

News

Moves

- **Janet Bobechko** has joined the Toronto office of *Norton Rose Fulbright* as a partner. She was previously at *Blaney McMurtry LLP* where she chaired the environmental group. She has a particular focus on environmental compliance and regulatory approvals. She provides environmental advice on all manner of business and real estate transactions.
- *Clark Wilson* announced that **Jim Schmidt** and **Scott Lamb** are now partners with the firm. Schmidt practises in the business litigation group and handles high-value commercial cases in trials, appeals and arbitrations and has particular experience in fraud claims, shareholder litigation and real estate disputes. Lamb practises in the technology, intellectual property and infrastructure, construction & procurement groups. Lamb is also a registered trademark agent and handles privacy law matters.
- *Aird & Berlis LLP* has announced the newest members of its expanded intellectual property practice. **Tim Lowman** and **Paula Bremner** have joined *Aird & Berlis'* litigation group and intellectual property group. Lowman has more than 35 years' experience as counsel in a broad range of commercial and intellectual property litigation. Bremner specializes in pharmaceutical patent litigation and trademark opposition matters. Five registered patent agents have also joined the firm's newly-founded patent agency practice: **Lola Bartoszewicz, Kimberly McManus, Kitt Sinden, Erica Lowthers** and **SuMei Cheung**.
- **Monika Szabo** is joining *PwC Law LLP's* immigration practice as a partner in U.S. immigration law. She comes from *KMPG Law LLP* where she led the U.S. immigration department.

Broader scope to sex harassment law

DONALEE MOULTON

Ontario is poised to enact new legislation that will substantively increase employer obligations relating to sexual harassment in the workplace.

Under the proposed new act, employers will have to take active steps to prevent and investigate incidents of sexual harassment.

"This is a comprehensive piece of legislation," said Sarah Crossley, a partner with *Norton Rose Fulbright* in Toronto. "It reinforces the importance of employers to take allegations of harassment very seriously. They cannot afford to turn a blind eye."

As a first step, Bill 132, *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)*, will require employers to update existing policies and procedures to clearly set out how incidents will be investigated, including how workers register a complaint if an employer or supervisor is the alleged harasser.

"Employers will have to spend time and resources to update their resources," said Sabrina Serino, an associate with *Dentons* employment and labour group in Toronto.

The legislation will have an even greater impact on publicly-funded colleges and universities and private career colleges, which will be required to create stand-alone policies addressing sexual violence against students, noted Nadine Zacks, an associate with *Hicks Morley* in Toronto.

"Implementing new effective policies and ensuring that all employees are trained on the policies is a large undertaking for any employer, and in particular smaller employers with less resources to spend on such projects," she said.

The main thrust of Bill 132, which amends several existing



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pieces of legislation including the *Occupational Health and Safety Act*, is to make it mandatory for employers to investigate complaints of harassment. It imposes a duty to ensure that incidents and complaints are appropriately investigated.

For some complaints such as employee-on-employee harassment, the investigation can be internal. For manager-on-employee complaints, the investigation will have to be external.

"Workplace harassment investigation requires a specific investigative skill set. Most small employers lack these skills and will likely have to retain consultants to do this," noted Daniel Zacks, an associate with *Clyde & Co. Canada LLP* in Toronto. These external investigations can be very expensive, he added.

"This will be costly and difficult for small employers."

Investigations can also be imposed on employers. A new legislative requirement will give Ministry of Labour inspectors greater authority to address complaints brought forward to them.

"As the bill now stands, it says inspectors can order third-party investigations, but it doesn't delineate how that will be determined," Serino noted.

In addition, the legislation, which has now passed second reading, will remove the limitation period for all civil proceedings based on sexual assault so victims can bring their civil claims forward whenever they feel ready to do so. The limitation period for survivors of sexual and domestic violence to make compensation applications to the Criminal Injuries Compensation Board will also be eliminated.

As well, the new legislation includes proposed amendments to the *Limitations Act, 2002* that describes what constitutes an intimate relationship. This could be problematic, said Daniel Zacks.

"The category of people in an intimate relationship that involves financial, emotional, physical, or other dependence is very broad.

"Unless 'dependence' is given a narrow meaning, it's a category that could in theory include every romantic relationship. This gives rise to the potential of significant volume of claims that are not subject to any limitation period."

Workplace harassment is also redefined under Bill 132 to include "workplace sexual harassment," which encompasses a course of "vexatious comment or conduct" and someone in a position of power "making a sexual solicitation or advance."

However, the legislation also makes it clear that a "reasonable action" taken by an employer or supervisor does not constitute sexual harassment. For example, denying an employee request for a day off is not harassment if the employer requires the worker on that day to maintain the business.

The new legislation flows from the Ontario government's aim to address issues of sexual harassment as spelled out in an action plan titled *It's Never Okay*, released in the spring of 2015.

According to the 35-page report, 28 per cent of Canadians say they have been on the receiving end of unwelcome sexual advances, requests for sexual favours or sexually charged talk while on the job.

Ontario's new legislation may also have a wider reach.

"This could definitely influence provinces across the country," said Serino. "Make no mistake, this is an important issue for employers and employees."

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HOW TO REACH US

Tel: (905) 479-2665 Fax: (905) 479-3758

Toll-free: 1-800-668-6481

Email: comments@lawyersweekly.ca

Main Office

111 Gordon Baker Road
Suite 900, Toronto, ON M2H 3R1

Ottawa Bureau

c/o Parliamentary Press Gallery
Rm 350-N, Centre Block
Parliament Hill, Ottawa, ON K1A 0A6
Tel: (613) 820-2794 Fax: (613) 995-5795

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2 Carlton Street, Suite 1706, Toronto, ON
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Advertising Sales

Jim Grice (905) 415-5807

Ritu Harjai (905) 415-5804

Anne Yu (905) 415-5881

Advertising Traffic Co-ordinator

Jackie D'Souza (905) 415-5801

Circulation Controller

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