



FTR

QUARTERLY

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DEEP ROOTS: 10 YEARS IN OTTAWA

When Hicks Morley began establishing a series of regional offices in Ontario in the 1990s, Ottawa was on the list of expansion locations. But the firm knew that getting it right could take time – with the right people, the right location and the right mix of clients.

The patience paid off. In 2001, the Ottawa office opened its doors – the last of the firm’s regional offices, but by no means the least. Charles Hofley, Andrew McCreary and Leanne Fisher already were established practitioners in the Ottawa region, and they joined two Hicks Morley lawyers who were making the move from Toronto to Ottawa – George Vuicic and Lynn Thomson.

All of the lawyers in the office had either lived or worked in Ottawa previously,

and with the ability to serve clients in both English and French, the practice grew quickly. Today, the Ottawa office has almost doubled in size and continues to expand its client base.

“One of the hallmarks of the firm’s success is our ability to serve clients locally – and this is especially important in Ottawa with its unique English-French mix,” says Charles Hofley, a partner in the Ottawa office. “While much of the work is similar to what

you'd find across Ontario, there are some distinct regional differences. Our client base includes embassies, quasi-governmental agencies and a variety of successful but smaller clients who are unique to the Ottawa area."

THE LOCAL-KNOWLEDGE ADVANTAGE

While having a local presence increases the opportunity for face-to-face meetings – and reduces the travel costs that can sometimes impact the way in which a dispute is litigated – an even more important benefit is the local knowledge that a local presence provides.

One of the hallmarks of the firm's success is our ability to service clients locally – and this is especially important in Ottawa with its unique English-French mix.

"As we live and work in the City of Ottawa, we know our clients and how they are positioned in the local business community. We also know the lawyers, judges and arbitrators we deal with repeatedly," says Andrew McCreary, another partner in the Ottawa office. "This knowledge is vital as it ensures our clients know to the greatest degree possible what to expect in litigation or other situations of conflict."

And of course, reputation is everything in the legal community – and nowhere more true than in Ottawa.

"The Bar in Ottawa is small and particularly collegial," says Cheryl Waram, who articulated with the firm and joined as an associate in 2010. "Maintaining a reputation of integrity, resolve and expertise among other lawyers, arbitrators and the judiciary minimizes

the cost of litigation and maximizes our clients' outcomes."

WIDE RANGE OF CLIENTS – AND EXPERTISE

The work that the Ottawa office handles is diverse. "We may, for example, find ourselves before the Human Rights Tribunal, an arbitration board and the courts, all within the same week," says Leanne Fisher, an Ottawa office associate, originally from the Winnipeg area. "The range of issues that we deal with, and the variety of forums in which we do so, makes our practice in Ottawa especially interesting."

The employers the office deals with are equally diverse. "We have a very healthy mix of clients, from government and high tech to manufacturing and construction," says Siobhan O'Brien, an Ottawa office associate who joined the firm in 2009. "We also do work for Québec-based companies that have operations in Ontario. The work may take place in Ontario in English, but we're dealing with the head office in Québec in French. Our clients appreciate that flexibility."

While the variety of work can make for a very stimulating work environment, it requires considerable expertise, something the office has in depth. As an example, for several years, and most recently in 2012, Charles Hofley has been listed in the *Best Lawyers* publication as one of the top lawyers in the area of labour and employment law. And pension expert Lisa Mills, a Hicks Morley partner, is the only lawyer in the Ottawa region whose practice is dedicated solely to management side pension and benefits law. Lisa was named to Lexpert's Top 40 Under 40, as was George Vuicic, another partner in the Ottawa office.

The expertise of all lawyers is extended through their outreach in the community through participation in professional associations, community groups, and charities.

Our work outside of the office gives us a greater connection to our professional colleagues, client industries and the community at large.

“It’s an extremely big part of what we do,” says Lisa Mills. “Our work outside of the office gives us a greater connection to our professional colleagues, client industries, and the community at large. My outside work ranges from teaching at Queen’s University to participating in events with the National Capital Region Down Syndrome Association. It’s extremely rewarding and really cements our ties to the area.”

FIVE LOCATIONS – ONE FIRM

Despite the physical distance between Hicks Morley office locations, the firm truly does operate as one.

“I’m meeting with and talking to and emailing colleagues all the time – the connection is very active,” says George Vuicic. “Everything from our phones to our document management system is integrated. There really aren’t any silos because we’re all interested in the same areas of law, and technology makes it so easy to share ideas. I get to live and work in Ottawa while having the full resources of the firm at my fingertips – it really is the best of both worlds.”

LOOKING TO THE FUTURE

While all Hicks Morley’s Ottawa lawyers are thrilled to be celebrating the firm’s 10 years in Ottawa, their focus is on the future. They are committed to building on the firm’s success so far, and to providing human resources law and advocacy services to even more employers across eastern Ontario.



HR QUICK HITS

Canada Pension Plan (“CPP”) Post-Retirement Benefit (“PRB”)

The federal government has proposed regulatory amendments prescribing the manner of employee elections or revocations regarding the new PRB. The PRB, available under the CPP effective January 1, 2012, will extend participation in the CPP to employees and self-employed workers in receipt

of CPP benefits who are 60 or more years of age. Additional contributions (including employer contributions) towards the PRB will be mandatory for employees who are between 60 and 65 years of age, and will be optional in respect of employees between 65 and 70 years of age.



TRAINING 101

Employee training is now pervasive at all levels of the modern workplace. At the outset of the employment relationship, newly hired employees benefit from orientation programs that acquaint them with their new positions and the policies that they will be required to follow.

BY: JONATHAN MAIER AND TERRA KLINCK

Most employers also recognize the advantages of training long-serving employees on a wide variety of issues that arise from time to time.

While most employee training is voluntary, in recent years, governments at both the provincial and federal levels have mandated that employers must train employees on a myriad of different subjects.

This article will focus on three types of employee training:

1. The training required under the *Accessibility for Ontarians with Disabilities Act* (“AODA”);
2. The expanding obligations under the *Occupational Health and Safety Act* (“OHS”) and the *Canada Labour Code*; and
3. The training that senior-level employees and even directors should receive in connection with pension plans.

TRAINING RELATED TO ACCESSIBILITY FOR THE DISABLED

The *AODA* has the ambitious mandate of making Ontario accessible to persons with disabilities by breaking down the barriers that limit their societal participation. To date, two regulations have been enacted under the *AODA*, each of which sets out rigorous training requirements that will apply to a wide array of individuals and organizations within the private and public sectors.

The Accessibility Standards for Customer Service Regulation requires that organizations covered by the Regulation provide accessibility training to a broad scope of individuals. The training must address, for example:

- how to interact and communicate with persons with various types of disabilities;
- how to use assistive equipment and devices the organization has that may help disabled persons access the organization's goods and services; and
- what to do if a disabled person is having difficulty accessing an organization's goods and services.

All individuals who deal with members of the public or other third parties (e.g. other organizations) on behalf of an organization that is providing a good or service must be trained, regardless of whether the individual is an employee, volunteer, agent or otherwise. Those who participate in developing the organization's policies, practices and procedures governing the provision of its goods or services to the public and third parties also need to be trained.

The Accessibility Standards for Customer Service Regulation emphasizes that this training must be delivered on an ongoing basis. The training must change as an organization's policies and procedures change. Designated public sector organizations and all employers with 20 or more employees must publish their training policy and maintain an updated training timetable.

To date, two regulations have been enacted under the *AODA*, each of which sets out rigorous training requirements that will apply to a wide array of individuals and organizations within the private and public sectors.

The Integrated Accessibility Standards Regulation imposes a general training requirement on all of the individuals and organizations that fit within its broad scope. These individuals and organizations must train their employees, volunteers, service providers and policy developers on the Regulation's accessibility standards along with the application of the *Human Rights Code* to individuals with disabilities. The Integrated Accessibility Standards Regulation imposes more detailed and industry-specific training requirements on school boards, educational and training institutions, and transportation providers. For more information on the Integrated Accessibility Standards Regulation, please refer to our *FTR Now* of June 9, 2011, "Ontario Government Releases Final Integrated Accessibility Standards Regulation Under the *AODA*."

TRAINING UNDER THE OHSA

Ontario's *OHSA* requires employers that regularly employ more than five workers at a workplace to prepare written policies with respect to workplace violence and workplace harassment, and to develop and maintain programs to implement both. "Appropriate" training on the contents of the workplace violence and harassment policies and programs must also be provided; however, the manner in which this training is delivered is not mandated by the legislation.

Pension regulators across Canada have encouraged employers to adopt formal pension plan governance and structures ... and provide appropriate training and ongoing education for the individuals involved in the management of the plans.

The *OHSA* has always required that certified members of a joint health and safety committee receive specific training on workplace safety, but recent amendments to the *OHSA* will allow the Chief Prevention Officer appointed under the *OHSA* to establish additional training requirements for certified committee members along with the health and safety representatives in smaller organizations. The ability to impose these additional training requirements is open-ended, and could culminate in new and demanding training obligations.

