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LEAVES OF ABSENCE REVISITED – EXPANSION CONTINUES

By: Theo Anne Opie, LL.B. © CCH Canadian Limited.

The June 2007 issue of *PaySource*, newsletter No. 144, contained an article entitled “Leaves of Absence Continue to Expand”, which highlighted developments up to that time. Since then, Alberta has introduced new job protection for public health emergency leave, compassionate care leave continued to develop and Canadian Forces Reservists Leave has continued to expand.

For payroll practitioners and human resources professionals, these developments keep compassionate care leave and EI benefits and leaves of absence in general, in the spotlight, and as such, they deserve to be revisited.

Compassionate Care Leave Developments

Effective June 15, 2006, the federal government amended the Employment Insurance Regulations to expand the definition of family member used for the purpose of qualifying for EI compassionate care benefits.

Since that time, British Columbia, Manitoba, Ontario, Newfoundland and Labrador, Nova Scotia, Saskatchewan, Nunavut, the Northwest Territories and the Yukon have amended Employment Standards legislation to match the expanded federal definition of family member. What this means is that in the case of employees in these provinces, entitlement to a leave of absence and qualifying for EI compassionate care benefits match.

Inside

Hot News Items

2008 Budget Season: Alta.; Man.; N.S.; and P.E.I.	3
Federal Reservists Leave Now Law	6
Nfld/Lab. Reservists Leave Progresses	7

Need To Know

B.C. Farm Worker Protection	7
New Nova Scotia Labour Department	8
Min. Wage Reminders: N.S.; P.E.I.; Que.; and Sask.	8

Recent Cases/Rulings

Seasonal Employee and Termination	8
Transport Company Within Federal Jurisdiction	9
Payment by Union	10
Independent Contractor and T4A Reporting	10
Gratuities Paid Electronically	10
Retiring Allowance Withholding	11

In New Brunswick, Prince Edward Island, and Quebec, the definition of family member for leave under Employment Standards legislation differs from the definition used to qualify for EI compassionate care benefits. Employers need to be aware of the definition of qualifying family member that entitles an employee to an unpaid leave of absence under employment/labour standards legislation and the definition of family member that qualifies an employee to receive EI benefits. In some situations, the family member who is ill and in need of care may qualify the employee to receive EI benefits but not be included in the qualifying list that entitles him or her to an unpaid leave of absence from his or her employment. The employee will need to be told whether or not he or she is entitled to the leave and why.

Finally, Alberta does not currently provide for compassionate care leave in its Employment Standards legislation. This means that while employees in Alberta may qualify for EI compassionate care benefits, their actual ability to take leave to care for an ill family member is not regulated, but remains up to individual employers. However, this may change as Alberta has reviewed its *Employment Standards*

Act and is expected to introduce amending legislation within the next year.

Commentary on compassionate care leave is located in the Employment Standards section of PAYSOURCE at ¶5900 *et seq.* and further developments will be noted in future Reports.

Alberta Job Protection in the Event of Pandemic

Effective June 19, 2007, people who are complying with an order or certificate issued under the *Public Health Act* during a public health emergency cannot be terminated from their employment just because of their compliance. During a pandemic this protection could also be extended to people who are ill with influenza, as well as to persons caring for sick family members.

Commentary on pandemic/health emergency leave is located in the Employment Standards section of PAYSOURCE at ¶5922.

Canadian Forces Reservists Leave

This is a new form of leave and would appear to have developed in response to Canada's expanded and continued commitment of troops to various international crises.

At the time of the original article, only Manitoba, Nova Scotia, and Saskatchewan had amended their Employment Standards legislation to permit employees to take unpaid leave for service in the Canadian Forces Reserves.

Since that time, the federal government, New Brunswick, Ontario, and Prince Edward Island have passed legislation to provide for Reservists Leave in their Employment Standards legislation. As well, Newfoundland and Labrador currently has an amending Bill before its legislature and that Bill is expected to become law shortly. Finally, British Columbia may also be moving to provide for such leave, but at the moment, only has a Private Members' Bill before its legislature, and not a government Bill.

Further developments will be noted in future Reports.

The commentary on Reservists Leave is located in the Employment Standards section of PAYSOURCE at ¶5900 *et seq.*

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Hot News Items

2008 Budget Season

Budget season is upon us once again. To date, the federal government and the following provinces/territories have issued their 2008 Budgets. Highlights of the Budgets relating to payroll are reproduced below. As the other provinces/territories issue their Budgets, they will be added to the list.

