



Developments in Workplace Law 2023

CSSEA 2023 AGM and Conference

Future: Bright

October 27, 2023

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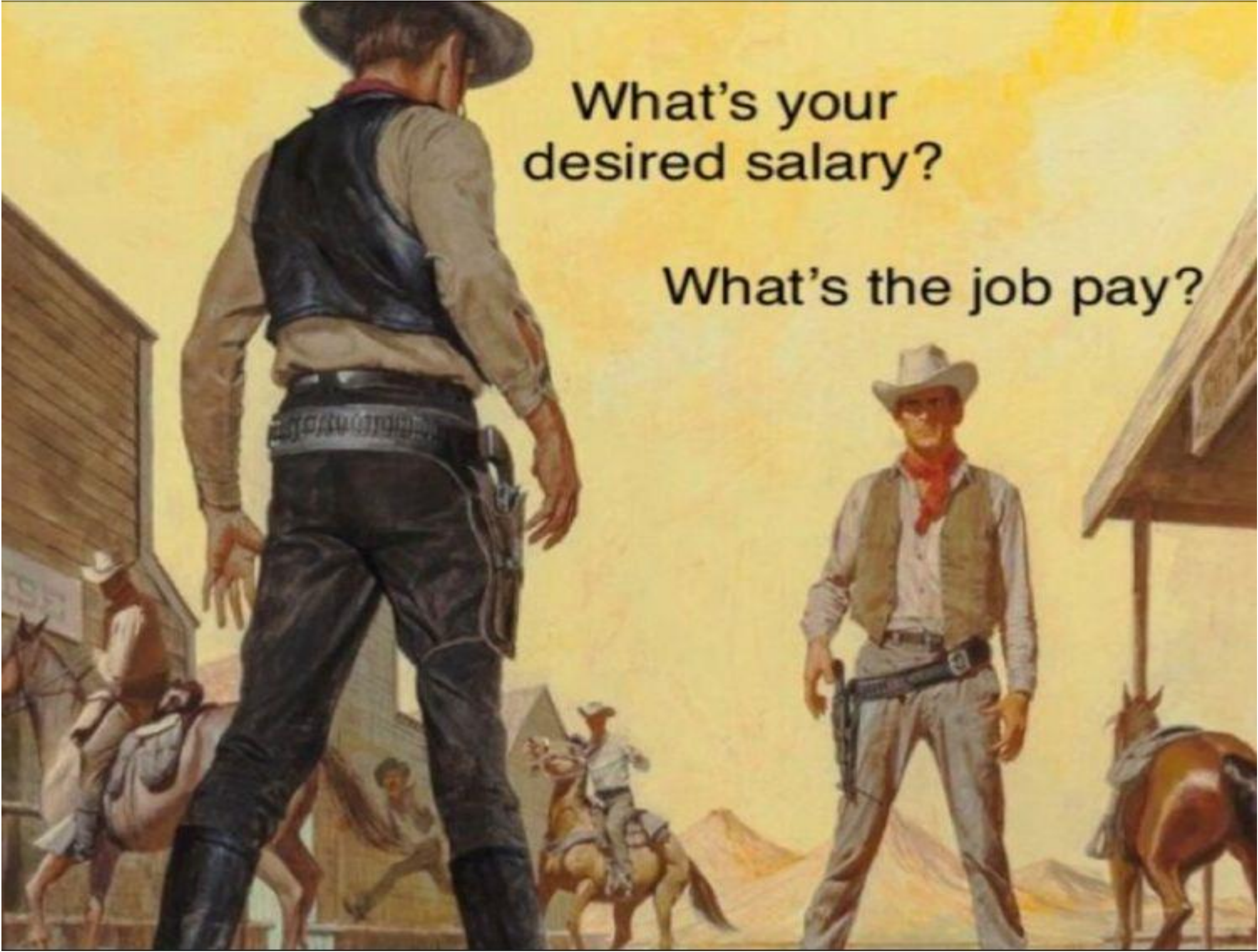
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Agenda |

- New legislation
 1. Pay transparency
 2. National Day of Truth and Reconciliation
- Human rights update
 1. The Tribunal is in disarray
 2. Developments in family status
discrimination
 3. COVID and Religion
- Employees behaving badly – time theft, false expenses, embezzlement, and side hustles
- Employers behaving badly – harassment, class actions, and bad terminations
- Short snappers
- Let's talk about YOU!

New Pay Transparency Legislation

- *Pay Transparency Act*
 - Must specify salary or wage in job postings starting November 1, 2023
 - Guidelines issued October, 2023
 - Must post employer's reasonable expectation about pay for the job
 - May be a defined range
 - Don't have to include value of benefits, overtime, bonuses, commissions, or tips
 - Can't ask applicants about pay history



What's your
desired salary?

What's the job pay?

New Pay Transparency Legislation

- *Pay Transparency Act*
 - Employers with 50+ employees must publish pay equity information annually, including on employer's website
 - Effective date of obligation depends on size of employer - 2023 (BC Govt) to 2026 (employers with 50+ employees)
 - Information must include data about indigenous women, women of colour, immigrant women, women with disabilities and non-binary people

National Day for Truth and Reconciliation

- New annual statutory holiday in BC – September 30
- Subject to existing ESA provisions regarding entitlement to and calculation of pay:
 1. Employee entitled if employed for at least 30 days and worked 15 of 30 preceding days
 2. Entitlement is average day's pay
 3. If employee works, entitled to average day's pay plus 1.5x pay for hours worked
 4. If falls on a non-work day, employer and employee can agree to designate another day

