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**WEBINAR SERIES**  
LEGAL UPDATES  
FOR CANADIAN EMPLOYERS

# Modern slavery reporting

February 23, 2024

Grow | Protect | Operate | Finance

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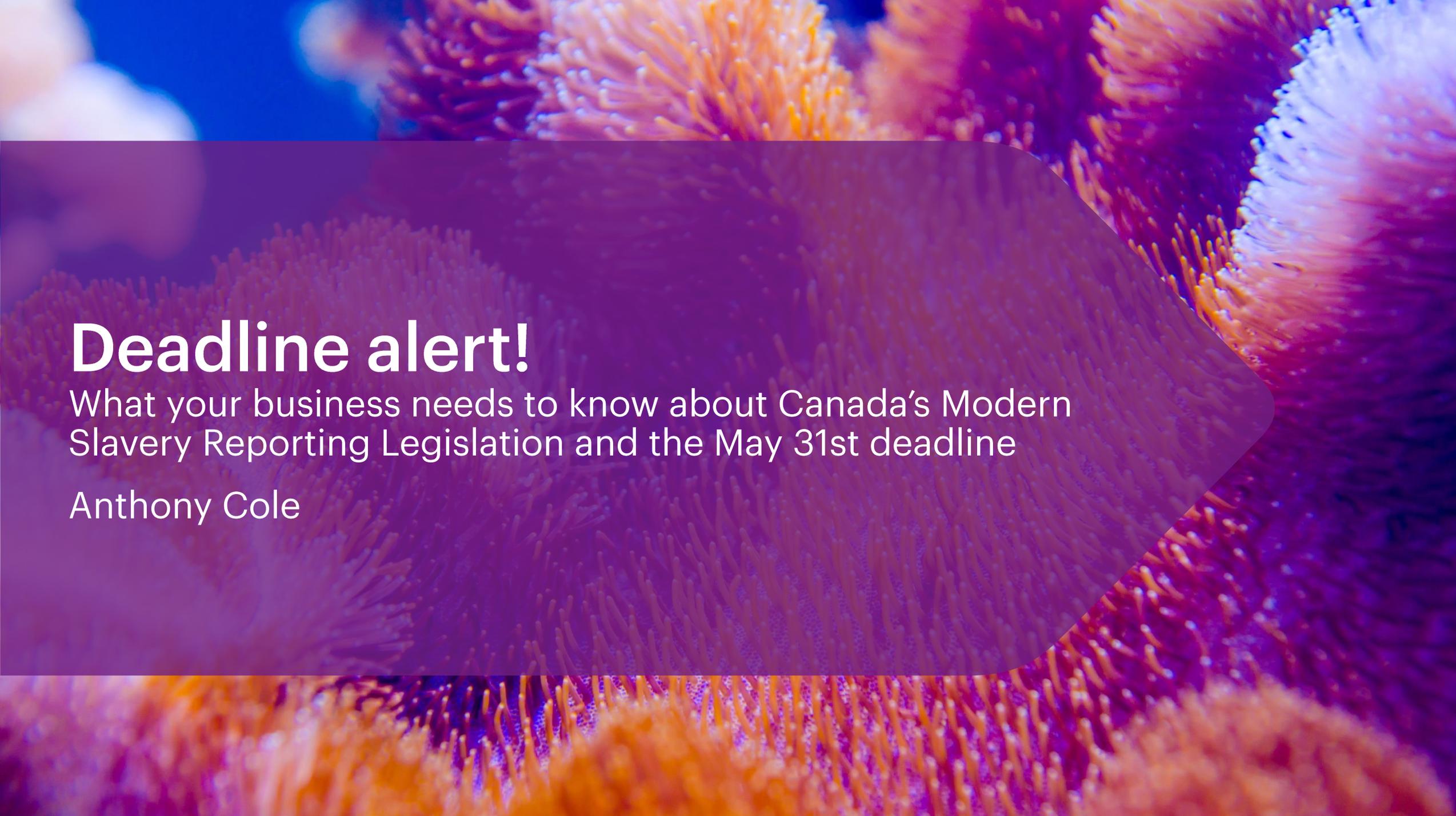
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# Deadline alert!

