YEAR IN REVIEW FOR 2025

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November 26, 2025 | 11:00AM – 12:00PM PST

ALEXANDER HOLBURN

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Today we will cover:

1	Legislative Update
2	Important Court Cases from 2025
3	Important WorkSafe/WCAT Cases from 2025
4	Important Human Rights Cases from 2025
5	Takeaways

LEGISLATIVE UPDATE

Change to *Employment Standards Regulation* - BC

Bill 11

- Passed November 12, 2025.
- Pre-November 12, 2025: employers could request a sick note from employees and employees were required to provide to the employer reasonably sufficient proof that the employee was entitled to sick leave “as soon as practicable”.
- Now: employers cannot ask for a sick note for a worker’s first two health-related, short-term absences of five consecutive days or fewer in a calendar year.
- Purpose of change: reduce the administrative burden in health care.

Anticipated Change to *Employment Standards Act* - BC

Bill 30

- Proposed amendment to the ESA entitling employees to as many as 27 weeks of unpaid, job-protected leave within a 12-month period to undergo medical treatment and recovery. Would bring BC into alignment with other provinces who already provide similar job protected leaves.

- Will apply to all employees covered by the ESA who have serious personal illness or injury and who have been unable to work for at least 7 consecutive days. To access the leave, employees must provide a medical certificate from a doctor or nurse practitioner.

IMPORTANT COURT CASES FROM 2025

Lesinski v. Cartel Communication Systems Inc., 2025 BCSC 1533

Facts

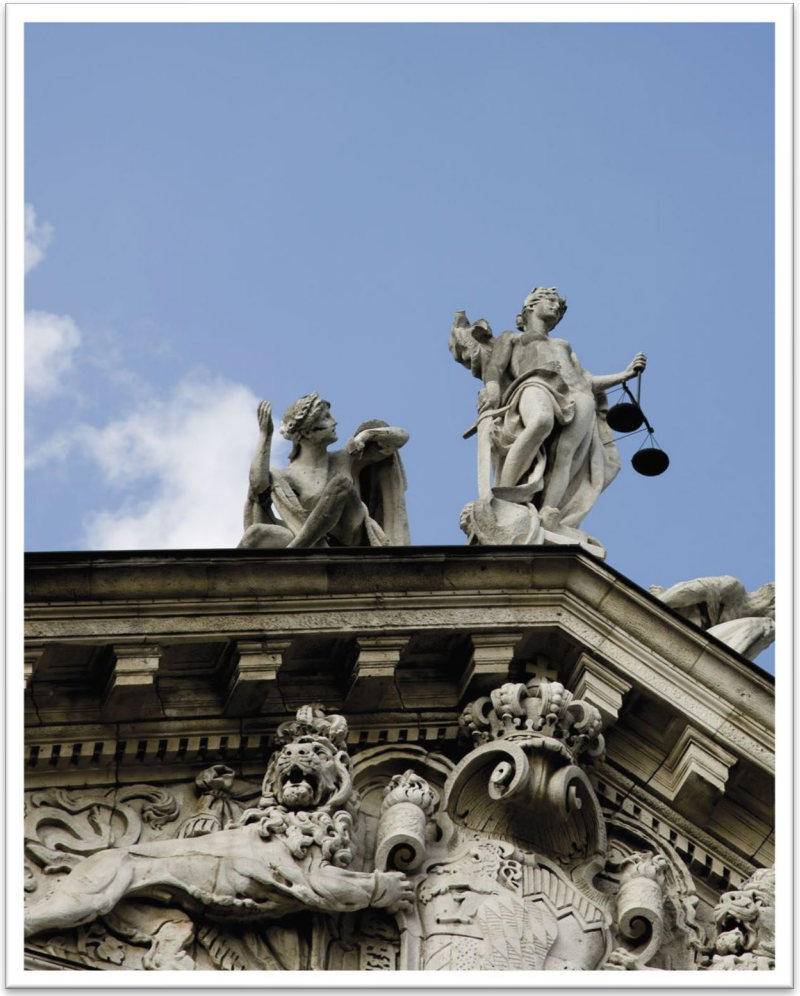
- 64-year-old VP with six months of service terminated without cause.

