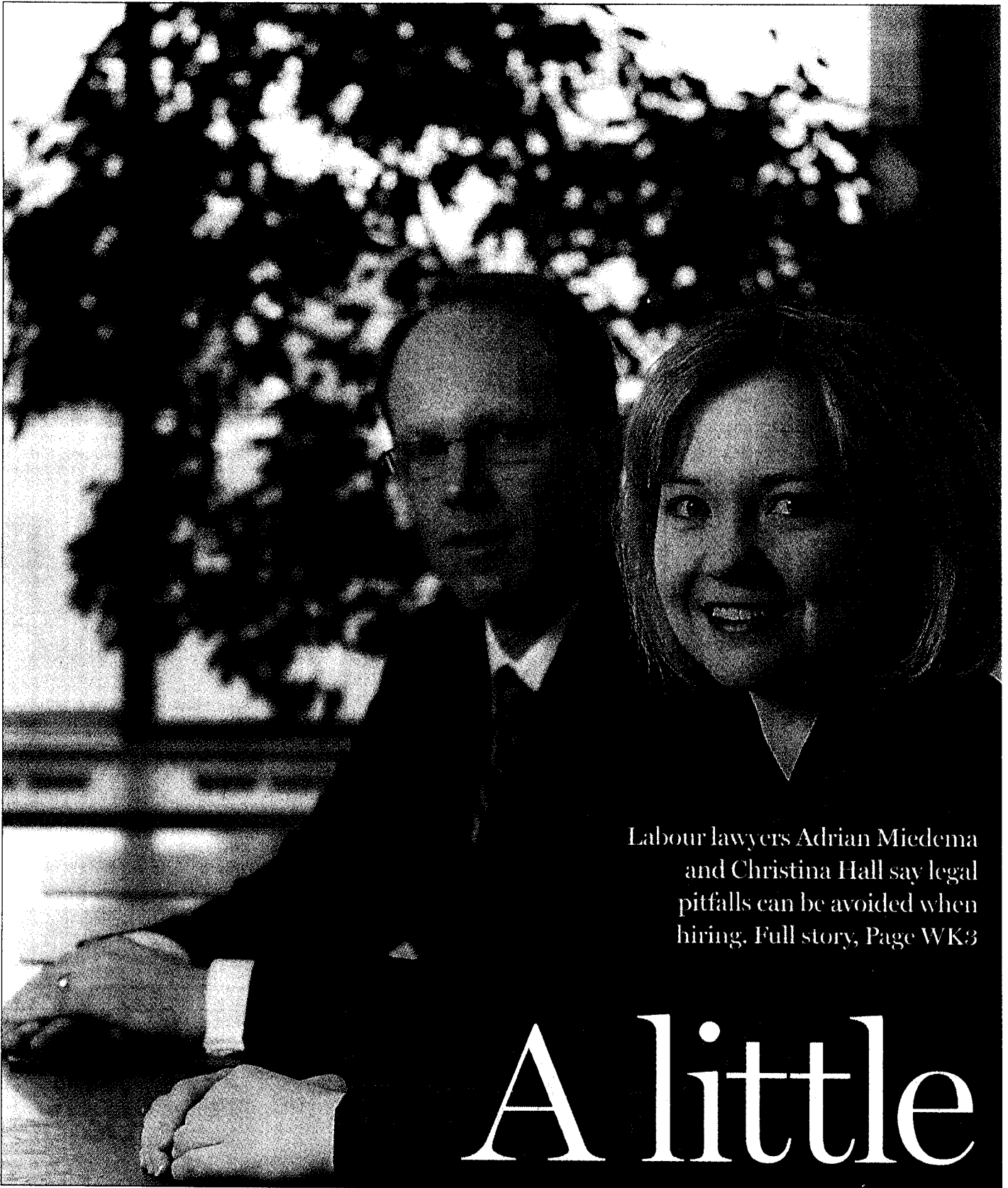


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DO SECURITY CHECKS WITH CARE



Labour lawyers Adrian Miedema and Christina Hall say legal pitfalls can be avoided when hiring. Full story, Page WK3

A little

knowledge

BRENT FOSTER / NATIONAL POST

A bad hire can be catastrophic to a businesses' reputation

'Didn't you check?'

By Jim Middlemiss

When Debbie Bennett prepares to hire a new employee she has to be careful to conduct the appropriate level of reference and security checks without running afoul of human rights and privacy law. Ms. Bennett, vice-president of human resources and finance at the Ottawa Citizen and the incoming chairwoman of the Human Resources Professionals Association of Ontario, says: "You can't do a background check willy-nilly." Rather, she says, there has got to be a "bona fide reason behind it."

