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COLLECTIVE BARGAINING AND AGREEMENT

David J. Corry

Release No. 2021-2, December 2021

Publisher's Special Release Note 2021

The pages in this work were reissued in December 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the December 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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

What's New in this Update:

This release includes updates to the caselaw and commentary in Chapter 1 (Canadian Employment Law and Collective Bargaining), 6 (Negotiation), 8 (Duty to Bargain), 9 (Collective Bargaining Tactics and The Law), 13 (Management Rights), 14 (Non-Discrimination and Human Rights), 15 (Union Rights and Responsibilities), 16 (Hours of Work and Rest), 20 (Leaves of Absence), 23 (Lay-off and Recall), 30 (Illness and Disability), 32 (Alcohol and Drug Testing) and 36 (Grievance and Arbitration Procedure).

Highlights:

CANADIAN EMPLOYMENT LAW AND COLLECTIVE BARGAINING — THE CHARTER OF RIGHTS AND FREEDOMS

—This new section discusses the significant impact of s. 2(d) of the Charter on labour relations, arbitration, and collective bargaining, including the constitutional protections extended to collective representation, independent representation selected by employees, and the exercise of the right to strike. This section includes a thorough discussion of 12 Supreme Court of Canada and Court of Appeal decisions along with other significant caselaw from across Canada.

CANADIAN EMPLOYMENT LAW AND COLLECTIVE BARGAINING — OVERVIEW OF EMPLOYMENT AND LABOUR LEGISLATION HUMAN RIGHTS LEGISLATION – DISCRIMINATION IN EMPLOYMENT — PAY EQUITY —

In *Ontario Nurses' Association v. Participating Nurses Homes*, 2021 CarswellOnt 14292 (Ont. C.A.), the parties disputed whether the proxy method is to be used in ensuring that pay equity is maintained or (as was the Participating Nursing Homes' and Ontario Attorney General's position) only to establish pay equity. In dismissing the Association's appeal, the Court of Appeal held that the text, context, scheme and purpose of the *Pay Equity Act* require ongoing access to male

comparators through the proxy method to maintain pay equity.

NEGOTIATION — RATIFICATION — In *Peri Formwork Systems Inc. and CSWU, Local 1611, Re*, 2020 CarswellBC 2368 (B.C. L.R.B.), the employer and union agreed at bargaining that certain performance bonuses would be ending. At the ratification meeting, the union representative mistakenly advised the bargaining unit that the bonus would continue. The employees ratified the collective agreement. The board dismissed the union's application seeking a declaration that no collective agreement was in effect. The union representative's error did not warrant a finding that no ratification had occurred.

NON-DISCRIMINATION AND HUMAN RIGHTS — PROHIBITION OF DISCRIMINATION ON VARIOUS GROUNDS — SEXUAL ORIENTATION — § 14:15 – In *Con-Drain Co. (1983) Ltd. And LIUNA, Local 183 (MK)*, 2021 CarswellOnt 8910 (Ont. Arb.), a grievor employed in the construction industry who identified as gay, Muslim and physically disabled filed a grievance alleging he was harassed, discriminated against and mistreated by his direct supervisor over a prolonged period. The employer terminated the supervisor for cause. The arbitrator allowed the grievance and issued a consent order: holding the employer vicariously liable for the supervisor's acts; awarding the grievor \$50,000 in damages; and declaring that the employer violated the *Occupational Health and Safety Act, Human Rights Code*, collective agreement and Policy on Prevention of Violence and Harassment. The decision also directed that neither the employer, any subsidiaries or any joint ventures employ or engage the offending supervisor.

ProView Developments

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- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages

