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## **COLLECTIVE BARGAINING AND AGREEMENT**

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**Release No. 28, December 2018**

*Collective Bargaining and Agreement* deals with every aspect of the collective bargaining process including: union-management relations, preparation for bargaining negotiations, and tactics and the law. It offers a practical explanation of industrial relations laws and practices, good faith bargaining in light of recent decisions, the law governing strikes, lockouts, replacement labour and other management-union tactics, as well as why more negotiators are using mutual gains bargaining, including the inner workings of today's most effective bargaining techniques and the factors affecting union-management relations. *Collective Bargaining and Agreement* also includes chapters covering key aspects of collective agreements with annotations which include a

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summary of the law and a discussion of applicable legal cases.

### **What's New in this Update:**

This release updates the case law and commentary in Chapters 1 (Canadian Employment Law and Collective Bargaining), 2 (The Union and Its Members), 3 (Management and Its Constituents), 4 (The Union-Management Relationship), 5 (Preparation for Collective Bargaining), 6 (Negotiation), 8 (Duty to Bargain), 9 (Collective Bargaining Tactics and The Law), 12 (Scope of Agreement and Union Recognition), 13 (Management Rights), 14 (Non-Discrimination and Human Rights), 15 (Union Rights and Responsibilities), 16 (Hours of Work and Rest), 17 (Classification of Employees), 18 (General Holidays and Holiday Pay), 19 (Vacations and Vacation Pay), 20 (Leaves of Absence), 21 (Wages), 22 (Seniority), 23 (Lay-off and Recall), 24 (Filling Vacancies), 26 (Contracting Out and Transfer of Work), 27 (Benefits), 28 (Pensions), 29 (Attendance), 30 (Illness and Disability), 32 (Alcohol and Drug Testing), 34 (Safety), 36 (Grievance and Arbitration Process) and 38 (Term of Agreement), as well as updates to the Master Drafting Checklist.

### **Case Highlights:**

- **Canadian Employment Law and Collective Bargaining — An Overview of Employment and Labour Legislation — Human Rights Legislation — Discrimination in Employment — Pay Equity** — The Supreme Court of Canada upheld the decisions of the Quebec Court of Appeal and the Quebec Superior Court declaring sections 76.3, 76.5 and section 103.1 paragraph 2 of the *Pay Equity Act* invalid on the ground that these provisions are discriminatory and violated section 15(1) of the *Canadian Charter of Rights and Freedoms*. The sections in question were deemed by the court to further perpetuate the historical disadvantage of women with respect to their compensation in employment as they allowed pay equities discovered during audits required every five years to go uncorrected until the next legislatively required audit. As adjustment payments were not retroactive, the employer's obligation to ensure pay equity amongst all employees was seen as an "episodic, partial obligation"; *Québec (Procureure générale) c. Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 (S.C.C.).
- **Management Rights — General Rights and Duties of Management** — The Supreme Court of Canada affirmed that management rights for unionized employers must always be exercised reasonably and

consistently with the collective agreement. A reasonable policy is one that involves a balancing of the interests of both parties and the policy's impact on employees; *Association des juristes de justice c. Canada (Procureur général)*, 2017 SCC 55 (S.C.C.).

- **Management Rights — Specific Rights of Management — Drug and Alcohol Policies** — An employee was dismissed after testing positive for cocaine following a workplace accident. The employer had a policy under which employees with addictions could seek treatment before an accident without fear of discipline. The employee brought a human rights complaint with respect to his dismissal, stating that he was not aware of his addiction until after the accident. He argued that his employer had discriminated against him on this basis of his addiction. The Alberta Court of Appeal found that the employee's termination did not amount to discrimination. The policy addressed *bona fide* occupational requirements. The objective of ensuring employee safety was relevant in the court's assessment of "undue hardship" in the context of accommodation. The employee appealed to the Supreme Court of Canada. A majority of the court held that the tribunal's decision was reasonable; *Stewart v. Elk Valley Coal Corp.*, 2015 ABCA 225 (Alta. C.A.), affirmed 2017 SCC 30 (S.C.C.).
- **Non-Discrimination and Human Rights — Obligations of Both the Company and the Union** — The scope of protection under Human Rights legislation was expanded by the Supreme Court of Canada when the court overturned the decision of the British Columbia Court of Appeal which found a complaint against an individual and their employer by an employee of a different employer could not proceed. The Supreme Court held that despite a lack of direct relationship, the complainant should be protected from discrimination in the broader context of their employment whenever that discrimination has a sufficient nexus with the employment context. This contextual analysis focused on the following non-exhaustive factors: whether the respondent was integral to the complainant's workplace; whether the impugned conduct occurred in the complainant's workplace; and whether the complainant's work performance or work environment was negatively affected; *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 (S.C.C.).

