

Special  
points of  
interest:

- Beverley Burns Joins the Firm
- Workplace Violence and Harassment Bill becomes Law
- Arbitrator Issues Huge Damages Award
- Grievor Reinstated Despite Last Chance Letter

Inside this  
issue:

- Big Win! 2
- Our Lawyers Speak! 2
- Damages for Termination 3
- Certification is Tricky 3
- Changes at the Firm 3
- Cindy's New Book! 4

# Watson Burns Report

Volume 1, Issue 1

Summer 2010

## A New Face and a New Name!

Cynthia Watson is pleased to announce that she has joined in partnership with Beverley Burns. The firm will now be called Watson Burns LLP.



Beverley Burns Joins the Firm  
as a Partner

Beverley can be found in the Toronto office, which has been relocated to the lively area of Broadview and Danforth. Beverley brings a wealth of experience having worked for 20 years as a labour lawyer, both in private practice and government positions.

More recently, Beverley was a Vice Chair at the Labour Relations Board of British Columbia, giving her a unique perspective on labour law, which will give Watson Burns a distinct advantage in litigation and mediation matters.

She holds both a Bachelor of Arts and a Bachelor of Laws from the University of Western Ontario, plus a Master of Laws from Osgoode Hall Law School.

Feel free to contact Beverley with any of your labour relations issues. The Toronto telephone number remains the same: 416-253-1967.

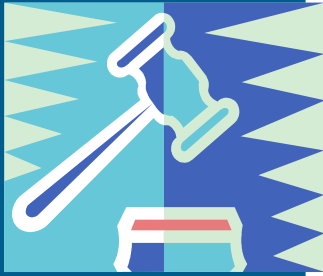
## Bill 168 Now in Force

Ontario's Bill 168, which amended the Occupational Health and Safety Act, came into effect on June 15, 2010. The Bill places new obligations on employers to protect their workers from violence and harassment in the workplace. The law applies to all workplaces with more than five employees.

Among other things, employers must now prepare workplace violence and harassment policies, perform risk assessments and develop a workplace violence prevention program. In our view, Bill 168 offers some new protections to workers, but also raises some thorny issues for unions.

Watson Burns has prepared a seminar on Bill 168 and its implications for unions. Should you be interested in having us present our seminar to your union or other group, please contact our office.

# A Big Win: Reinstatement of a Grievor on a Last Chance Agreement



The employer is required to accommodate employees with disabilities and treat them fairly

Watson Burns was recently successful in an arbitration to reinstate a grievor who was terminated for a workplace violence incident.

The grievor was a 7 year employee who had been previously disciplined for breaking company property. He was placed on a “Last Chance Agreement” by the employer and the Union. The Last Chance Agreement stated that any further incident of aggressive behaviour would result in termination.

About 10 months later, the grievor was outside his workplace on a smoke break, where he was taunted by another employee who teased the grievor with vulgar, sexual jokes. The grievor attempted to leave and return to

work, but at the last remark, turned and punched the other employee in the mouth.

The grievor apologized shortly after that and expressed his remorse. The other employee accepted the apology .

Unfortunately for the grievor, that was not the end of the matter. The employer found out about the incident and investigated it. During the investigation, the grievor advised the employer he was suffering from anxiety and depression due to the fact his wife was undergoing breast cancer treatment and his father had recently passed away. The grievor also advised the employer that he was under medical treatment and was getting counselling for anger management.

In the end, the employer terminated the grievor’s employment, based on the terms of the Last Chance Agreement.

We represented the Union and the grievor at arbitration. We successfully argued that the grievor should be reinstated because the employer was required to accommodate his disability and that it had treated him unfairly during the investigation, as the other employee received no discipline for his harassing behaviour. In spite of the Last Chance Agreement, the arbitrator agreed with our arguments and reinstated the employee, substituting a 20 day suspension for the termination. We consider this to be an excellent result, in all the circumstances.