Issue

- What is the employee's entitlement to notice / pay-in-lieu?

Held

- Five months notice.



Lesinski v. Cartel Communication Systems Inc.

Basis for Decision

- No written termination provision
- *Bardal* factors + law provides disproportionate periods of notice to short-service employees
  - Law in BC is that employees dismissed in the first three years of their employment are entitled to a proportionately longer period of notice: *Saalfeld v. Absolute Software Corp.,* 2009 BCCA 18; *Pakozdi v. B&B Heavy Civil Construction Ltd.,* 2018 BCCA 23
  - Range of notice for specialized employees in short term positions is 2-3 months, as adjusted for age, length of service and job responsibility. Five months is on the “high side” and 8 months is “outside the range of reasonableness unless there are very special circumstances” (para 51)

Lesinski v. Cartel Communication Systems Inc. Main Takeaways

- Length of service has been reduced to little significance for any employee in the first three years of employment. Ultimately, the other *Bardal* factors will be of more importance to the court in these circumstances, which should serve as a caution to employers.

- Just because an employee is over the age of 60, doesn't necessarily mean their entitlement to notice will increase. Stated reasons suggest that age (64) was deemed a "neutral factor…or at least a modest factor" in the Plaintiff's favour.

Hoem v. Macquarie Energy Canada Ltd., 2025 BCSC 446

Facts

- Salesperson employee terminated without cause
- Compensation included commission
- Termination clause contemplated employee would receive 52 weeks of notice or pay in lieu thereof. Clause did not account for commission earnings.
- Employer paid employee in accordance with termination provision. Employee sued for wrongful dismissal, alleging that termination provision was unenforceable.
- Reduce risk of unwelcome findings;
- Consistent position between proceedings; and
- Impact of failing to fully advance your case in each proceeding

Issue

- Was the termination provision unenforceable?

Held

- Yes

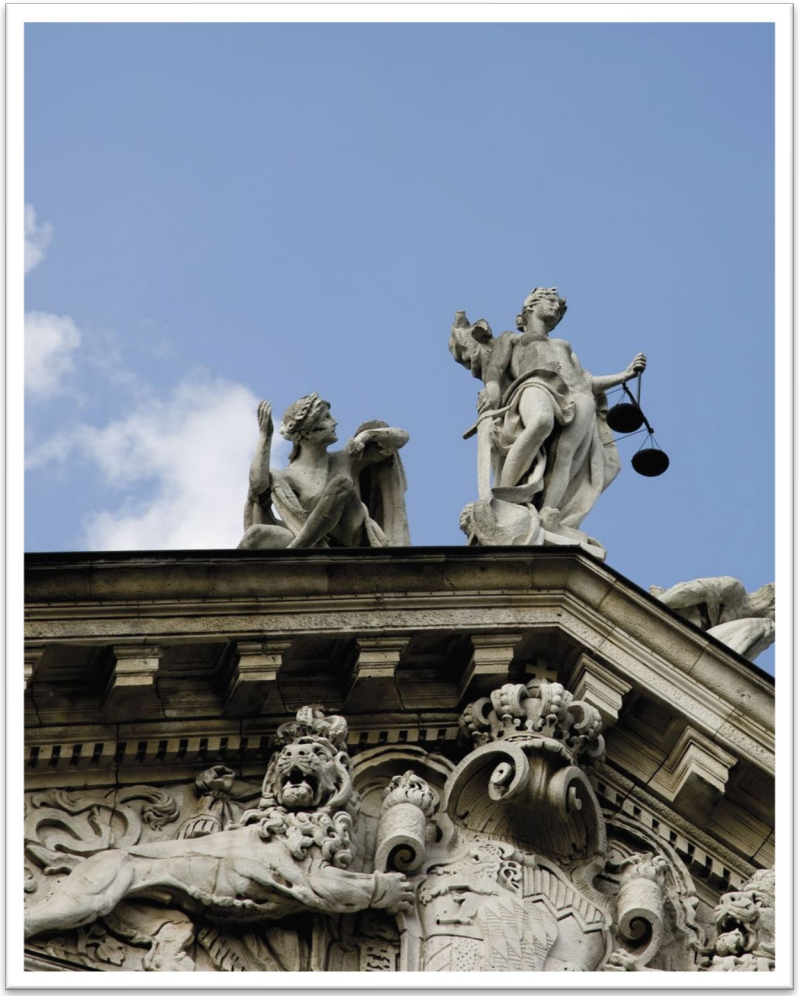
Hoem v. Macquarie Energy Canada Ltd.