Human Rights – the Tribunal is in Disarray

- 3,000 complaints waiting to be processed at BC Human Rights Tribunal
- The enormous backlog at BC Human Rights Tribunal prompted a “Strategy Update” in July 2023
- HRT published “screening decisions” to try to head off more COVID complaints
- Devoting Member resources to clearing COVID complaints
- Cancelled most hearings in second half of 2023, hope to reschedule in 2024
- For non-COVID complaints, focusing on outstanding dismissal applications

Human Rights – Family Status Discrimination

- At issue – whether *Campbell River* should still be law
- *British Columbia (Human Rights Tribunal) v. Gibraltar Mines Ltd.*, 2023 BCCA 168
- Good news – preserved “materiality” part of test for accommodation – “serious interference with a substantial parental or other family duty or obligation of the employee”
 - Mere “I can’t find daycare” complaint doesn’t trigger right to accommodation
- Bad news – eliminated “only employer changes” part of test for accommodation
 - So employer may have to accommodate even if it had nothing to do with the problem

Human Rights – COVID and Religion

- COVID caused spike in human rights complaints about religious discrimination because of vaccination policies, masking requirements, and restrictions on gatherings
- *B.C. Rapid Transit Co. v. CUPE, Local 7000 (Morzhakov Grievance)*, 2022 BCCAAA NO. 144 (Noonan)
- Test is not the objective validity of the religious belief or that the belief is objectively recognized as valid by other members of the same faith
- Rather, test is whether the issue is a *sincerely held religious belief of the claimant*
- Requires careful employee-specific analysis

Employees Behaving Badly – Time Theft

- *Besse v. Reach CPA Inc*, 2023 BCCRT 27
- BC Civil Resolution Tribunal
- Time theft as cause for termination and basis for damages
- Important factors:
 1. Written agreement regarding working remotely; and
 2. Time-tracking software on employee's laptop ("TimeCamp") found to be reliable

Employees Behaving Badly – False Expenses

- *Mechalchuk v Galaxy Motors (1990) Ltd.*, 2023 BCSC 635
- Only about \$250 in false business expenses – meals with wife
- But cause for termination because:
 1. the employee was the most senior employee of the company and held a position of trust;
and
 2. the employee hid his dishonesty and failed to come clean when confronted.

Employees Behaving Badly - Embezzlement

- *B.A. Blacktop Ltd. and Eurovia BC Inc. v Fazio*, 2023 BCSC 892
- Elaborate scheme to make fake payroll payments to employee's 19(!) bank accounts
- \$1,923,000 in damages and \$100,000 in punitive damages
- Probably a dry judgment – gambling addiction

Employees Behaving Badly – Side Hustles

- *Dove v Destiny Media Technologies Inc.*, 2023 BCSC 1031
- Unpaid work for a café and general store owned by employer's CEO and another partner
- Concerns about her absenteeism and inability to fulfill important work obligations
- Evidence showed
 1. significant work on side business during company hours without approval
 2. impact on ability to fulfill duties for the employer – esp. neglect of a requested business plan
- Key - duty to provide full-time service to the employer unless otherwise agreed

Employers Behaving Badly – New Tort of Harassment?

- *Alberta Health Services v. Johnston*, 2023 ABKB 209
- Candidate for Mayor of Calgary spread COVID conspiracy theories about Alberta Health Services and a public health inspector
- Identified employee by name and publicized pictures of her and her family
- Liable for new “tort of harassment” - \$100,000 in general damages and \$250,000 in aggravated damages (as well as \$300,000 in damages for defamation)

Employers Behaving Badly – New Tort of Harassment?

- Elements of tort:
 1. Defendant engaged in repeated communications, threats, insults, stalking, or other harassing behaviour in person or through other means;
 2. that he knew or ought to have known was unwelcome;
 3. which impugned the dignity of the plaintiff, would cause a reasonable person to fear for her safety or the safety of her loved ones, or could foreseeably cause emotional distress; and
 4. caused harm.
- Potential for application to employment situations

Employers Behaving Badly – Class Actions for Harassment

- Class actions are a powerful tool for harassment claims because victims can avoid attention and cases very rarely go to trial
- Door open in BC after *Lewis v. WestJet Airlines Ltd.* – claim alleges employer breached harassment policy
- But vicarious liability – where employer strictly liable for act of employee – is a significant step further
- *Burke v Red Barn at Mattick's Ltd.*, 2023 BCSC 367 (CanLII) – class action certified on that basis
- Store assistant manager took photos of 13 female employees while undressed in washroom and staff room and uploaded them to online pornographic websites
- “unauthorized acts closely connected with employee’s authorized acts, duties and responsibilities”

Employers Behaving Badly – Terminations Gone Wild

- *Chu v. China Southern Airlines Company Limited*, 2023 BCSC 21
- Award of 20 months' notice for a 68 year old employee with 11 years' service
- Plus \$150,000 in aggravated and punitive damages due to employer's conduct
- All because of how badly the employer treated the employee

Short Snappers

- *Shalagin v. Mercer Celgar Limited Partnership*, 2022 BCSC 112 re surreptitious workplace recordings upheld on appeal
- *Forbes v. Glenmore Printing Ltd.*, 2023 BCSC 25 – contractual termination provision effective even if it doesn't comply with group notice provisions of ESA
- *Mema v. City of Nanaimo (No. 2)*, 2023 BCHRT 91 - \$600,000 human rights award based on “subconscious” operation of stereotype
- *South West Terminal Ltd. v. Achter Land & Cattle Ltd.*, 2023 SKKB 116 – 🍷 emoji established contract for sale of 86 tonnes of flax

Matthew's Guide to Modern Collective Bargaining

- 🗨️ = “R u serious?????”
- 😞 = “OK, now we’re pissed”
- 🚪 = “That’s it, we’re out of here”
- 📄 = “We have a deal!”

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