



**Canadian Lawyer InHouse Innovatio Award
to OPTrust and Sherrard Kuzz LLP!**

September 2016

Congratulations to our client, OPTrust (Director of Labour Relations, Tamara Johnson) and Sherrard Kuzz LLP's, Michael Sherrard and Lisa Bolton, who were selected as the winners in the category of *Working with External Counsel, Small Departments*.

The *Canadian Lawyer InHouse Innovatio Awards* is the pre-eminent award program recognizing innovation by members of the in-house bar within the Canadian legal market. These awards celebrate in-house counsel, both individuals and teams, who show leadership by becoming more efficient, innovative and creative in meeting the needs of their organizations. *The Innovatio Awards* program draws on a panel of in-house counsel judges to determine the winners, based on a range of criteria.

The winning submission by OPTrust and SK described how and why Tamara Johnson and Michael Sherrard co-created with the Ontario Public Sector Employees Union, an expedited union grievance resolution process to successfully resolve 29 employment reclassification grievances. The grievances covered a period of more than 4 years, were governed by 2 different collective agreements, and involved 12 different positions within a department. As a result of this process all of the 29 reclassification grievances were successfully completed in fewer than 3 months with only 6 hearing days required. Using a traditional arbitration hearing model the parties anticipated approximately 60 hearing days over a period of several years.

About Sherrard Kuzz LLP:

Sherrard Kuzz LLP is one of Canada's leading employment and labour law firms exclusively representing the interests of management. Recognized nationally and internationally, our team is consistently named among *Canada's Top 10 Employment and Labour Boutiques (Canadian Lawyer®)*, *Canada's Leading Employment & Labour Law Firms (Chambers Global®)* and as *Repeatedly Recommended (Lexpert®)*.



Mediation-arbitration approach saves OPTrust time and money

By Jennifer Brown

Faced with a complex and potentially protracted arbitration process, Tamara Johnson, director of labour relations for OPTrust, decided a new approach was needed to not only expedite the process but save on legal costs.

Last year, together with her external counsel Michael Sherrard of Sherrard Kuzz LLP, Johnson co-created with the Ontario Public Service Employees Union an expedited union grievance resolution process to successfully resolve 29 employment reclassification grievances.

The grievances covered a period of more than four years, were governed by two different collective agreements and involved 12 different positions within a department.

The process was developed with the

following guiding principles in mind. The process should be:

Mutually agreeable, promoting buy-in from and collaboration with the union and creating improved labour relations.

Inclusive, facilitating employee participation and representation.

Equitable, utilizing a single neutral adjudicator jointly selected by the parties.

Efficient, implementing an accelerated hearing schedule and co-operative proce-

dures for submitting evidence resulting in significant time and cost savings for the union and employer.

The parties met for one day to discuss a time-restricted mediation-arbitration process and develop a guideline agreement. Some of the key strategies included:

A single arbitrator appointed to adjudicate all grievances.

Twenty-nine grievances proactively grouped into 12 classifications.

A representative union witness was appointed for each classification group.

An inquisitorial process was adopted, permitting the arbitrator to obtain evidence directly from each representative witness, with the assistance of a written synopsis of issues and list of questions submitted by



CATEGORY: Working with external counsel

DEPARTMENT SIZE: Small

COMPANY: OPTrust



L to R – Lisa Bolton, Michael Sherrard, Tamara Johnson, John Walsh, managing director, general counsel OPTrust.

each of the parties prior to the hearing.

A single employer representative provided responding evidence for all 12 classifications.

Examination and cross-examination of representative witnesses was limited to key issues.

An early evaluation session enabled the parties to discuss the legal issues and evidence with the arbitrator in advance of a decision.

As a result of this process, all of the 29 reclassification grievances were completed in less than three months with just six hearing days required. Using a traditional arbitration hearing model, OPTrust had anticipated about 60 hearing days would have been required and the entire process would likely have taken several years to complete.

External counsel Sherrard and Lisa Bolton from Sherrard Kuzz assisted Johnson in the process.

Johnson recognized the significant impact the outstanding grievances were having on employee morale not only in the affected department but also across the organization.

"She was also concerned about the length of time it would take to complete all of the grievances using traditional arbitration procedures and the significant financial cost and business interruption resulting from lengthy individual hearings," says Sherrard. "Tamara also recognized the need for a consistent approach to determining the appropriate classification of positions, which she believed could not be achieved if different arbitrators adjudicated the grievances in isolation."

Finally, Johnson believed that a different, collaborative approach to promptly resolve the grievances was essential to foster positive labour relations as the parties were preparing to begin renegotiations of the collective agreement.

Johnson initiated the change with OP-SEU as a way to resolve outstanding classification grievances that had been pending for several years.

There were several positive business outcomes for the company including swift, consistent resolution of all outstanding grievances:

- Enhanced employee morale not only in the affected department but across the organization.
- Considerably cut down the time and cost (financial and personal anxiety of witnesses) to complete the grievances, relative to

a traditional arbitration procedure.

- Minimized disruption to daily operations.
- Ensured a consistent approach to determining the appropriate classification of positions, which could not have been achieved if different arbitrators adjudicated the individual grievances in isolation.
- Promoted collaboration and co-operation between the union and employer regarding reclassification, which had traditionally been a contentious issue between the

parties. This was particularly important as the parties were preparing to begin negotiations for the renewal of their collective agreement. By proactively resolving the grievances, the parties were able to remove a significant impediment affecting future labour relations.

There was a significant legal cost savings for both the employer and union, but above all was the saving of time and workplace disruption. ■

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