a severe MS episode which required him to take time off from active service. While most of the symptoms of this attack abated quickly, he experienced numbness in his hands that persisted. Cassidy felt he could return to work soon after the episode; he came back initially as a driver in mid-December, and was back to full duties by April 2004. Clearwater accommodated Cassidy on his return to work, assisting him as necessary, including palpating pulses which Cassidy found he was unable to do because of persistent numbness in his hands. Cassidy was also given a positive assessment for continuing to work. A year later, concerns about Cassidy’s MS arose again, particularly the fact that he could not feel his hands or palpate a pulse. By June 2005, Cassidy had been taken off work as a paramedic due to concerns about his MS, and he was sent for further assessment. After Cassidy renewed his driver’s licence, it was decided that he could return to work as a driver only. There was disagreement over how Cassidy’s shifts should be scheduled, however, and he was not allowed equal access to the schedule until June 2006. Cassidy applied for a lateral transfer, and was successful, but the offer was withdrawn when Cassidy’s issues with the Clearwater branch were disclosed. Cassidy brought a claim of discrimination on the basis of physical disability.

The claim was allowed, in part. Cassidy demonstrated a *prima facie* case of discrimination. He had a physical disability, he suffered a range of disadvantaging criteria or conduct from his employer, including not being allowed to work as an attending paramedic because of his inability to

palpate a pulse manually, and the criteria and conduct were related to his MS and its consequences. With respect to whether the employer had a *bona fide* occupational requirement defence, the employer relied on safety, and the potential risk to patients posed by Cassidy’s limitations, in order to show that they had accommodated to the point of undue hardship. The Tribunal found that the requirement that all paramedics be able to manually palpate a pulse was rationally connected to the performance of the job, as a routine and fundamental part of a paramedic’s duties is to assess a patient’s pulse. The employer also acted honestly and in good faith in the adoption of the manual palpation standard. The Tribunal determined that it would have caused undue hardship for the employer to be required to allow Cassidy to work as an attending paramedic, given his inability to manually palpate pulses. The standard was adopted to ensure the reasonable safety of the public and specifically the people who need paramedic care, who are generally in a very vulnerable position. The employer did not establish an absolute standard based on blanket assumptions about the capacities and limitations of people within a particular group, but a functional standard based on the ability to palpate pulses. The technical aids and partner assistance suggested as means of accommodating Cassidy’s functional limitation were not sufficient to overcome the risk to patient safety resulting from his inability to palpate pulses. Despite these findings, however, the Tribunal determined that the employer did not treat Cassidy fairly and with due respect for his dignity in the process it adopted. Specifically, the employer allowed Cassidy to work as an attending paramedic for one year despite his functional limitation, before telling him he could no longer work; he was treated as a safety risk, which was demeaning to his dignity as a human being; inappropriate comments were made about his illness, leading to misinformation about its actual effects; there was no justification for not allowing him to work in a capacity other than attending paramedic, and given that he was not eligible for benefits while off on leave, the employer should have attempted to get him back to work sooner; and the employer actively attempted to get Cassidy’s driver’s licence and paramedic’s licence revoked. These actions subjected Cassidy to unnecessary frustration, anxiety, and financial insecurity and hardship. Therefore, the employer failed to comply with the procedural aspect of the duty to accommodate, and the Tribunal awarded damages for injury to dignity, feelings and self-respect of \$22,500.

Cassidy v. Emergency and Health Services Commission, Gallaher, and Garland, 2008 CLC ¶230-020 (B.C.H.R.T.)

THE ECONOMY

The statistics below provide a convenient overview of the latest Consumer Price Index (CPI) and other economic and labour indicators of interest. Do you need detailed CPI figures for all of Canada, individual provinces, regional cities, or specific goods and services (e.g., housing, food, and transportation)? If so, you can find the detailed CPI figures in the "Consumer Price Index" tab division of Volume 1 at ¶26 *et seq.*

Cost of Living – Up

The Consumer Price Index (2002 = 100) for April 2008 was 113.5, 1.7% above the April 2007 figure of 111.6. The All-items index for April 2008, based on the 1992 = 100 time reference period, was 135.1. On a monthly basis, the CPI was up 0.8% from the March 2008 level of 112.6.

Industrial Production – Down

The preliminary, seasonally adjusted figure of industrial production for the month of February 2008, in chained 1997 dollars, was estimated at \$268,746 million, down 2.9% from the revised February 2007 figure of \$276,903 million.

Weekly Earnings – Up

The average weekly earnings (including overtime), seasonally adjusted at the industrial aggregate level in March

2008 were \$788.71, up 3.2% from \$764.43 in March 2007, according to a preliminary estimate based on a sample survey of reporting units.

Unemployment – Up

In April 2008, the seasonally adjusted number of unemployed persons totalled 1,103,800, up 4,600 from March 2008. The number of persons without jobs constituted 6.1% of an active labour force of 18,239,800. The employment level in April was 17,136,000.

Strikes and Lockouts – Down

In February 2008, there were 5,500 person days lost from one work stoppage, down from 49,360 person days lost from five work stoppages in February 2007.