Federal

The 2008 federal Budget was presented February 26, 2008, and is reproduced in the Budgets & New Developments section at ¶180,162.

Alberta

The 2008 Alberta Budget of April 22, 2008, presented by Finance Minister Iris Evans, contained the following measures related to payroll.

Personal Income Tax Rates and Credits

Alberta Family Employment Tax Credit

The Alberta Family Employment Tax Credit (AFETC) fulfills two objectives. It provides benefits to working families, who currently receive up to \$1,604 each year. The refundable credit also assists families in moving off income support programs, by providing additional income as they work more, helping to compensate them for the loss of other benefits.

Beginning in July 2008, the government will enhance the credit, over and above annual inflation adjustments, by increasing benefits and making 20,000 more families eligible for the credit. The maximum benefit will be increased by 10%, to \$669 for one child, \$1,277 for two children, \$1,642 for three children and \$1,764 for four or more children. In addition, the point at which the credit starts to phase out will be increased by \$5,000 to \$32,633.

Caregiver/Infirm Dependant/Disability Tax Credits

Many people find themselves assuming financial responsibility for providing care for family members or actually providing the care themselves. The tax system recognizes this extra burden through several different tax credits, including the caregiver credit and the infirm dependant credit. Individuals with a disability can claim the disability credit, and if they are under 18, are also eligible for the disability supplement. In cases where these individuals do not have enough income to pay tax, these amounts can be transferred to parents or other relatives.

Effective for the 2008 tax year, each of these credit amounts will be enhanced by \$5,000, on top of inflation indexing. The caregiver, infirm dependant and disability supplement amounts will more than double to \$9,355, while the disability amount will rise by 67% to \$12,466. In addition, income thresholds will be increased by \$5,000, to \$24,229 for the caregiver credit and to \$15,535 for the infirm dependant credit, meaning more people can claim these credits.

In general, taxpayers who are currently claiming one of these credits will be able to receive an additional benefit from these changes of up to \$500 each year. For individuals who are able to claim both the disability amount and the disability supplement, benefits could increase by up to \$1,000.

2008 Indexation Factor for Tax Credits

Alberta indexes personal income tax credit amounts to prevent inflation from artificially increasing how much tax people have to pay. In 2008, amounts will be indexed by 4.7%. The decision to index means that nearly \$132 million will stay with Albertans in 2008, rather than being paid to the government because of inflation.

Alberta's basic and spousal amounts are far and away the highest in Canada and mean that Albertans can make more money without paying any provincial income tax. Single Albertans who work can earn \$17,100 before paying provincial income tax. A working family with two children that is eligible for the Alberta Family Employment Tax Credit can earn \$41,100 before paying provincial income tax.

Health Care Insurance Premiums To Be Eliminated

Health care insurance premiums will be eliminated entirely on January 1, 2009. This means that about \$1 billion will be left with individual Albertans and Alberta businesses each year. This is a significant savings, roughly equal to a 12% reduction in personal income taxes.

Seniors were exempted from paying premiums in 2004 and Albertans below a certain income threshold have their premiums either fully or partially subsidized. Now all Albertans will be free from paying premiums. This is especially important for those lower-income Albertans just above that threshold who still pay premiums. Because the premium is a flat amount, it forms a larger portion of their combined tax and premium bill.

Eliminating premiums will benefit Alberta families by up to \$1,056 each year. Single Albertans will benefit by as much as \$528. Because an employer-paid premium is a taxable benefit, many individuals will also pay less in federal and provincial income taxes. In general, Alberta businesses that pay premiums on behalf of employees as part of a benefit package will experience an immediate gain. It is difficult to determine how the benefits will be divided between employees and employers in these situations over time.

Ending premiums enhances Alberta's tax advantage in comparison to other provinces. Eliminating premiums means that Alberta's tax system is even more competitive and equitable. Ontario and British Columbia are now the only provinces that levy premiums.

The elimination of premiums will not affect funding for health care.

The government will continue to require health registration to provide access to insured health care services. Currently, many Albertans are registered in the health care system by their employers, using the same process that employers use to remit premiums on their employees' behalf. Until a new registration process is developed, employers will be asked to continue to register their employees. The Ministry of Health and Wellness will soon communicate with employers regarding this process.