Basis for Decision

- Employee argued that the termination provision did not comply with the ESA. Based on the size of the employee's commission earnings, court agreed that the clause was capable of providing employee with less than what was required by the ESA.

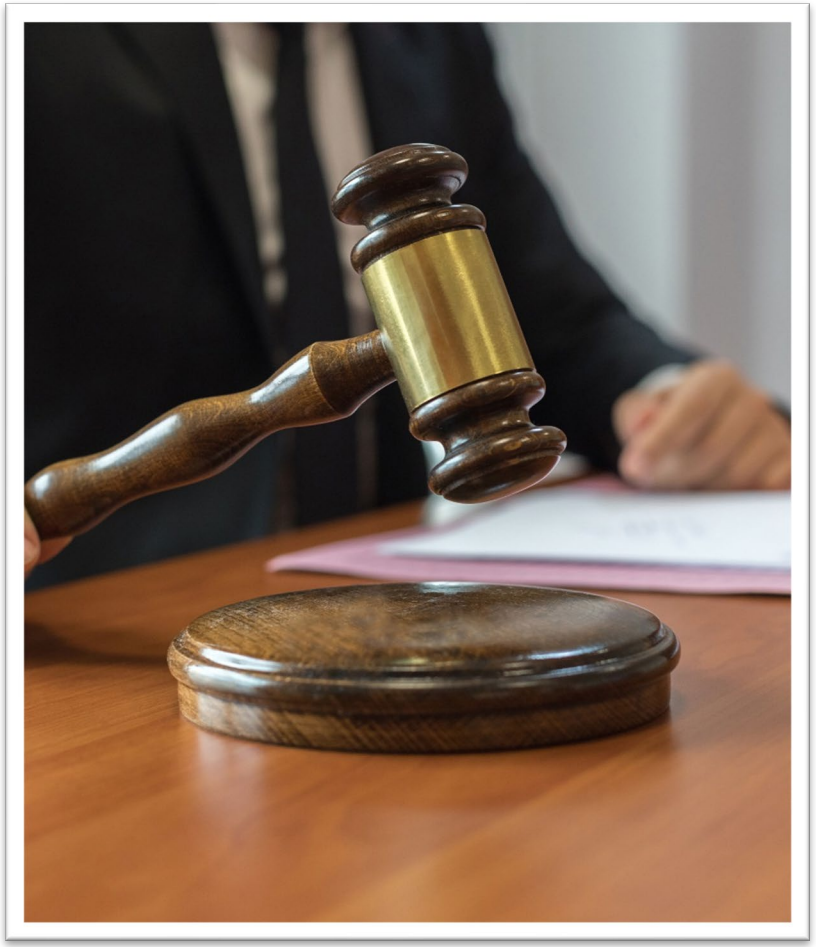
Other Elements of the Decision

- Aggravated damages awarded to employee after employer decided to allege after acquired cause on tenuous grounds.



Hoem v. Macquarie Energy Canada Ltd. Main Takeaways

- Even if your termination clause appears to exceed the ESA, it may not. Need to consider employment contracts on a case-by-case basis
- KISS Principle – simple termination clauses will likely improve the chances at enforceability
- Court reiterates that it will punish employers for harsh litigation tactics / tenuous allegations of cause



IMPORTANT WORKSAFE / WCAT CASES FROM 2025

Pickering v. Workers' Compensation Board, 2025 BCSC 376

Facts

- Employee filed a mental disorder claim alleging bullying and harassment by a co-worker in the workplace. Employer took action to resolve the allegations, but employee considered those actions to be dismissive/ineffective

- Employee's claim denied as a result of "Predominant Cause Provision" and "Labour Relations Exclusion"

Pickering v. Workers' Compensation Board

Predominant Cause Provision

Section 135(1)(a)(ii) of the WCA states that a worker is entitled to compensation where a mental disorder is "predominantly caused" by a significant work-related stressor