What your business needs to know about Canada's Modern Slavery Reporting Legislation and the May 31st deadline

Anthony Cole

# Canada's Modern Slavery Reporting Legislation

## *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (“Forced Labour Act”)

- *Forced Labour Act* passed in May 2023 and **entered into force on January 1, 2024**:
  - Guidance subsequently issued by Public Safety Canada in December 2023.
- Reporting **deadline of May 31, 2024**:
  - Report relates to reporting entity's prior financial year
- Requires Board approval:
  - Also needs to have attestation by a Director/Officer with power to bind the entity
- Reports are public:
  - Will be available in a government registry and must be prominently posted on entity's website.

# Canada's Modern Slavery Reporting Legislation

## *Fighting Against Forced Labour and Child Labour in Supply Chains Act*

### What is an Entity?

- Corporation or a trust, partnership or other unincorporated organization that:
  - Is listed on a stock exchange in Canada.
  - Has a place of business in Canada, does business in Canada or has assets in Canada, and meets **at least two** of the following financial or employment thresholds in one of the two most recent financial years:
    - They have at least CA\$20 million in assets;
    - They have generated at least CA\$40 million in revenue;
    - They employ an average of at least 250 employees; OR
    - Is prescribed by regulations.

### Scope of Legislation:

- Any entities (a) producing, **selling or distributing goods** in Canada or elsewhere; (b) **importing** into Canada goods produced outside Canada; or (c) **controlling an entity** engaged in any activity described in (a) or (b).

# What does the report need to include?

The steps the entity has taken during its previous financial year **to prevent and reduce the risk that forced labour or child labour is used at any step of the production of goods in Canada or elsewhere** by the entity or of goods imported into Canada by the entity.

- (a) its structure, activities and supply chains;
- (b) its policies and its due diligence processes in relation to forced labour and child labour;
- (c) the parts of its business and supply chains that carry a risk of forced labour or child labour being used and the steps it has taken to assess and manage that risk;
- (d) any measures taken to remediate any forced labour or child labour;
- (e) any measures taken to remediate the loss of income to the most vulnerable families that results from any measure taken to eliminate the use of forced labour or child labour in its activities and supply chains;
- (f) the training provided to employees on forced labour and child labour; and
- (g) how the entity assesses its effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains.

# Other key aspects of Canada's Modern Slavery Legislation

- There are penalties for non-compliance, including fines up to CA\$250,000.
  - Main offences are failing to file a compliant report, or knowingly making false or misleading statements (includes willful blindness).
- Specific provision making directors/officers liable for directing/authorizing/participating/acquiescing in any offence.
- For *Canada Business Corporations Act* entities or entities created under any other act of parliament, reports must be sent out to shareholders with other financial reporting documents.
- The *Act* includes reporting on child labour – it is one of the first jurisdictions in the world to include reporting on child labour in supply chains.

# Useful Resources on Modern Slavery Legislation

- [Fighting Against Forced Labour and Child Labour in Supply Chains Act \(justice.gc.ca\)](https://www.justice.gc.ca/eng/1525/1525.html)
- [Prepare a report – Entities \(publicsafety.gc.ca\)](https://www.publicsafety.gc.ca/eng/1525/1525.html)
- [Canada publishes modern slavery reporting guidance - Canada Regulatory Review](https://www.regulatoryreview.gc.ca/eng/1525/1525.html)



# Human trafficking civil claims

Colleen Hoey

# Human Trafficking on the World Stage

- **Misconceptions**
- **Statistics**
  - 24.9 million people worldwide, are subject to forced labour
  - Of the total number in forced labour, 83% are exploited in the private economy
- **Growing International Focus**
  - 2000, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons was ratified

# The Tort of Human Trafficking in Ontario

## The Legislation

*The Prevention of and Remedies for Human Trafficking Act, 2017* provides individuals with a private right of action if they have been subject to human trafficking.