Until premiums are eliminated on January 1, 2009, Albertans are still responsible for paying premiums, as before. The government monitors the collection of outstanding premiums closely. Individuals and businesses that do not pay their premiums will be pursued vigorously.

British Columbia

The 2008 British Columbia Budget was presented February 19, 2008, reported in the February issue of *PAYSOURCE*, No. 152, and is reproduced in the Budgets & New Developments section at ¶180,164.

Manitoba

The 2008 Manitoba Budget of April 9, 2008, presented by Finance Minister Greg Selinger, contained the following measures related to payroll.

Personal Income Tax Rates

Budget 2007 set out a five-year plan of personal income tax bracket and rate changes.

The changes for 2009 are now confirmed. Starting January 1, 2009, the first bracket rate is reduced from 10.9% to 10.8%; the middle bracket threshold is raised from \$30,544 to \$31,000; and the top bracket threshold is raised from \$66,000 to \$67,000. These measures save Manitoba taxpayers \$14.8 million on a full-year basis.

The changes for 2010 and 2011 are still expected to be as follows: Starting January 1, 2010, the first bracket rate is reduced from 10.8% to 10.7%; the middle bracket threshold is raised from \$31,000 to \$32,000; and the top bracket threshold is raised from \$67,000 to \$68,000. Starting January 2011, the first bracket rate is reduced from 10.7% to 10.5%; the middle bracket threshold is raised from \$32,000 to \$35,000; and the top bracket threshold is raised from \$68,000 to \$70,000.

Personal Tax Credits

Basic Personal, Spousal, and Eligible Dependent Amounts

The Basic Personal Amount (BPA), the Spousal Amount, and the Eligible Dependent Amount are each increased by \$100 to \$8,134, effective January 1, 2009. This is the seventh increase in the BPA since 1999.

A taxpayer can claim a non-refundable tax credit for a dependent spouse, or if the taxpayer is a single parent, for one dependent child under 18. The maximum Spousal Amount and Eligible Dependent Amount are reduced by any income earned by the dependent. Budget 2007 raised the maximum Spousal and Eligible Dependent Amount by 24% from \$6,482 to \$8,034, reaching the same level as the BPA for the first time.

Primary Caregiver Tax Credit

The Primary Caregiver Tax Credit is introduced, commencing in the 2009 tax year, to provide recognition and financial support to individuals who serve as volunteer primary caregivers for more than three continuous months. This program builds upon the Manitoba Home Care Program, and is intended to help care recipients remain independent as long as possible.

The primary caregiver may be a spouse, other relative, neighbour or friend who provides care without remuneration to a Manitoba Home Care client.

The client must be assessed as requiring Care Level 2, 3, or 4 while living at home. Examples include those with a disability (young or old), those receiving palliative care, and others needing care or supervision for periods of more than three months.

After a three-month qualifying period, the refundable credit is \$85 per month to a maximum of \$1,020 per year to the primary caregiver for each client, claimable when the caregiver files her/his personal income tax return for the year in which the credit is earned.

Only one person may be designated as the client's primary caregiver at any one time. A caregiver may not earn the credit for more than three clients within a given month.

The benefit to eligible primary caregivers is projected to be \$5.4 million on a full-year basis.

Personal Tax Credits

Commencing with the 2009 taxation year, the Personal Tax Credit amounts are increased as follows:

- Basic Credit \$195
- Age Credit for Self \$113
- Basic Credit for Spouse \$195
- Age Credit for Spouse \$113
- Disability Credit for Spouse \$113
- Credit for Eligible Dependent \$195
- Disability Credit for Self or Dependent \$113

- Disability Credit for Dependents \$62
- Credit for Dependent Children \$26.

Northern Residents Deduction

Individuals who live in prescribed areas of northern Canada for at least six consecutive months may claim the Northern Residents Deduction in computing their taxable income. Effective January 1, 2008, the residency deduction is increased from \$7.50 to \$8.25 per person per day, and from \$15 to \$16.50 per day for a sole claimant in a household, as announced in the 2008 federal Budget. Residents of the more isolated Northern Zone are eligible for the full deduction, while residents of the Intermediate Zone are eligible for a half deduction.

