



15th Annual National Labour Arbitration Competition

Mathews Dinsdale would like to extend its congratulations to **Natasha Edgar** and **Avril Fisher** of the **University of Alberta**, winners of the **2013 Mathews Dinsdale National Labour Arbitration Competition!**

The Competition required students from across Canada to research and argue both sides of a case, including whether an employer could rely on evidence obtained during a search of an employee's locker and whether an employer could discipline or discharge an employee for sleeping on the job and/or for bringing a firearm to the workplace.

The students made their arguments in front of panels of judges, adjudicators, and practitioners in the labour and employment law field. On Sunday, the finalists made their arguments before Elizabeth MacPherson, Chair of the Canada Industrial Relations Board; The Honourable Justice Michael McKelvey; and Bernie Fishbein, Chair of the Ontario Labour Relations Board.

Mathews Dinsdale would like to congratulate all of the competitors and thank all of the judges, adjudicators, and practitioners who volunteered their time to make this year's Competition possible. 

Make Payments or Go to Prison?

Ontario Employer Jailed for Failure to Pay Wages

Recently, the Ontario Court of Justice sentenced a local employer to 90 days in prison for violating the *Employment Standards Act, 2000* ("the Act"). His crime? Continuously failing to pay his employees.

The employer, Steve Blondin, is the director of six Ontario companies. At this time, it is unclear whether the companies are still operating.

In addition to the prison sentence, Mr. Blondin was also ordered to pay \$280,000 in fines.

According to court documents, 61 employees from six companies operated by Mr. Blondin filed claims for unpaid wages with the Ministry of Labour between March 2007 and October 2009. The Ministry investigated these claims and found that wages were owed to all 61 employees. >

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Between February 2008 and April 2010, an employment standards officer issued 113 orders to the six companies and to Mr. Blondin. Both the companies and Mr. Blondin were ordered to pay over \$125,000 in unpaid wages. Despite the orders, the companies and Mr. Blondin failed to make any payments.

Mr. Blondin and the six companies were eventually charged by the Ministry of Labour under Ontario's *Provincial Offences Act*.

In October 2011, Mr. Blondin and each of the six companies pled guilty to failing to comply with the Ministry of Labour's orders. In this instance, the employer represented himself in court.

The sentence was handed down in Toronto on November 1, 2012 by Justice Vladimir Bubrin. In addition to the jail sentence and the \$280,000 in fines, Mr. Blondin and his companies were ordered to pay wages owing to 61 employees, as well as a 25 percent victim fine surcharge, as mandated by Ontario's *Provincial Offences Act*.

In a press release following the decision, Minister of Labour Linda Jeffrey remarked: "This sentence serves as a warning to those who believe they are above the law. Our government is committed to ensuring that all Ontarians are treated fairly at work, and we will continue to help ensure that Ontarians know their rights and responsibilities."

Although it has rarely occurred, the Act does contemplate that a director can be fined and jailed if he or she violates the Act. Specifically, under section 136 of the Act, a director of a corporation is guilty of an offence if he or she fails to comply with an order of an employment standards officer to pay wages. Under this provision, the director's liability is limited to a fine of not more than \$50,000 and does not include jail time.

However, under section 137 of the Act, if a director permits or acquiesces in an offence, he or she can be liable to a fine or imprisonment. In practice, the imposition of such penalties has been infrequent. Nevertheless, this decision may signal that the Ministry of Labour and the courts are taking a stricter approach to employers who fail to comply with the orders of employment standards officers.

It is of paramount importance for employers to treat orders from an employment standards officer seriously and in an expeditious manner. This does not mean that an employer cannot appeal the order. However, if an employer decides not to pursue an appeal, they should not delay compliance. Should you be faced with a complaint made under the Act or with an order from an employment standards officer, a Mathews Dinsdale lawyer will be pleased to assist. 

Zellers Employees the "Target" of Downsizing

American discount giant Target first made headlines in Canada in January 2011, when it announced that in 2013 it would be expanding north as a result of its purchase of several leaseholds from Canadian chain store Zellers. The process of opening 100 to 150 stores in Canada began as early as 2004 for Target, with a cost of over \$1.8 billion in leases alone, and will ultimately result in thousands of Zellers workers losing their jobs.

The impact of Target's expansion into Canada was the subject of a recent British Columbia Labour Relations Board Decision. In this decision, the B.C. Labour Relations Board ("the B.C. Board") ruled against the United Food and Commercial Workers Union, Local 1518 ("the Union"), which represented Zellers employees at a store in Burnaby, B.C. and had filed a successor employer application. >

In its decision, the B.C. Board outlined what it called “Target’s present foray into Canada,” noting that Target had to choose between building its stores at new and undeveloped locations or entering into an agreement with an existing retailer for the purchase of its leasehold interests. As a result of Canadian land-use regulations and the critical mass of stores needed to penetrate the Canadian market, Target elected to enter into an agreement with Zellers, which had been struggling with its eroding market share and had made overtures to Target in the past.