## Our Lawyers are in Demand!

We are often asked to speak as experts on Labour Relations issues. Recently:

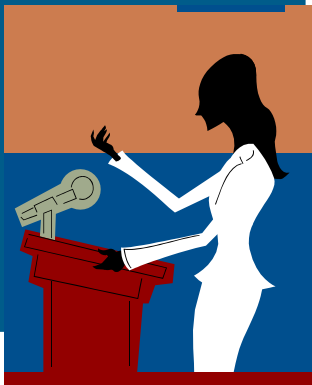
\* Cynthia Watson spoke about the state of trade unionism today at the ATU’s Western States Conference in Portland, Oregon

\* Beverley Burns was interviewed about sexual harassment in the workplace on CTV’s Canada AM

\*Cynthia Watson judged the Matthews Moot Competition at the Ontario Labour Relations Board

\*Beverley Burns presented a seminar on union organizing to the ATU Canadian Conference in Moncton, NB

If you would like someone from our firm to speak at your event, please feel free to contact us.



# Arbitrator Sends Message with Damages Award



A senior Ontario arbitrator has just awarded the highest damages award ever in a termination grievance. In a rare move, the arbi-

trator ordered the employer to pay damages in excess of \$500,000 to an employee it had terminated for alleged sick leave fraud.

The employer had videotaped the employee while she was on sick leave and used that evidence to terminate her employment after 23 years of discipline

free service. The arbitrator found that the employee had been without fault, the employer had acted unreasonably and in bad faith and had destroyed the “relationship of confidence and trust between employer and employee.”

We assume the employer is appealing this decision.

“A single misstep or omission can cause the organizing drive to fail”

## Certifications are Tricky Business

Organizing drives are a tough job for unions everywhere. There are numerous requirements to certify a new union or a local of an existing union. A single misstep or omission can cause the organizing drive to fail.

For example, in the Federal jurisdiction, a union membership card must normally be signed and dated less than 6 months before the date of application for certification. In addition, the union must already have status at the relevant Labour Relations

Board or must prove status as a trade union before a certificate will be issued.

We have developed a checklist of legal requirements for organizing drives. If you would like a copy, please contact us.

## Changes at Watson Burns...

We have had many changes at Watson Burns over the last few months. Two of our staff whom you may have dealt with, Laurel and Maylene, have moved on to other challenges. We're sad to see them go, but we have been lucky to replace them with

equally talented people in both the Bracebridge office and the Toronto office.

Speaking of the Toronto office, it has moved to Suite 304, 177 Danforth Avenue, Toronto, M4K 1N2. The phone and fax numbers remain the same: Tel: 416-253-1967 and

Fax: 416-253-7660.

In addition, we will be creating a new look for our letterhead and website. Stay tuned for more details and our website launch!



## Cindy Watson Publishes Book About Canadian Music Icon!

As you may know, not only is Cindy Watson a respected lawyer, but she is also a published author! We have just found out that her next book, about Canadian guitar great Jeff Healey, is going to be published in August. Congratulations Cindy! Here's what the publisher has to say about her book:

*"In this up-close and personal account, loaded with never-before-seen photographs, memorabilia, and intimate recollections of family, friends, and fellow musicians, we discover this unique music icon's dynamic career, which saw him collaborate with everyone from George Harrison and Eric Clapton to B.B. King and Stevie Ray Vaughan. From Jeff's lonely start one snowy night at St. Joseph's Hospital in Toronto to his untimely end in the same building, we come away with a potent message of empowerment and a renewed sense of hope."*

Cindy's book, *Out of Darkness*, hits the book

shelves August 21st. Make sure to look for it! Cindy has also been working to promote a program encouraging literacy for underprivileged youth with a focus on young boys. Her book targets this young teen market. Any Local Unions interested in donating copies of *Out of Darkness* to this worthwhile program please contact Cindy. You can target a particular geographic area, school or organization and Cindy will ensure press releases are issued to recognize the Union's contributions to an important cause.



The **Watson Burns Report** is a publication of Watson Burns LLP. The **Watson Burns Report** is prepared for general information purposes only and is intended to provide comments for our clients, friends and associates on current and emerging developments in labour law. The contents of the **Watson Burns Report** should not be construed as legal advice or opinion. We invite you to contact us if you have specific questions regarding the articles or any other questions of a legal nature. Additional copies of the **Watson Burns Report** may be obtained by contacting the firm.

### WATSON BURNS LLP

**Toronto Office:**

Suite 304, 177 Danforth Avenue

Toronto M4K 1N2

Tel: 416-253-1967 Fax: 416-253-7660

**Bracebridge Office:**

Suite 4, 3 Manitoba Street

Bracebridge, Ontario P1L 1S4

Tel: (705) 646-5595 Fax: (705) 646-5586

[www.watsonburns.ca](http://www.watsonburns.ca)