### Action

- 16 (1) A victim of human trafficking may bring an action against any person who engaged in the human trafficking.  
**Proof of damage not required.**
- (2) The action may be brought without proof of damage.

### Standard of proof

- (3) Findings of fact in an action under this section shall be made on the balance of probabilities.

# Available Remedies

## Powers of court

17 (1) In an action under *Section 16*, the court may:

- a) Award damages to the plaintiff, including general, special, aggravated and punitive damages.
- b) Order the defendant to account to the plaintiff for any profits that have accrued to the defendant as a result of the human trafficking.
- c) Issue an injunction on such terms and with such conditions as the court determines appropriate in the circumstances; and
- d) Make any other order that the court considers reasonable in the circumstances.

# ***Osmani v. Universal Restorations Ltd. 2022 ONSC 6979***

First case to consider the tort of human trafficking in Ontario

## **Facts:**

- Plaintiff, Mr. Osmani arrived in Canada and found work as a labourer.
- Mr. Osmani met Mr. De-Almeida who said he could help Mr. Osmani get a job with his employer (a paving company). Later, he invited Mr. Osmani to join him to join the corporate defendant Universal Restorations which he did
- Mr. De-Almeida, was his supervisor at Universal Restorations and was abusive in his treatment of Mr. Osmani.
- Mr. De-Almeida also had Mr. Osmani do renovation work at his home.
- Mr. Osmani was injured on the job with Universal. He did not return to work and began this action.

## **Plaintiff's claim as it relates to Human Trafficking:**

- \$100,000 from both the company and Mr. De-Almeida personally for the tort of human trafficking contrary to *the Prevention of and Remedies for Human Trafficking Act* and
- Damages to account for profits that have been made as a result of human trafficking

# Analysis

Two main elements must be present to establish a person has been trafficked:

## 1. The conduct

- May include recruitment, transportation, harbouring a person or can be less coercive including exercising influence.

## 2. The purpose

- for the purpose of **exploiting** or facilitating the exploitation of the trafficked person.

**Exploitation:** whether the conduct in question could reasonably have been expected to cause the person to believe that their safety would be threatened if they failed to provide the service requested.

**Fear for Safety:** violence, threats, coercion, deception, abuse of trust, power or authority, control of finances, financial benefit to the accused, etc.

# Was Mr. Osmani trafficked?

## By the Employer? **No**

- Apart from the usual direction that an employee receives from an employer, the court found no evidence that he was controlled, directed or influenced. Likewise, no evidence that USRL's purpose was to exploit or facilitate the exploitation of Mr. Osmani.

## By Mr. De-Almeida? **No – but closer call**

- Abusive boss who repeated threats to have Osmani removed on the next plane.
- Reasonable for Osmani to have concluded that De-Almeida could exert control over his stay in Canada (whether true or not) and that this would have created fear for his safety.
- Court satisfied that his help with the renovations amounted to a 'direction' to perform labour at his home for free.
- Where the claim failed was on the second part of the test – exploitation. The direction to work at his home on the renovations was not coupled with comments or threats that if he failed to do the work it would impact his work permit.

# Examples of Trafficking Cases in US

## US – case – March 20, 2023

- Two US residents convinced 2 victims to leave their homes in Micronesia and travel to the US promising them that they could work in the US and send money home.
- Once in the US, the defendants confiscated the workers passports and obtained jobs for them at a meat processing plant.
- Each week the defendants took the workers to cash their paychecks and seized most of the money.
- They compelled the defendants to provide their labour by imposing debts, making it impossible for the workers to leave as they had no money, papers, and no way to get home and limited language skills.