These recent amendments are similar to the training obligations imposed on federal sector employers by the *Canada Labour Code*, which require that members

of policy and workplace committees, along with health and safety representatives, receive the training that is set out in the *Canada Occupational Health and Safety Regulations*.

PENSION EDUCATION AND TRAINING

For employers who maintain one or more registered pension plans, training is not mandated by statute, although pension regulators across Canada have encouraged employers to adopt formal pension plan governance structures (i.e. formal processes and procedures for overseeing, managing and administering pension plans) and provide appropriate training and ongoing education for individuals involved in the management of the plans.

Most organizations form pension management committees and board-level committees that oversee pension plans in order to comply with the regulatory governance guidelines. The primary focus of all such committees is to ensure the organization's fiduciary duties vis-à-vis plan beneficiaries are being met.

Given the legal importance of a pension committee's duties and responsibilities, coupled with the fact that membership on the committee is typically an "add-on" to the day-to-day responsibilities of executives and directors, providing training and ongoing education to committee members is critical. Ongoing education and training helps ensure that committee members understand their duties and responsibilities under the governance structure as well as the fiduciary duties owed to plan members. This, in turn, reduces the risk of plan-related fiduciary litigation.

In addition, in recent years Canadian courts have suggested that committee members may be exposed to personal liability if fiduciary duties are not properly considered when committees are making decisions. Training can educate committee members about their specific duties and responsibilities and, in turn, can help guard against findings of personal liability.

KNOW YOUR TRAINING REQUIREMENTS

An employer's need to maintain a properly trained workforce at all levels of its organization has never been more apparent. If you would like to obtain more specific information on any of these training obligations, please contact your Hicks Morley lawyer.



Jonathan Maier practises in all areas of labour and employment law, and has appeared before the Ontario Labour Relations Board, the courts and various labour arbitrators. He acts on behalf of a wide variety of private sector clients located in both Canada and the United States along with several public sector organizations in Ontario including municipalities, police services boards and universities.



Terra Klinck is a partner in the firm's Pension and Benefits Practice Group. She advises employers on all legal issues relating to pension and employee savings and benefit programs, and has particular experience in relation to fiduciary duties and governance matters. Terra also has extensive experience in advising employers on pension and benefit matters in the context of corporate transactions and insolvencies.



HR QUICK HITS

WSIB Funding Review

Last fall, the Workplace Safety and Insurance Board initiated a Funding Review chaired by Professor Harry Arthurs. The mandate of the Funding Review is to focus on premium rate setting, rate group structure, employer incentives, occupational disease funding options and the indexation of benefits for disabled workers. Professor Arthurs is in the midst of a multi-stakeholder consultation process, with the next set of meetings scheduled for early November, 2011 and a final report due in 2012.



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FRENCH CONNECTION



George Vuicic is a founding member of the Hicks Morley Ottawa office, and one of several in the firm who maintains a bilingual practice, advising and representing clients in both official languages. With a practice that crosses languages, it's not surprising that George's work also crosses a range of issues within the human resources law area.

George spoke with *FTR Quarterly* in October about his practice and some of the legal trends that are emerging.

You have a bilingual practice in both French and English. Tell us a bit about your background and how you developed a proficiency in both languages.

I attended a French school in Tecumseh, near Windsor, beginning in Grade 5, and I completed my last years of high school in Rigaud, Québec, so I was fully bilingual by the time I reached university. I did my undergraduate work in both English and French at the University of Ottawa as well, although my law schooling at Windsor was in English.

How did your interest in law develop?

I was interested in law in high school and I always knew it was something I'd pursue. Labour and employment law was a focus, because I've always been intrigued by the dynamics of employer-employee relations. I kept an open mind when I did my articling interviews, and I interviewed with a number of firms, but the labour and employment people really won me over. It's such a dynamic area with a wide variety of work, and interesting human issues. So I articulated at the Hicks Morley Toronto office in the mid-1990s and joined the firm after that.

Our work in the education sector is another area that's grown substantially. And from a personal standpoint, I've done more and more for the French language school boards, as well as expand my work with universities and colleges.

When did you make the move to Ottawa?

I had practised for about four years in the Toronto office when plans for the Ottawa office were announced. I was already doing some work in French in Toronto and I had lived in Ottawa during school, so I was thrilled to have the opportunity to continue my practice in the nation's capital. I made the move in 2001, and I've never looked back.

How has your practice evolved over the years?

I'm very fortunate because the combination of the bilingual practice and the smaller office means that I'm called on to handle a wide variety of work – and I have since the beginning. My practice is pretty evenly split between French and English clients, so there's even variety from a language standpoint.

