



MacDonald's Monthly



From left: Laura Nash, Mackenzie Irwin, and Natalie MacDonald

Natalie's Recommendations Adopted by the House of Commons

A FORCE FOR CHANGE: *Creating a Culture of Equality for Women in the Canadian Armed Forces*

Earlier this year, Natalie MacDonald testified as an expert employment lawyer in front of the House of Commons Standing Committee on the Status of Women (**"the Committee"**) among 19 other witnesses in discussing the steps that must be taken in order to achieve greater equality in the Canadian Armed Forces, particularly for their female members.

The consequential report that was released by the Committee earlier this month has outlined the actions that they've decided to take to achieve greater equality, adopting many of Ms. MacDonald's recommendations.

[Read the report here.](#)

Recent Court Wins

- Natalie MacDonald won a "Duty to Defend" Application which was unprecedented in upholding the importance of university professors providing truthful references about colleagues who are subject to NDA's as a result of sexual misconduct.
- Associate Mackenzie Irwin was recently successful in defending a refusals motion and was awarded costs.

THIS ISSUE AT A GLANCE

- [UPDATE] [House of Commons Adopts Natalie MacDonald's Recommendations](#)
- [NEWS] [The Globe and Mail's Nine to Five with Natalie MacDonald and Mackenzie Irwin](#)
- [UPDATE] [Natalie MacDonald speaks at the inaugural Latin America's Women Economic Forum in Cartagena, Colombia](#)
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The Globe and Mail's Nine to Five with Natalie MacDonald and Mackenzie Irwin

Am I entitled to both commission and vacation pay?

THE QUESTION

As a sales manager receiving payroll and commissions on product sales, I used to receive commission with vacation pay. However, my employer has now told me that was not correct. They started to pay me only commission. I am mostly working from my employer's office with about 25 per cent travel overseas. I receive commission on the sales of the company products from these overseas customers. Ontario regulations state employers shall make commission payments plus vacation pay. Is this correct? What should I tell my employer?

THE FIRST ANSWER

Natalie C. MacDonald, MacDonald & Associates, Toronto

In general, employees are entitled to vacation pay calculated based on their base pay and commissions. However, this depends on the language in any employment contract, or commission plan, or whether one qualifies as a salesperson under the exemption of the Employment Standards Act, 2000 (ESA), which provides the basis for employer obligations.

Under the ESA, employers in Ontario must pay their employees vacation pay at a minimum of 4 per cent of their gross wages. "Wages" is defined under the ESA and includes commissions.

[Read more...](#)

Natalie MacDonald speaks at the Women Economic Forum

Colombia
August 1st - August 3rd 2019

Natalie MacDonald was honoured to be invited as a guest speaker at the Women Economic Forum in Cartagena Colombia.





Law Firm Slapped With \$50,000 in Moral Damages for Abhorrent Treatment of Articling Student

Mackenzie Irwin - Associate

Published September 3, 2019

In *Acumen Law Corporation v Ojanen*, 2019 BCSC 1352, Ms. Melissa Ojanen ("Ms. Ojanen") was hired as an articling student at Acumen Law Corp ("Acumen") where she worked for three (3) months until she started her Professional Legal Training Course ("PLTC") as part of the licensing requirement for British Columbia.

Acumen decided to terminated Ms. Ojanen in front of her peers during her licencing course and served her with a claim for breach of contract, theft, wrongful use of marketing materials, and trespass by entering into Acumen's premises after hours without permission. In what the Court considered "**unnecessary and psychologically brutal**".

In its claim, Acumen asserted just cause for terminating Ms. Ojanen, and claimed notional damages in a substantial amount without proof of loss.

[Read more...](#)

Avoiding Hiring Pitfalls

Kimberly Smith - Associate

Published August 23, 2019

Hiring Pitfalls

To avoid hiring pitfalls, employers should be aware of applicable human rights legislation. An employer that is federally regulated is subject to the *Canada Human Rights Act*, whereas provincially regulated employers fall under the jurisdiction of the *Ontario Human Rights Code* ("Code").

This article will focus on discrimination in the hiring process under the *Ontario Human Rights Code*.



[Read more...](#)



Dependent Contractor Status Requires “Substantially More Than 50%” of Income Coming From One Client

Christopher Justice - Associate

Published August 19, 2019

A recent decision of the Ontario Court of Appeal provided some guidance on how economically dependent a contractor must be before they are afforded the same statutory and common law termination protections given to employees.

In *Thurston v. Ontario (Children’s Lawyer)*, 2019 ONCA 640, Ms. Thurston was a lawyer who provided services to the Office of the Children’s Lawyer (OCL) under a series of fixed-term contracts over a 13-year period. The OCL did not renew the last contract.

Each contract required Ms. Thurston to apply for reappointment as one contract expired, there was no automatic right of renewal, and had language to the effect of what is reproduced below:

The term may be extended or subsequently renewed in the discretion of the Children’s Lawyer.

...

No guarantee of work

The OCL makes no guarantee of the total value or volume of work to be assigned to you. You confirm that in your capacity as an OCL agent, you are not an employee of the OCL.

[Read more...](#)



Workplace Investigations 101: Five Key Steps to Take in a Workplace Investigation

Amelia Phillips – Associate

Published August 6, 2019

[Book a consultation today](#) and speak with one of our lawyers experienced in workplace investigations.

In Ontario, an employer must ensure that an appropriate investigation is conducted into incidents or complaints of workplace harassment.

In this article, we outline the 5 key steps to take in a workplace investigation.

The 5 key steps in a workplace investigation are:

STEP 1: Have a Plan

When an incident of workplace harassment is reported, ensure you take the complaint seriously and ensure that the complainant knows it is being taken seriously. To that end, have a formal plan for how to address each complaint.

This plain should start with determining whether an investigation is necessary. Ask yourself, if the complaint is true, would the behaviour in question violate your workplace policies and/or the relevant legislation. If so, an investigation is likely required.

[Read more...](#)

Court Wins



Natalie MacDonald was recently successful in bringing a Duty to Defend Application, setting a significant precedent.

The following is a synopsis:

The University of Windsor and their insurer refused to defend a law professor - who gave a truthful reference to a prospective employer stating that her former faculty colleague had been terminated by the University of Windsor for sexual and other misconduct - in a "defamation" suit brought against her personally by the perpetrator.

The reason?

The University had signed a non-disclosure agreement with the terminated employee.

Ms. MacDonald brought a successful motion to Ontario Superior Court compelling them to defend the professor who had told the truth and acted "in the course of her employment".

This is a crucial decision upholding the importance of professors providing truthful references and not allowing universities to escape their obligations when they use an NDA to cover up sexual misconduct and allow the perpetrator to move to other universities.

[**Click here to read the decision**](#)

You can skip to page 14, paragraph 55, to read the decision.

ALSO

Associate Mackenzie Irwin was recently successful in defending a refusals motion and was awarded costs.

Want more?

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www.macdonaldassociates.ca
or, follow us on social media.



If you would like to speak to a lawyer, you could book a consultation through our online form [here](#), or call us at

416-601-2300.