# US Trafficking, continued

## 2022 – Owner of Farm Labor Company – Forced Labor of Mexican Farm workers

- Los Villatoros Harvesting Co, a labour contracting company in the US was in the business of bringing in agricultural workers into the US temporary visas.
  - Made false promises about pay
  - Charged visa fees, and lying about reimbursement
  - Created fraudulent records to avoid paying workers what they earned
  - Subjected the workers to crowded, unsanitary and degrading living conditions
  - Confiscated passports and threatening workers with arrest and deportation
- Case was tried and resulted in restitution for victims and prison time for the company owner, as well as two others.
- In the United States, the Federal Trafficking Victims Protection Reauthorization Act (TVPPA) provides victims of trafficking a private right of action to sue businesses for their part in allowing human trafficking to occur on their premises, even if the organization did not know it was taking place. In 2019 at least 125 hospitality related entities were sued in state and federal courts in connection with human trafficking.

# Observations & Comments:

- Employers may find themselves accused of being vicariously responsible for human trafficking by another employee.
- Evolving issue: where a business knew or ought to have known that trafficking was occurring there may be increased exposure to legal consequences.
- Employers should consider the recruitment process and potential power dynamics that may be at play.
- Proposed legislation to require registration of placement agencies. May be a mechanism for helping to reduce vulnerabilities.
- Proactive steps: If you are an employer with a workforce that draws on groups who are at higher risk of trafficking (migrant workers, temporary workers, foreign students) consider creating a policy that makes clear your organization's commitment not to providing a safe workplace and consider training or making information available to those who may have been trafficked.



# Caste-based discrimination:

The next frontier in Canadian human rights law

Salim Visram

# Discrimination Overview

## Three-Part Test to Establish *Prima Facie* Discrimination:

1. Does the Complainant possess a protected characteristic;
2. Did the Complainant experience an adverse impact regarding their employment or a term or condition of their employment; and
3. Was the protected characteristic a factor in the adverse impact?<sup>1</sup>

<sup>1</sup>*Moore v British Columbia (Minister of Education)*, 2012 SCC 61.

# What is a “Caste System”

## Ontario Human Rights Bulletin; October 26, 2023

- A caste system is a social stratification or hierarchy that determines a person or group’s social class or standing, rooted in their ancestry and underlying notions of “purity” and “pollution.” It is a traditional practice based in the political, social, cultural and economic structures of some cultural or religious communities and the societies in which it is practiced.
- Caste-markers can include first and last names, family deities, rituals, wedding bands, customs and ceremonies, belief systems, food habits or diet, accent, dialect, area of origin, ancestry, and descent. Skin colour or “colourism” can also be a marker of social status that overlaps or intersects with other markers. Different castes or sub-castes may take up different positions in the social hierarchy, while other groups may not be assigned a caste at all. These groups may be deemed “untouchable” and assigned a position at the bottom of the social hierarchy including local Indigenous peoples. A person’s caste is seen as immutable and determined at birth.”

## United Nations Report; January 28, 2016

- “Discrimination based on caste refers to a form of discrimination based on descent. Caste-discrimination may be defined as “any distinction, exclusion, restriction or preference based on inherited status such as caste, including present or ancestral occupation, family, community or social origin, name, birthplace, place of residence, dialect and accent that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.”
- The term “caste” refers to a strict hierarchical social system that is often based on the notions of purity and pollution, in which individuals placed at the bottom of the system may face exclusion and discrimination in a wide range of areas. At present, the term “caste” has broadened in meaning, transcending religious affiliation. Caste and caste-like systems may be based on either a religious or a secular background and can be found within diverse religious and/or ethnic groups in all geographical regions.