How about the evolution of the Ottawa office – any changes?

We've certainly grown since our opening 10 years ago. We've managed to attract more work from the federal sector – there are a number of stand-alone federal agencies that use our services. Our work in the education sector is another area that's grown substantially. And from a personal standpoint, I've done more and more for the French language school boards, as well as expand my work with universities and colleges.

Technology companies also remain a large part of the firm's client base, but there's been a lot of change on that front, which is the nature of the industry. The tech sector is still very vibrant here and we continue to work with a number of technology companies.

Any trends in particular that employers should note?

I think there are a couple of areas that employers need to watch for. The aging labour force is definitely going to be an issue, as it will become harder for employers to find skilled labour. Once the bulk of the boomers begin to retire and the economy picks up, the challenges will emerge. Our role in this area will be to help employers with legal issues in the workplace that are bound to result from this demographic change.

Another trend is the growth in litigation, and the explosion in class actions related to human resources. We tend to follow about 5 to 10 years behind the U.S. in this area, and U.S.-style litigation has now arrived. The class actions really cover a wide range of issues, from overtime pay, to pensions, to mass terminations. In addition to handling this litigation, we can also help clients gauge their exposure to class action risks, and take preventive measures if needed.

What do you enjoy doing in your downtime?

I love the outdoors and the green spaces in and around Ottawa. I live about 25 kilometres from the office and I bike to work as often as I can – right along the Ottawa River and past the Prime Minister's residence. My wife and I have two daughters, ages 8 and 10, and with great skiing just 15 minutes outside of town, it's easy to stay active as a family. We really enjoy it here.

NEW ASSOCIATES

Hicks Morley is pleased to welcome back the following new associates to the Toronto office, after the successful completion of their articles at the firm and their call to the Bar in 2011.



JENNIFER DEL VECCHIO

Jennifer is an associate in the Hicks Morley Pensions and Benefits Practice Group, and practises in all areas of pension plan administration and governance. She graduated from the University of Western Ontario's Faculty of Law, where she was awarded the Miller Thomson LLP Award and the Stringer, Brisbin, Humphrey Award in Labour Law. While at law school, she was a co-chair of the Bankruptcy and Insolvency Group, and a third year representative of the Labour Law Society.



P. ADRIAN DI LULLO

Adrian practises in all areas of labour and employment law. He obtained his Juris Doctor degree from Queen's University, where he graduated with the Medal in Law (Third Highest Standing), and won the Vincent Principi Memorial Award in Labour Law, the David Sabbath Prize in Collective Agreement and Arbitration, and the Sack Goldblatt Mitchell Award in Labour Law, Employment Law and Human Rights.



CAROLYN CORNFORD GREAVES

Carolyn practises in all areas of labour and employment law. She received her Juris Doctor degree from the University of Ottawa, where she was awarded the 2009 McCarthy Tétrault Leadership Award, the 2010 Law Society of Upper Canada Award for Outstanding Achievement in Legal Studies, and the 2010 Sack Goldblatt Mitchell Award in Labour Law, Employment Law and Human Rights.



STEPHANIE N. JERONIMO

Stephanie practises in all areas of labour and employment law. She received her Juris Doctor degree from Osgoode Hall, in conjunction with a Masters in Environmental Studies from York University. Prior to joining Hicks Morley, Stephanie worked at Parkdale Community Legal Services, where she represented tenants in hearings and mediations before the Landlord and Tenant Board.



CAROLYN MCKENNA

Carolyn practises in all areas of labour and employment law. She received her Juris Doctor degree from the University of Western Ontario, where she was awarded the J.S.D. Tory Writing Prize. Throughout law school, Carolyn worked as a research assistant to her constitutional and administrative law professors.

NEW LONDON ASSOCIATE

Called to the Bar in 2008, Lisa Kwasek recently joined the London office as an associate.



LISA M. KWASEK

Lisa practises in all areas of labour and employment law. She received her LL.B. from the University of Western Ontario. Prior to joining the firm, Lisa was an associate in a London law firm with a focus on labour and employment law and obtained a strong background in litigation, appearing as counsel before the Ontario Labour Relations Board, the Human Rights Tribunal of Ontario and the courts.



After 35 years of practice, David retired from the Hicks Morley partnership this past June.

He led our firm's development in the area of workers' compensation law and was one of the founders of the Workers' Compensation Section of the Ontario Bar Association ("OBA").

In 2001, David received the OBA's Ron Ellis Award for his significant contributions to this area of practice, and has been recognized in the *Best Lawyers* publication for labour and employment law.

We wish David all the best as he embarks on this next phase of his life and career.

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