

NOVEMBER 2023 MONTH IN REVIEW

New Brunswick

LAWS & ANNOUNCEMENTS

Labour Relations

Nov 3: [Bill 3](#), which has passed Third Reading but not yet received Royal Assent, amends the *Industrial Relations Act* to recognize employees that apply in writing for trade union membership as constituting members. Under current New Brunswick law, employees are recognized as members only if they apply in writing and pay at least \$1.00 in initiation fees or union dues.

Employment Benefits

Nov 29: Newly tabled [Bill 17](#) would create a process enabling the transfer of 5 New Brunswick government pension plans that are at financial risk to existing shared-risk pension plans that are currently registered under Part 2 of the *Pension Benefits Act* in an effort to keep the threatened government plans afloat.

CASES

Social Media: Accessing Employee's Facebook Account Doesn't Constitute Privacy Tort

A company accused its former Director of Computer Program Development of sharing trade secrets with a competitor in violation of his non-compete and non-disclosure agreement and went to court seeking an injunction. Its key evidence came from the Director's Facebook Messenger exchanges with other employers

that the company discovered after his resignation, included The Director countersued the company for constructive dismissal and breach of privacy by accessing his Facebook account. In addition to granting the injunction, the New Brunswick court refused to award summary judgment on the Director's privacy claims, which were based on recognition of a novel tort called "intrusion upon seclusion," which occurs when a defendant intentionally or recklessly invades a plaintiff's private affairs in a way that reasonable person would deem highly offensive, causing distress, humiliation or anguish. Even if such a tort did exist, there were legitimate questions in this case regarding whether the company's behaviour was highly offensive and the Director's privacy expectations were reasonable, especially since he had shared his Facebook password with the company and didn't remove his Facebook account from his computer when he left [*Unipco Ltd. v. Mullin*, 2023 NBKB 200 (CanLII), November 22, 2023].

Action Point: Use the HRI template to create your own [social media use policy](#)