This measure reduces Manitoba revenue and provides northern residents with tax savings of \$0.4 million on a full-year basis.

New Brunswick

The 2008 New Brunswick Budget was presented March 18, 2008, reported in the March issue of PAYSOURCE No. 153, and is reproduced in the Budgets & New Developments section at ¶180,164.

Nova Scotia

The 2008 Nova Scotia Budget was presented April 29, 2008, a Budget summary was posted to CCH's PaySource News Tracker on April 29, 2008, and for subscribers of the electronic PaySource, is reproduced in the Budgets & New Developments section at ¶180,164. Readers who subscribe to the paper version of PaySource will receive the Budget summary with the next Report.

Ontario

The 2008 Ontario Budget was presented March 25, 2008, reported in the March issue of PAYSOURCE, No. 153, and is reproduced in the Budgets & New Developments section at ¶180,164.

Prince Edward Island

The 2008 Prince Edward Island Budget of April 23, 2008, presented by Treasurer Wesley Sheridan, contained the following measures related to payroll.

Personal Income Tax Rates and Credits

As part of the 2007 Budget, the basic personal tax credit increased to \$7,560. As part of the 2008 Budget, the basic personal tax credit will increase to \$7,708.

The 2007 Budget increased the income tax brackets by 2% and the 2008 Budget will increase the income tax brackets by 4% over the 2006 levels.

The following list shows the tax credits and brackets for 2008:

- Basic Personal Amount – \$7,708
- Spouse Amount – \$6,546
 - Income Threshold – \$655
- Age Amount – \$3,764
 - Income Threshold – \$28,019
- 2nd Income Tax Bracket Threshold – \$31,984
- 3rd Income Tax Bracket Threshold – \$63,969
- Surtax Threshold – \$12,500
- Education Amount Full Time – \$400
- Education Amount Part Time – \$120

Note: Thresholds are effective January 1, 2008 and the thresholds will increase by 4% over 2006 levels.

Quebec

The 2008 Quebec Budget was presented March 13, 2008, reported in the March issue of PAYSOURCE, No. 153, and is reproduced in the Budgets & New Developments section at ¶180,164.

Saskatchewan

The 2008 Saskatchewan Budget was presented March 19, 2008, reported in the March issue of PAYSOURCE, No. 153, and is reproduced in the Budgets & New Developments section at ¶180,164.

Nunavut

The 2008 Nunavut Budget was presented February 20, 2008, reported in the February issue of PAYSOURCE, No. 152, and is reproduced in the Budgets & New Developments section at ¶180,164.

Yukon

The 2008 Yukon Budget was presented March 20, 2008, reported in the March issue of PAYSOURCE, No. 153, and is reproduced in the Budgets & New Developments section at ¶180,164.

Federal Reservists Leave Now Law

Bill C-40 (now S.C. 2008, c. 15), *An Act to amend the Canada Labour Code, the Canada Student Financial Assistance Act, the Canada Student Loans Act and the Public Service Employment Act*, previously noted in the March issue of *PaySource*, No. 153, received third reading in the Senate April 16, 2008 and Royal Assent April 17, 2008. The Bill was proclaimed law on April 17, 2008.

New legislation amends Part III of the *Canada Labour Code* in order to provide job protection for reservists who work for employers in federally regulated industries and the federal public sector.

- The proposed amendments will allow reservists who have completed at least six months of continuous employment with their employer to take a leave of absence without pay to participate in annual training or volunteer for designated domestic or international operations (e.g., Operation ATHENA in Afghanistan, peacekeeping missions, disaster relief and search and rescue operations).
- Reservists will also be entitled to reinstatement in the position they held prior to the leave or in an equivalent position, with some exceptions in case of a workplace reorganization or where accommodating an employee can only be done by offering a different position.
- In addition, new provisions of the *Canada Labour Code* will prohibit employers from penalizing employees who are reservists, or who apply for or take leave. Reservists will also be able to defer taking vacations while they are on leave.

- The leave will be unpaid, and employers will not have to provide benefits or make pension contributions during an employee's leave. Reservists receive pay and benefits from the Canadian Reserve Force during their periods of service. However, seniority will continue to accrue, and the periods of service with the employer immediately before and after the leave will be considered continuous service.
- Employees will have to provide advance notice of the start and end dates of their leave to their employer.
- Regulation-making powers will allow the government, if necessary, to clarify certain terms or prescribe circumstances in which an employer may be exempted from one or more obligations related to these new provisions.

