

CAVALLUZZO

June 5, 2020

Phil Abbink, Jan Borowy and Danielle Bisnar are the Partners leading Cavalluzzo's Health Law, Human Rights and Pay Equity Practice Groups. In addition to the years of experience they all have in working with ONA, they each bring unique strengths and experience to providing strategic advice to and litigating on behalf of trade unions and health professionals in a wide range of contexts. Their detailed bios are below.

In addition to their expertise, the firm has a depth of experience and resources in a broad range of areas of law, including: a large civil litigation group led by Stephen Moreau, acting on behalf of unions and workers, including in injunctions and class actions; expertise in election law and government relations; broad experience advising on trade union governance, policies and internal relations; and leading expertise in public law including Charter litigation, inquiries and inquests. Cavalluzzo has recently been joined by Cynthia Cryslar, a pensions lawyer with 25 years of experience advising unions, plan administrators, OMERS and the Financial Services Regulatory Authority as the head of the firm's Pension and Benefits Practice Group. We also have a team of associate lawyers with experience advising and litigating on behalf of ONA, including Tyler Boggs, Michael Mandarino and Niiti Simmonds.

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**Jan Borowy, Hons BA, MA, LLB**, brings more than 30 years experience in representing workers in legal and other key strategic forums to her practice.

She began her career on an inside committee organizing her co-workers. She was an active union member in grievance handling and on the local women's committee. She moved on to a union staff role as a Research Director with the ILGWU where she directed a major campaign involving improvements for precarious workers within the *Employment Standards Act* in response to free trade. She worked for ten years at OPSEU where she held several positions of increasing responsibility, including Coordinator of the Ontario Public Service contract mobilization and 2002 strike (involving a bargaining unit of 45,000), Campaign Strategist for part-time college faculty and support staff who were legislatively barred from unionization, and as a Supervisor of staff representatives. In 2004, Jan coordinated OPSEU's response to the food safety system through an organizing campaign of meat inspectors and Justice Haine's review of the Food Safety system, *From Farm to Fork*.

Prior to joining OPSEU, Jan worked as a community legal worker where she argued cases before the *Employment Standards Act* umpire and worked on numerous human rights cases.

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Jan started at Cavalluzzo LLP in 2007 first as a legal researcher on pay equity matters. She articulated at the firm and is now a partner and on the Executive Committee. Jan has a full labour law practice including labour relations, *PSLRTA*, human rights, pay equity, occupational health and safety and professional regulation, primarily in health care. This work includes strategic appellate work to enforce workers' rights from the Divisional Court to the Supreme Court of Canada.

Jan has a special interest in occupational health and safety, including preventing workplace violence and harassment. For ONA she argued the successful breakthrough case for an interim order to protect nurses from workplace violence (*Ontario Nurses' Association v Royal Ottawa Health Care Group – Brockville Mental Health Centre, 2014*). The Brockville case has continued to set key precedents as ONA has enforced nurses' right to a safe workplaces at the OLRB and through an attempted contempt proceeding.

Jan is the firm's lead lawyer on pay equity and has argued the leading pay equity cases involving at Divisional Court (*Ontario Nurses' Association v. Participating Nursing Homes, 2019 ONSC 2168*) and the Supreme Court of Canada (*Centrale des syndicats du Québec v. Quebec (Attorney General), 2018 SCC 18, [2018] 1 S.C.R. 522*). Jan is the co-chair of the Equal Pay Coalition, the main advocacy organization in Canada to close the gender pay gap. In this capacity, Jan is leading a major project funded by the Atkinson Foundation and the Canadian Women's Foundation on women's economic justice through an intersectional equality lens.

Jan is frequently asked to present and to lead workshops for the Canadian Labour Congress and the Ontario Federation of Labour. She is a regular course instructor at the Eastern Nurses Labour School for CFNU. She has published extensively on various forms of work reorganization under neo-liberalism. Jan brings to her practice a longstanding commitment to the promotion of social justice, workers' rights and human rights. She knows the importance of comprehensive campaigns involving litigation, negotiations, communication and organizing if trade unions are to protect their members' rights.

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Phil Abbink, Hons BA, MA, JD, brings a wealth of litigation experience from a wide variety of fora to every matter. His approach is to identify client problems, and provide them with concrete solutions and strategies.

After earning a JD and a MA in International Relations from the University of Toronto, Phil articulated at Cavalluzzo. During his articles, he represented the Ontario Nurses Association along with Kate Hughes in a Coroner's Inquest arising from a death in a long-term care home. The recommendations from this inquest led to significant changes specifically related to the assessment of, and care for, residents with behavioural challenges, which remain in practice to this day.

He also worked with David Bloom in a very lengthy, and hotly contested, professional misconduct hearing at the College of Teachers, successfully defending the teacher against scores of allegations and obtaining a penalty of a mere reprimand. Phil then returned to work at Cavalluzzo as an Associate, practicing criminal defence, labour arbitration, and professional regulation. He represented clients in Provincial and Superior Court, at the Court of Appeal and before professional regulatory Colleges. His defence practice principally related to professionals, including teachers and nurses.

After living in Ireland for several years, Phil returned to Cavalluzzo as an Associate, and became a partner in 2017. During this time, his practice has focussed on representing nurses in labour arbitration and professional regulatory proceedings. He has continued to advocate for individuals and institutions in Coroners' Inquests, including representing the surviving siblings of Jeffrey Baldwin in the Inquest into his death over several months. Recommendations from this Inquest also led to significant changes in the child protection system in Ontario.

At the Labour Relations Board, Phil acts for institutional clients in relation to appeals under the *Occupational Health and Safety Act* and other matters. He has experience in appeals to the Information and Privacy Commissioner, both as applicant and defendant.