Labour Relations Exclusion

Section 135(1)(c) of the WCA provides that even if a claimant satisfies the "predominant cause" test, there will be no entitlement to compensation if the mental disorder was caused by an employer's decision relating to the worker's employment

Pickering v. Workers' Compensation Board

Issue

- Employee argued that the denial of his claim was discriminatory because the Predominant Cause Provision and the Labour Relations Exclusion infringed his rights under s. 15 of the Charter. He claimed that he had been subjected to discrimination because:

  1) the Predominant Cause Provision applied a more stringent test in respect of chronic mental disorder claims as compared to physical injury claims ("predominant cause" vs. "causative significance" standard for physical injuries); and

  2) the Labour Relations Exclusion applied only to chronic mental disorders and not physical injuries irrespective of whether management decisions were made in good faith

Pickering v. Workers' Compensation Board

Held

- BC Supreme Court allowed the petition and set aside decision of the Workers' Compensation Appeal Tribunal.

Determined that:

1. Predominant Cause Provision did create a distinction by imposing additional burdens on workers with chronic mental disorders as compared to other claims, including physical injuries. Nevertheless, provision was not arbitrary, as there was insufficient evidence to show that this had the effect of reinforcing, perpetuating, or exacerbating disadvantages against workers; and

2. Labour Relations Exclusion was arbitrary and overbroad and therefore a violation of s. 15 of the Charter. Exclusion read down to apply only to "management decisions on generic processes" and "good faith actions"

Pickering v. Workers' Compensation Board Main Takeaways

- Labour Relations Exclusion is not a blanket defence
- Labour Relations Exclusion only applies to specific "management decisions on generic processes" and "good faith actions"
- What does this mean? Not entirely clear!

Prohibited Action Decision: Complaint No. 2022D495

Facts

- Prohibited Action Remedy Decision published September 23, 2025
- WorkSafe determined that employer took prohibited action against worker by dismissing her, at least in part, because she reported bullying and harassment in the workplace
- Worker found new job within 1 month

Issue

- What remedy is the employee entitled to?

Prohibited Action Decision: Complaint No. 2022D495

Held

- 9 Months

Basis for Decision

- “Make Whole Remedy”: when an employer’s prohibited action is the unlawful dismissal of a worker, the worker is generally entitled to wage loss starting from their dismissal and ending with their commencement of new, comparable employment. However, a larger award can be found if the worker’s employment with the employer “would have continued but for the prohibited action.”

Prohibited Action Decision: Complaint No. 2022D495

[42] Projecting the duration of a worker's continued employment with an employer is not an exact science as no one, not even the parties, can predict with certainty how long the worker would have remained working for the employer if not for the prohibited action. As frequently noted, decision makers "will differ, perhaps widely, in making assessments in cases which have been said to depend on what may be seen in a crystal ball."[5]

[43] Being mindful of this challenge, I find it reasonably foreseeable that if not for the prohibited action, the worker would have continued working for the employer for nine more months. I find it reasonably foreseeable that in the absence of the prohibited action, conflict between the worker and employer would have continued given their differing views on non-OHS matters, specifically, her job description, reporting structure, remuneration, and the employer's financial reporting obligations. I find it more likely than not that in these circumstances, the employer's perception of the worker as non-compliant or "not a good fit" would have intensified, resulting in it ending the employment relationship within nine months (I note that I find that the employer held a negative view of the worker, which would likely have intensified over time. However, I make no finding as to whether that perception was accurate).

Prohibited Action Decision: Complaint No. 2022D495 Main Takeaways

- WorkSafe has broad powers under “Make Whole Remedy”
- Mitigation doesn’t necessarily apply in the context of prohibited action complaints

IMPORTANT HUMAN RIGHTS CASES FROM 2025

Mr. T v. Silver Bullet Solutions Inc., 2025 BCHRT 141

Facts

- Complainant worked for employer for 7 days. Employment was terminated immediately after his employer learned that he had two prior criminal convictions that he had not disclosed during the hiring process. Employee argued that termination was discriminatory under s. 13 of the Code