The federal government has now joined New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Manitoba and Saskatchewan, who have already amended their respective Employment Standards legislation to protect reservists' jobs.

The new Federal Reservists Leave has been incorporated into the Employment Standards section of PAYSOURCE, at ¶180,164.

Newfoundland and Labrador Reservists Leave Progresses

The Province of Newfoundland and Labrador recently introduced legislation to protect the civilian jobs reservists' leave behind when they are serving their country either at home or overseas.

Bill 1, *An Act to Amend the Labour Standards Act to Provide for Leave for Reservists*, previously summarized in the March issue of *PaySource*, No. 153, received second and third reading April 22, 2008.

Newfoundland and Labrador will join the federal government, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Manitoba and Saskatchewan, who have already amended their respective Employment Standards legislation to protect reservists' jobs.

Amendments to the current legislation would allow reservists to be away on unpaid leave for the period of service which includes training and any period of time for treatment, recovery or rehabilitation in respect of a physical or mental health problem that results from service. In order to meet eligibility requirements, the applicant must have at least six months of employment with his or her employer and provide the employer with 60 days' notice of intention

to take leave. The notice must give the date on which the leave will begin and the anticipated date on which his or her service will end. In addition, documentation from the Canadian Armed Forces and from the employee requiring leave must be provided upon the request of the employer.

Reservists are also entitled to reinstatement in the position they held prior to the leave or in an equivalent position. However, unless the employer and the employee otherwise agree, the period of Reservists Leave does not count towards seniority/length of service and, therefore, also does not count with respect to accrual of vacation entitlement, required notice of termination, etc. The period of employment following leave is, however, considered to be continuous with the period worked before the leave.

The new Reservists Leave will become law when the Bill receives Royal Assent, and the progress of the Bill will be noted in future Reports.

Need To Know

British Columbia Farm Worker Protection

During Farm Safety Week in British Columbia, the government introduced legislation that will prohibit farm producers from hiring farm labour contractors who are not licensed and will provide for the cancellation or suspension of a farm labour contractor's licence for safety violations. In addition, when an unsafe farm labour contractor vehicle is taken off the road following a roadside check, the contractor will be required to pay for alternative transportation of any affected employees to the workplace.

The amendments are contained in Bill 13, the *Labour and Citizen's Services Statutes Amendment Act, 2008*, which was previously summarized in the March issue of PAYSOURCE, No. 153.

The Bill also proposes changes that will improve the timeliness of decision-making with respect to applications and complaints to the Labour Relations Board, and will make an administrative change to the *Workers Compensation Act*.

Lastly, the Bill will make changes to the *Freedom of Information and Protection of Privacy Act* to make it a more potent piece of legislation.

Bill 13 received first reading on March 13, 2008, second reading on April 1, 2008 and third reading on April 7, 2008. The progress of the Bill will be noted in future Reports.

New Nova Scotia Labour Department Effective April 1, 2008

As of April 1, 2008, the Department of Environment and Labour has been replaced by two separate departments, the Department of Environment and the Department of Labour and Workforce Development. The former Minister of Environment and Labour, Mark Parent, has been sworn in as the Minister of Labour and Workforce Development and the Minister of Environment.

The Department of Labour and Workforce Development will have a Skills and Learning Branch, which will emphasize recruitment, retention, repatriation and retraining of workers to meet the changing needs of the province's economy at a time when Nova Scotia is competing with the world for skilled workers. The Department of Labour and Workforce Development will also be responsible for occupational health and safety, labour services such as dispute resolution, labour standards, alcohol and gaming, public safety, and the Workers' Advisers Program.

The new department can be reached at: Labour and Workforce Development, P.O. Box 697, Halifax, N.S. B3J 2T8. Telephone: (902) 424-5301. Web site: www.gov.ns/lwd.

Minimum Wage Changes/Reminders

The new minimum wage rates are located in the Employment Standards section of PAYSOURCE at ¶5505, ¶5532, ¶5536, ¶5538, and ¶5540.