# ***Bhangu v Inderjit Dhillon and Others***

2023 BCHRT 23

## **Facts**

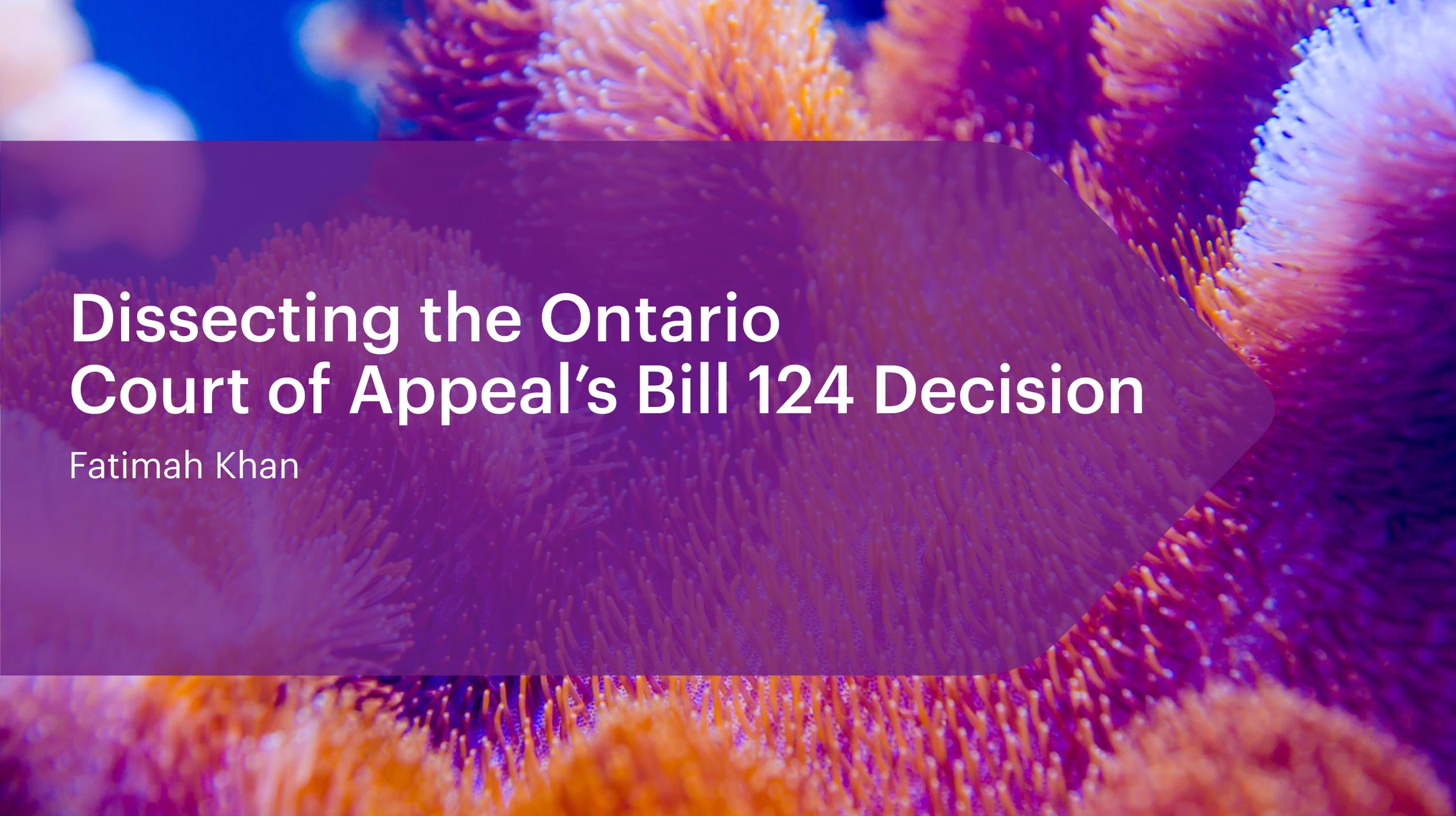
- Mr. Bhangu worked for a taxicab company. He is from Punjab, India, and is a member of the Dalit caste, which is the lowest caste in the Indian caste system.
- Mr. Bhangu filed a human rights complaint, alleging that three of his coworkers used caste-based slurs against him at the company Christmas party. The Tribunal was satisfied that his coworkers had used a caste-based slur against Mr. Bhangu and that the slur was intended to insult and humiliate Mr. Bhangu.