Issues

1. Whether termination was discriminatory; and
2. If yes, what remedy was the Complainant entitled to receive?

Mr. T v. Silver Bullet Solutions Inc., 2025 BCHRT 141

Held

1. Termination discriminatory

2. $10,000 for injury to dignity, $0 for wage loss

Mr. T v. Silver Bullet Solutions Inc., 2025 BCHRT 141

Basis for Decision

[57] I have accepted that MotiveWave had decided to terminate Mr. T's employment on September 2 for non-discriminatory reasons. However, its decision to terminate his employment on September 1 was clearly based at least in part on his criminal convictions. Mr. Lindsay was frank in acknowledging this in cross-examination:

> Q: ...You were part of the decision-making process, in terms of how to terminate [Mr. T]. You had a phone call with him on September 1st?
>
> A: Yes.
>
> Q: And you terminated his employment in that phone call?
>
> A: Yes.
>
> Q: And so you called him September 1st to terminate his employment without notice because you had learned about his criminal conviction, correct?
>
> A: Correct.

Mr. T v. Silver Bullet Solutions Inc., 2025 BCHRT 141

Basis for Decision

- [59] I appreciate that circumstances were exacerbated by the fact that Mr. T had lied about his convictions in the interview process. It is possible that, had Mr. Lindsay and Ms. Carter considered the convictions and concluded (as I have) that they were unrelated to Mr. T's employment, they would have terminated his employment for dishonesty anyway.

- [60] At the same time, there is no dispute that Mr. Lindsay's message during this call was that Mr. T's employment was being terminated because of the convictions. Regardless of Mr. Lindsay's intentions (which are not relevant to the human rights analysis), the impact on Mr. T was to connect his convictions to his termination.

Mr. T v. Silver Bullet Solutions Inc., 2025 BCHRT 141

Basis for Decision

- [90] Mr. T seeks an award for 18 months of wage loss, which is the period between his termination and when he was able to find new full-time employment. Respectfully, this claim is denied.

- [91] I have found that, if Mr. Lindsay and Ms. Carter had not learned about Mr. T's criminal convictions, they would have terminated his employment for non-discriminatory reasons the next morning. In this situation, there is no wage loss flowing from the discrimination.

Mr. T v. Silver Bullet Solutions Inc., 2025 BCHRT 141

Basis for Decision

- [93] …Any case involving the termination of employment is inherently very serious, and would typically attract the top end of the Tribunal's awards…However, in this case, the nature of the discrimination is mitigated somewhat by my finding that, but for the discrimination, Mr. T would have lost his job the next day anyway….

- [96] This evidence highlights how the manner of his termination, and the reasons given for it, impacted Mr. T's dignity. He testified, and I accept, that these circumstances give rise to the triggers for his poor mental health…

- [99] Considering all the circumstances, I exercise my discretion to award $10,000 to Mr. T…It accounts for the fact that Mr. T's employment would have been terminated anyway, but that the way he was terminated had a significant impact on his mental health and wellbeing. In my view, this amount is a proportionate response to the injury to Mr. T's dignity in this case.

Mr. T v. Silver Bullet Solutions Inc., 2025 BCHRT 141 Main Takeaways

- Terminating someone with a protected ground is inherently risky
- Income loss awards are inherently fact specific. Very difficult to predict what the HRT will do

Bonnefoy v. Northern Health Authority, 2025 BCHRT 20

Facts

- Complainant alleges discrimination against former employer in the context of employment and tenancy

- After attending the first day of a 10-day hearing, Complainant refused to attend the remainder of the hearing. During the day she did attend, Complainant gave testimony unrelated to her complaint, yelled at the Tribunal Member and the parties, ignored directions from the Tribunal Member, interrupted others, made disrespectful personal attacks about the physical appearance of the Respondent's representative and counsel, and engaged in other inappropriate behaviour. This conduct followed pre-hearing warnings and directions from the Tribunal about the Complainant's pre-hearing conduct

Bonnefoy v. Northern Health Authority

Issue

- Was the Respondent entitled to an award of costs in light of the Complainant's conduct?