On a *pro bono* basis, Phil and a team of Cavalluzzo lawyers represented complainants at the disciplinary hearing of Supt. Mark Fenton, in relation to the kettling of protesters during the G20 protests in Toronto in 2010. Supt. Fenton was found guilty of professional misconduct based on the strong advocacy and cross-examinations conducted by Phil and the Cavalluzzo team during this lengthy and complex hearing.

In cases that changed health care policy throughout the province, Phil, Kate Hughes and Tyler Boggs represented the Ontario Nurses' Association in two arbitration proceedings successfully overturning Hospital policies requiring nurses who had not received the seasonal influenza vaccine to wear a surgical mask during influenza season. This required extensive understanding of the relevant science, as well as preparing and cross-examining the expert witnesses. Another notable victory required a Hospital to apply the short-term disability provisions of HOODIP consistently with the *Human Rights Code*, by counting modified hours and graduated return to work hours towards reinstatement of benefits (*Ontario Nurses Association v. Southlake Regional Health Centre*, Jan 8, 2020, B. Keller, unreported).

Most recently, Phil and the Cavalluzzo team obtained an injunction requiring five long-term care facilities to comply with Provincial Directives relating to the pandemic (*Ontario Nurses Association v. Eatonville/Henley Place*, 2020 ONSC 2467 (CanLII)), and also obtained an award requiring over 200 Long-term Care Homes represented by ONA to comply with the collective agreement, and OHSAA, to prevent the spread of COVID-19 and protect both residents and staff (*Participating Nursing Homes v Ontario Nurses' Association*, 2020 CanLII 36663 (ON LA))

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**Danielle Bisnar, Hons BA, MA, MA, JD**, is a workers' rights, equality and Aboriginal law advocate. She represents unions, professional associations, individual workers, regulated professionals, and First Nations in diverse contexts including labour disputes, government relations, human rights and constitutional law, pay equity, professional discipline, judicial reviews and appeals. She has particular expertise in the health care, policing and public sectors.

Danielle's labour law practice is focused on providing on strategic research and advice in the health care sector and on litigating grievance arbitrations, judicial reviews and appeals of labour law issues. She has represented ONA before the Divisional Court and the Court of Appeal on numerous occasions, including in: *Windsor v ONA* 2019 ONSC 6883 (jurisdiction of *HLDA* arbitrator to clarify award); *ONA v Cambridge Memorial Hospital* 2019 ONSC 3951 (confirming that discipline of employees for misconduct linked with substance dependence must conform with human rights principles); *Toronto East General Hospital v ONA* 2018 ONCA 175 (upholding arbitrator's decision that reduction of regular part-time nurse's hours triggers layoff provisions under collective agreement); and *Timmins and District Hospital v. Ontario Nurses' Association*, 2013 ONSC 6002 (upholding arbitrator's award of full entitlement to LTD benefits when member elects free accrual under HOOPP). She is currently co-counsel in ONA's *Charter* challenge to Bill 124, Ontario's 2019 wage restraint legislation.

Danielle has a depth of experience in written advocacy and litigation in all aspects of professional regulation under the *Regulated Health Professions Act*, and regularly acts on behalf of nurses and midwives in health inquiries and professional misconduct proceedings before their Colleges. She was co-counsel in ONA's constitutional challenge to the *Regulated Health Professions Act* which led to systemic changes to the manner in which the College of Nurses of Ontario regulates nurses with disabilities. Danielle also advises health sector unions and professional associations on all aspects of health care governance and regulation.

Danielle is proud to walk in the footsteps of Cavalluzzo's feminist founding partners and devotes a significant portion of her practice to human rights and anti-discrimination advocacy. She has extensive experience litigating complex systemic discrimination claims including leading equality cases on behalf of women, racialized and disabled workers. She has twice represented the Women's Legal Education and Action Fund (LEAF) as an intervener in appeals relating to workplace gender discrimination, first in *Canada v. Johnstone* 2014 FCA 110, a leading case on family status discrimination, and second in *Fraser v. Canada* (heard December 2019), in which she argued before the Supreme Court of Canada on adverse effect discrimination and pension equality for women with caregiving responsibilities.

Danielle's equality law experience includes representing ONA, with Jan Borowy, in the leading case on pay equity maintenance, *Ontario Nurses' Association v. Participating*

*Nursing Homes*, 2019 ONSC 2168. She has also acted on behalf of unions and professional associations in claims of systemic gender discrimination in compensation before the Human Rights Tribunal of Ontario. As an articling student, she was highly involved in representing an Indigenous worker in *McKinnon v. Ontario*, a leading series of human rights cases on race discrimination and systemic remedies.

Danielle brings her health sector expertise to her advocacy for First Nations. She acts for Grassy Narrows First Nation, a community which has experienced fifty years of mercury poisoning from industrial waste dumped into their river system. As lead counsel, Danielle successfully concluded negotiations with the federal Minister of Indigenous Services resulting in an historic Framework Agreement for the establishment of a specialised Mercury Care Home on reserve.

Danielle has also completed the Osgoode Certificate in Pension Law.

Danielle is regularly invited to present to academic and professional audiences in the areas of labour, administrative, equality and health law and has published several journal articles in these areas. She holds a JD from Osgoode Hall Law School and graduate degrees in Social and Political Thought and in English Literature. Prior to law school, she worked with Canadian midwifery regulators to establish a bridging program to facilitate entry of internationally educated midwives into the profession.

Danielle brings feminist, anti-racist and decolonial approaches to her legal practice and is committed to using the law to empower her clients and support the aims of labour and social movements. Her commitment to law as a tool for achieving justice at work flows from her experiences as a union member and community organizer with Filipinx migrant workers and their families.

Outside of law, Danielle serves as a member of the Board for the Canadian Women's Foundation.