## **Analysis**

- In 2008, the BC Human Rights dismissed a complaint of caste-based discrimination where an individual was denied membership in a religious organization allegedly due to his caste.
- This is the first decision of a human rights tribunal to expressly recognize ‘caste’ as a protected characteristic.

# Key Takeaways

- Awareness of the issues in employment surrounding the caste-system is growing in Canada: The Ontario Human Rights Commission recently issued a bulletin which stated that caste is a protected ground, as it is subsumed by a combination of ancestry, creed, colour, race, ethnic origin, place of origin, and family status. Similarly, the BC Human Rights Tribunal recognized in *Bhangu* that an individual's membership in a caste is a protected characteristic.
- Casteism affects all aspects of life and can result in social and economic exclusion and inequality for persons said to be of a "lower" caste. Individuals may allege that they have suffered discrimination if they are assigned less desirable job duties because of perceptions about caste.
- Those from "lower" castes are particularly vulnerable to contemporary forms of slavery. Research conducted by the United Nations indicates that forced or bonded labour is widespread within caste-affected communities, despite legal bans.
- Organizations should respond to and investigate claims of caste-based discrimination when discrimination is found. Training may also be necessary to help prevent and address misinformation, prejudice or other barriers that contribute to caste-based discrimination.



# Dissecting the Ontario Court of Appeal's Bill 124 Decision

Fatimah Khan

# Introduction

## *Bill 124*

- *Bill 124* came into force on November 8, 2019.
- Affected both unionized and non-unionized public sector workers.
- Restricted all increases in compensation to 1% during each year of the mandated three-year moderation period.

# Decision by Court of Appeal for Ontario

*Bill 124 unconstitutional for unionized workers only*

- *Bill 124* unconstitutional for unionized workers **but** constitutional for non-unionized employees
- *Bill 124* violated section 2(d) of unionized workers' *Section 2(d)* collective bargaining rights under the Charter of Rights and Freedoms and could not be saved under *Section 1*

# Decision by Court of Appeal for Ontario

## *Section 2(d) Charter Violation*

*Bill 124* did not “preserve a meaningful process of consultation and good faith negotiation”. Specifically:

- There was no significant collective bargaining that took place prior to the introduction of *Bill 124*.
- There was no consultation over *Bill 124*.
- The broad definition of compensation, which included wages and virtually all monetary benefits, significantly limited the scope of potential negotiation during collective bargaining.
- Although *Bill 124* references “exemptions” there were actually no meaningful processes in place to obtain an exemption from the 1% limitation.
- Public sector collective agreements not captured by *Bill 124* did not limit annual monetary entitlement increases to 1% or less.

# Decision by Court of Appeal for Ontario

## *Not saved by section 1 of the Charter*

- *Bill 124* addressed a pressing and substantial objective (i.e. managing finances and budgetary considerations).
- There was no rational connection between *Bill 124* and certain groups of public sector workers (i.e. energy and university workers).
- *Bill 124* did not minimally impair unionized public workers' right to collectively bargain under section 2(d) because it could not demonstrate why it could not use other less restrictive measures to manage finances and control budgetary expenditures.

# Impacts

- Ontario government announced it is not seeking appeal of the Court of Appeal's decision, will take steps to repeal *Bill 124* “in its entirety” and introduce regulations to exempt non-unionized from *Bill 124* until it is repealed.
- Labour arbitral decisions awarding retroactive pay for public sector workers affected by *Bill 124* will likely continue.
- Ongoing questions about remedies for non-unionized public sector workers.

# Thank you



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