Nova Scotia

Annual increases to minimum wage over the next three years will be as follows:

- May 1 to March 31, 2009: 6.5 per cent increase to \$8.10 per hour.
- April 1, 2009 to March 31, 2010: 6.2 per cent increase to \$8.60 per hour.
- April 1, 2010 to September 30, 2010: 6.9 per cent increase to \$9.20 per hour.
- October 1, 2010 to March 31, 2011: 4.8 per cent increase to \$9.65 per hour.

After March 31, 2011, minimum wage will be adjusted annually based on the Consumer Price Index.

Prince Edward Island

On May 1, 2008, the minimum wage will increase to \$7.75 per hour, up from the current level of \$7.50 per hour and will rise again on October 1, 2008 to \$8.00.

Quebec

On May 1, 2008, the minimum wage is expected to increase to \$8.50 per hour, up from the current level of \$8.00 per hour.

Saskatchewan

On May 1, 2008, the minimum wage will increase to \$8.60 per hour, up from the current level of \$8.25 per hour.

Recent Cases and Rulings

Seasonal employee with pattern of recall entitled to reasonable notice

● ● ● **New Brunswick** ● ● ● Vibert, who owned a fishing enterprise, hired Paulin for three summers as a deckhand and a fisher. After each fishing season, Vibert would issue a Record of Employment to Paulin, indicating an unknown date of rehire. After the third summer, Paulin received a letter from Vibert indicating that his services were no longer required, and that he was laid off and could not be guaranteed an eventual return. Paulin was 34 years old, and when he was unable to find enough work to qualify for Employment Insurance, he eventually started to receive Social Assistance benefits. In an action for wrongful dismissal, the trial judge determined Paulin was not given sufficient notice of dismissal, and that a seasonal pattern of recall had been established resulting in his being owed wages in lieu of notice in compensation for the lost fishing season and the lost Employment Insurance benefits. The trial judge awarded Paulin seven months' reasonable notice. Vibert applied for judicial review of this decision.

The application for judicial review was allowed. Seasonal employees may be terminated without notice at the end of the season, but in this case the trial judge determined that Paulin was a permanent employee because of a pattern of recall each summer. As a result, the Court of Appeal only addressed whether the equivalent of seven months' wages in lieu of notice was reasonable, and whether the trial judge was correct in awarding five months of lost Employment Insurance benefits. The assessment of reasonable notice period by the trial judge was strikingly high, as it was clearly outside of the range traditionally awarded to employees in seasonal positions. The primary

objective of the notice period is to provide a dismissed employee with a fair opportunity to find similar or alternate employment, and in this case Paulin had ample opportunity to search for other employment during the winter months. In addition, Paulin was a young employee who had only worked for Vibert for a few summers. Therefore, he was entitled to four months' reasonable notice, and as a result he would not have qualified for Employment Insurance benefits.

Vibert v. Paulin, (N.B.C.A.), 2008 CLC ¶210-012.

A golf pro was a seasonal full-time employee entitled to reasonable notice equivalent to one full golf season

• • • **New Brunswick** • • • Schurman was hired as the golf pro at Covered Bridge Golf and Country Club. The terms of employment included a weekly salary as well as a percentage of the revenue from green fees and rentals. Schurman worked during the golf seasons from 2003 until 2006. Each October, at the end of golf season, he would receive a Record of Employment stating that he had been laid off for "lack of work", with an unknown return date, and he would receive Employment Insurance benefits through the winter. The golf club became concerned about Schurman's work, including the fact that he was not renting out the cabins as fully as he could. In October 2006, Schurman was told that he would not be coming back. However, he was given the standard Record of Employment and received Employment Insurance during that winter. Schurman applied for positions at other golf clubs, but he was largely unsuccessful. Schurman brought an action claiming that he was wrongfully dismissed. The golf club initially alleged that he was terminated for cause, but it abandoned that argument at the end of the trial.

The action was allowed. The position of golf pro was a seasonal full-time position, since the golf industry is seasonal, but the employer hired back the same employees each year. In this situation, the employee was entitled to one season's notice, as he was employed permanently for an indefinite term. Since the employer claimed that Schurman had been dismissed for cause right up until the end of trial, despite the fact that it did not indicate on the Record of Employment that his work was unsatisfactory, the Court awarded a further four weeks' aggravated damages.

Schurman v. Covered Bridge Recreation Inc., (N.B.Q.B.), 2008 CLC ¶210-014.