The agreement between Target and Zellers was entered into on January 12, 2011. Under this agreement, Target selected 189 leases of a possible 220 Zellers’ leases.

Following the arrangement between Target and Zellers, Target entered into an agreement with the landlord of the Brentwood store in Burnaby to terminate Zellers’ lease. Then, in July 2012, Zellers announced the closure of the Brentwood store, effective in early 2013.

In response to this expansion—nicknamed “Project Bacon” by Target—the Union representing the 137 employees at the Brentwood store applied under the B.C. *Labour Relations Code* for a declaration that Target was a successor employer to Zellers.

In particular, the Union urged the Board to consider whether the enterprise had been left in a form in which the earlier collective bargaining rights of the employees should be preserved. The Union claimed that in answering this question, the Board had an obligation to “fairly balance freedom of trade with the reasonable expectations and hard-won rights of employees within the bargaining unit.”

Target countered that there was no factual basis for the Board to conclude that Target acquired the business of Zellers. Target asserted that even if it were

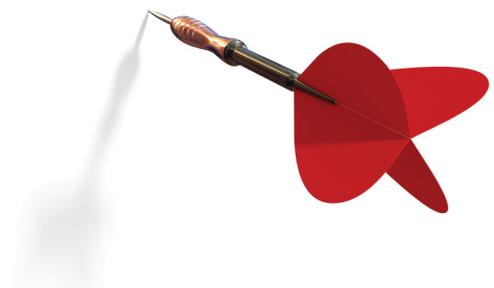
to assume the space formerly occupied by Zellers at the Brentwood Mall, it would bear little resemblance to the Zellers that had existed there previously.

Finding in Target’s favour, the Board emphasized that there had been no transfer of inventory, business processes, IT systems, employment policies, distribution networks, trade fixtures, customer loyalty programs, contracts or accounts, or any other indicia of a transfer or sale of business. Rather, the transaction between Target and Zellers centred on the transfer of leases, pharmacy records, and a Brand Waiver.

Further, the simple fact that the employees at Target would be performing functions similar to those that employees at Zellers had done previously was not enough to convince the B.C. Board, to extend the rights of the workers under the B.C. *Labour Relations Code*.

Accordingly, the B.C. Board determined that Target has a unique position in the retail sector, writing that: “Target is bringing its own highly successful business to Canada. It did not need Zellers for anything but the lease....”

With Target purchasing such a large number of locations in various provinces across Canada, it is likely that this will not be the last challenge made by a union against Target with respect to bargaining rights. It remains to be seen whether the B.C. Board’s decision will serve as a benchmark for the other provinces, or whether Labour Boards in the other provinces will be more inclined to accept the Union’s contention that Labour Boards have an obligation to “fairly balance freedom of trade with the reasonable expectations and hard-won rights of employees within the bargaining unit”.



Seminars and Presentations

January

January 15, 2013: **Mark Contini** spoke to a Sault Ste. Marie area employer on the topic of *Issues with Discipline*.

January 30, 2013: **David Gorelle** and **Matthew Carroll** presented to the Toronto Area Road Builders Association on *Changes to the Workplace Safety and Insurance Act and the Ontario Workplace Safety and Insurance Board Policies*.

February

February 7, 2013: **Dan Leone** spoke at the Ontario Bar Association's Labour and Employment Law Institute 2013 on the topic *Construction Labour Relations: What Every Labour and Employment Lawyer Should Know*.

February 12, 2013: **Joseph Liberman** presented to the project managers of a major civil engineering (construction) company on *Understanding and Managing the Collective Agreement*.

February 15, 2013: **Joseph Liberman** spoke to the Advanced Labour Program at Western University on *Understanding the Construction Provisions in the Labour Relations Act*.

March

March 1, 2013: **Joseph Liberman** will be speaking to the Heavy Construction Association of Toronto on *What Project Managers and Superintendents Should Know About Management Rights and Obligations in the Collective Agreement*.

March 4 and 5, 2013: A number of Mathews Dinsdale lawyers will be speaking at the 23rd Annual Police Association of Ontario Conference. **Rick Baldwin**, Conference Co-Chair, will speak on the topic of *Update your Status — Privacy in the Internet Age — Email and Social Media*; **Steve Wilson** will speak on *Collective Bargaining in 2013 and Beyond*; **Elizabeth Keenan** will participate in *A Discussion About the Role of the Association in Accommodation and Return to Work Programs*; and **David Francis** will speak on the topic of *Booze and Pills at Work — Drug and Alcohol Testing in the Workplace*.

March 20, 2013: **Steven Wilson** will participate in a panel called *What Do Current Economic Conditions Portend for Union–Management Relationships?* at the Ministry of Labour Dispute Resolution Services' 2013 Conference & Workshop.

DISCLAIMER: The aim of MD&C's *Employers' Advisor* is to keep its readers informed on current legal issues. It is not intended to provide legal advice. As individual circumstances may vary, readers with questions about issues raised by this newsletter, or any other legal issue, are encouraged to contact counsel for specific answers and advice.