Held

- Yes - $3,000

Bonnefoy v. Northern Health Authority

Basis for Decision

- Complainant was self-represented. However, Tribunal determined that the Complainant's "lack of legal representation was not a factor that contributed to her inappropriate behaviour"
- Complainant's conduct had "a significant prejudicial effect on the integrity of the Tribunal's processes"
- Complainant did not lead evidence regarding factors outside of her control which might have contributed to the behaviour in question (e.g. a disability), nor did she lead evidence about her ability to pay a cost award. There was evidence that the Complainant was employed

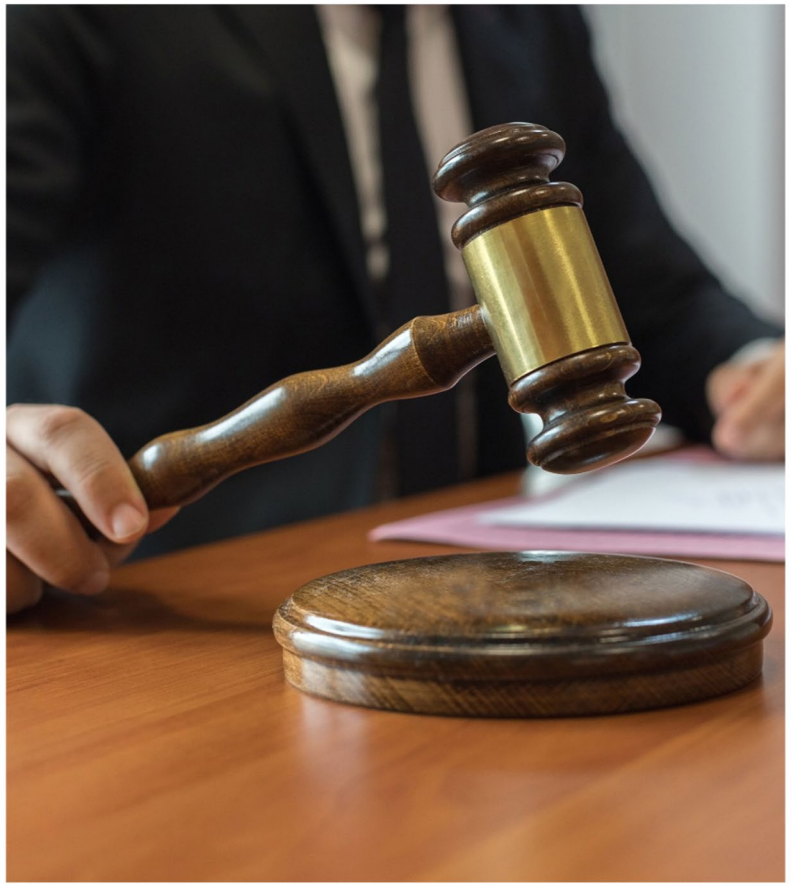
Bonnefoy v. Northern Health Authority

Basis for Decision

- [58] In this case the combination of the severe and repeated conduct despite warnings, as well as the disrespect and disregard that Ms. Bonnefoy has shown to the participants and the Tribunal's process requires a higher award. However, I temper the award with the fact that Ms. Bonnefoy is a self-represented complainant who is clearly dealing with trauma and struggled with the Tribunal's adversarial process. Further, I find that unlike cases where a party was found to have deliberately deceived the Tribunal, there was no intention by Ms. Bonnefoy to deceive or put forward falsehoods.

Bonnefoy v. Northern Health Authority Main Takeaways

- Costs awards are possible at the HRT!
- When costs awards are obtained, they are for nominal amounts, even when the other party engages in abhorrent behaviour;
- While the quantum of injury to dignity awards are on the rise, the quantum of cost awards are not



TAKEAWAYS FROM 2025

Takeaways from 2025

- Short-service employees receiving disproportionate amounts of notice
- Mitigation is a tricky topic – the duty exists for all types of employees, but it is very difficult to establish a failure to mitigate and, even if the employee mitigates, that doesn't save you from damages in a prohibited action complaint
- Litigation at the HRT remains slow and expensive. Costs awards are rare and, even when ordered, are not compensatory
- Courts will punish employers for sharp litigation practices, weak arguments for cause, failure to comply with ESA, etc.

ANY QUESTIONS?

THANK YOU

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