Transport company fell within federal labour sphere

• • • **Alberta** • • • Consolidated Fastfrate Inc. was a freight forwarding business with branches across Canada, and a head office in Toronto. Fastfrate received and consolidated customer shipments, and then contracted with third party carriers for interprovincial truck and rail movement of the freight. Fastfrate then received, de-consolidated and arranged delivery of, or delivered, inbound shipments. The third party carriers used by Fastfrate did not indicate that they were involved with Fastfrate, and Fastfrate assumed liability for damage or non-delivery with the customers. Many of Fastfrate's employees were unionized, with bargaining rights established pursuant to certification orders from the federal, and various provincial, labour relations boards. In April 2004, the Canadian Industrial Relations Board granted the Teamsters' application for certification to represent all Fastfrate employees in Alberta, Saskatchewan and Manitoba. The Fastfrate Transport Employees Association of Calgary applied to the Alberta Labour Relations Board seeking to affirm its existing Alberta bargaining certificate, bargaining rights and collective agreement. The Board found that Fastfrate's Calgary operation fell within federal jurisdiction and was therefore subject to the *Canada Labour Code* (see ¶220-062). On application for judicial review, the review judge determined that the Alberta Labour Relations Board had erred in holding that Fastfrate's Calgary operation was within federal jurisdiction, finding it was provincial. While the Board was correct in determining that the Calgary operation was not sufficiently connected to the third party interprovincial carriers to qualify as falling within the federal jurisdiction, the Board was incorrect in holding that federal jurisdiction arose on the basis of the Calgary operation itself being characterized as a federal work or undertaking (see 2006 CLC ¶220-004). The Teamsters appealed.

The appeal was allowed. A transportation undertaking may fall under federal jurisdiction and be subject to the *Canada Labour Code* if it is direct or derivative, namely where it is itself a federal work or undertaking or it can properly be viewed as integral to an existing federal work or undertaking. At issue on appeal was whether Fastfrate's enterprise constituted a federal work or undertaking, of which the Calgary operation was a part, or was vital, integral or essential to that undertaking. It is the essential nature or character of the undertaking that is determinative, not the physical structures such as geographic location or corporate structure. The Appeal Court determined that the review judge erred in limiting his inquiry to whether the Calgary operation physically participated in the interprovincial carriage of goods, rather than determining whether the nature of Fastfrate's operations as a going concern were interprovincial in scope, and whether the Cal-

gary operations were part of that interprovincial service. Looking at the facts of this case, the Court found that Fastfrate operated an interprovincial freight collection and delivery service, which involved picking up the freight at one end, consolidating it, arranging for its transportation, picking it up at the other end, de-consolidating it, and arranging for its ultimate delivery. This all occurred through a single, centralized corporate entity with facilities throughout Canada, and the Calgary operation was functionally integrated into this whole.

A dissent would have dismissed the appeal, finding that Fastfrate was not an interprovincial transportation undertaking. Instead, Fastfrate operated a series of individual profit centres that collected, organized, consolidated and de-consolidated freight within the province. The only acts of transportation performed by Fastfrate's provincial operations were the occasional pickup or delivery of freight within the province. As Fastfrate's employees and equipment did not transport freight across a provincial or international border, it was not engaged in the interprovincial or international transportation of freight.

Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters, Consolidated Fastfrate Transport Employees Association of Calgary and the Alberta Labour Relations Board, (Alta. C.A.), 2008 CLC ¶220-019.

Payment by Union

In a situation the CRA was asked to comment on, an individual received a payment from a union as compensation for not having her grievance adjudicated. The grievance was with respect to the termination of the individual's employment. It was the CRA's view that "the payment is damages for 'not having the opportunity to have her grievance adjudicated' and is not a payment for compensation for the loss of employment". Therefore, the payment would not qualify as a retiring allowance. With regard to the treatment of the payment, the CRA referred to the comments in Interpretation Bulletin IT-337R4.

Technical Interpretation, Financial Sector and Exempt Entities Division, November 5, 2007, Document No. 2007-0249291E5.

Expense Reimbursement to an Independent Contractor – Reporting on Form T4A

The issue the CRA was asked to comment on involved a taxpayer having entered into a service contract with an independent contractor and reimbursing him under the

contract for expenses incurred in connection with the provision of services. The CRA was asked if the taxpayer had to report the expense reimbursement on Form T4A in accordance with Regulation 200(1) and if the reported amount would include any Goods and Services Tax (GST) and Quebec Sales Tax (QST) paid on those expenses. The CRA confirmed that any reimbursement of expenses related to the provision of services constituted a source of business or property income and was reportable under Regulation 200(1). This reporting requirement applied to any person having made payments described in subsection 153(1) of the Act in the course of its business activities. Fees and meal or automobile expense reimbursements received as a consideration for providing services (including GST/QST) are payments covered under paragraph 153(1)(g) of the Act. Any person making this type of payments is required to deduct income tax from the payments and remit it to the CRA as prescribed by regulation, and to report them on a Form T4A by the end of February. The expression "fees, commissions or other amounts for services" in paragraph 153(1)(g) of the Act is broad enough to include amounts paid for services rendered by independent contractors. The administrative policy of the CRA is only to require the preparation of a Form T4A if the total payments made to an independent contractor for a taxation year are in excess of \$500 or if an income tax was withheld from the payments. For additional information on this topic, see Guide RC4157, "Deducting Income Tax on Pension and Other Income, and Filing the T4A Slip and Summary".

Technical Interpretation, Business and Partnerships Division, January 31, 2008, Document No. 2007-0230111E5.

Gratuities Paid Electronically

The situation considered by the CRA involved two related companies, ACO and BCO, with a portion of their shares held by the common parent company CCO. ACO operates a restaurant and ensures that all the gratuities of its employees are wired electronically to their bank account. BCO hires those employees and make sure to tax them on the gratuities received. The CRA was asked which company actually controlled the gratuities paid to the employees. The CRA was also asked if the gratuities paid electronically were subject to source deductions. The CRA confirmed that the question of whether ACO or BCO controlled the gratuities was a question of fact but added that BCO appeared to be acting as an agent for ACO. Regarding the second question, it is the view of the CRA that either the employer or the person paying the gratuities electronically to the employees (that is, ACO or BCO) would have to deduct and remit to the CRA the required source deductions. The gratuities were under the control of either ACO or BCO. The terms "employer" and "remuneration" are

defined in Regulation 100(1). All gratuities received in the course of employment and reported on a Form T4 must be reported on Line 101 of the employee's income tax return and all gratuities received by an employee but not reported on a Form T4 must be reported on Line 104 of their return.

Technical Interpretation, Business and Partnerships Division, February 20, 2008, Document No. 2007-0232621E5.

Retiring Allowance – Withholding from Settlement Paid to Dismissed Employee

The issue the CRA was asked to review involved an employee contesting a notice of dismissal received from his employer. A settlement offer prepared by the employee's solicitors provided for the payment to the employee of non-taxable damages and for the payment to the Receiver General of Canada of an overpayment of employment insurance benefits made to the employee. A counter-offer made by the employer provided only for a payment compensating the employee for the loss of his employment. The CRA was asked to comment on the employer's responsibilities concerning the withholding of income tax, EI, and CPP from the indemnity paid to the employee in respect of the loss of his employment.

The CRA confirmed that an indemnity paid by an employer or former employer to a dismissed employee for

the loss of his employment would normally be treated as a "retiring allowance" as this expression is defined under subsection 248(1) of the Act and included in the dismissed employee's income under subparagraph 56(1)(a)(ii). The definition of the expression "retiring allowance" is broad enough to include payments made for special damages and also payments made for general damages received for loss of self-respect, humiliation, mental anguish and hurt feelings. The CRA noted that a payment could not be characterized as non-taxable damages by a taxpayer if it had all the characteristics of a retiring allowance as this term is defined in subsection 248(1) of the Act. If the payment qualified as a retiring allowance, the employer was required by paragraph 153(1)(c) of the Act to deduct income tax (but not EI and CPP contributions) from the payment. Regarding the EI benefit overpayment repaid by the employer to the Receiver General of Canada, the employer would not normally be authorized to reduce the retiring allowance amount subject to withholding tax unless the employee could deduct the overpayment under paragraph 60(n) of the Act, and applied and obtained a withholding reduction from the CRA for undue hardship in accordance with subsection 153(1.1). For additional information on this topic, see CRA Guide T4001, "Employers' Guide – Payroll Deductions and Remittances" and IT-337R4.

Technical Interpretation, Business and Partnerships Division, February 6, 2008, Document No. 2007-0248161E5.

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