For example, Ms. Bennett says, she would not hire somebody with access to money without checking to see if there were charges for embezzlement or fraud on their record. "I don't care if it's a DWI charge unless it's an obligation of the job."

As Ms. Bennett knows, the most important decision any manager makes is hiring the right person for a job. That's because the damage a bad hire inflicts on a business reputation can be catastrophic, says Adrian Miedema, a labour and employment lawyer at Fraser Milner Casgrain in Toronto and author of the *HR Manager's Guide to Background Checks and Pre-employment Testing*.

If it turns out the person is a rogue and his or her nefarious conduct results in media scrutiny, he says, "the first thing reporters ask a company is, 'Didn't you check?'" It turns out to be a real problem for employers if they haven't done a background check.

As a rule, daycare firms need to avoid hiring someone who has been involved in sexual assaults or pornography. Heavy equipment operators and companies shuttling passengers want to avoid hiring people with bad driving records. And financial institutions need to stay away from hiring connen and fraud artists.

Mr. Miedema says that "the cost associated with bad hires makes it worthwhile to spend a little extra up front to keep people out of the business." Statistics Canada recently reported that one in eight hires from a workplace and employment survey conducted in 2001 said they were the subjects of a security check during the hiring process, while medical examinations were required in 11% of hires, although that is declining.

Security checks were most common for those seeking jobs, such as teachers, health workers, police and information technology personnel. Workplaces with more than 500 employees screened 18% of their new hires in 2000 and 2001, compared with 8% in companies with fewer than 20 employees.

Angus Stewart, vice-president of forensics and leader of corporate intelligence at KPMG LLP in Toronto, which conducts background checks for companies, says "I think the biggest hurdle is really awareness. A lot of clients have no idea this service is available."

In his book, Mr. Miedema and co-author Christina Hall, also a lawyer at FMC, write about the various types of screens employers can conduct in the hiring process and the legal pitfalls around them.

They range from what you can and can't do in a job interview to more elaborate safeguards, such as reference, credit history, education and professional certification checks, psychometric testing, and medical and fitness testing, police records review, drug and alcohol checks and im-



ROD MACIVOR / CANWEST NEWS SERVICE

Debbie Bennett, incoming chairwoman of the Human Resources Professionals Association of Ontario: The key is consent and what you do with the information.

migration and terrorism checks.

The experts say employers have to be careful of privacy and human rights protections when engaging in such reviews.

Ms. Bennett says it's critical to get a candidate's approval before looking into their past. "The key thing is consent and what you do with the information once you're done." Is it going to be destroyed and who is going to have access to it? she asks.

If a person doesn't consent to a background check, then it raises "red flags," she says.

Ms. Bennett relies on third-party firms to conduct many searches, such as credit and criminal records checks.

KPMG's Mr. Stewart says knowing what to look for is key to a successful search. "Education fraud is the most common," he says, adding that people lie about the degree they receive or the institutions they attend. There is also the "diploma mill issue," where people cite degrees that they order online from phony institutions. "There's quite a bit of that."

When it comes to police record checks, it can be complex and confusing. Mr. Miedema notes that there are different levels of checks and employers must be specific about the type of records they are seeking. Do they want just convictions or information related to charges and investigations that police

might have on record?

The primary database is Canadian Police Information Centre, operated by the RCMP. However, police practices vary by jurisdiction, so there's no guarantee that the subject's entire police record is being disclosed, and a local search might also be necessary.

"A lot of corporate malfeasance doesn't end up in the criminal justice system," Mr. Stewart says. No criminal records exist because employers don't press charges. The company simply fires the person and sues in

WRONGFUL DISMISSAL SUITS CAN UNEARTH HELPFUL NUGGETS

civil court to recover the loss. "It's very wise to check civil litigation," he says, noting that wrongful dismissal actions can also unearth helpful nuggets. In response to a wrongful suit, an employer will cite the reasons for firing an employee including allegations of theft.

Reference checks with past employers are also critical, but the fear of being sued for giving an unflattering reference makes former employers reluctant to give much more than name, rank and serial number.

"People are afraid of lawsuits," Mr. Stewart says. What he tries to do is get an old resumé and compare it to the one the person filed for the job. That can reveal inconsistencies.

As for who to conduct searches on, Mr. Stewart says "I highly recommend everybody gets checked, but it doesn't mean everybody needs to get checked to the same extent."

Mr. Miedema agrees: "We don't advocate doing all possible criminal record checks for every person."

Beware of overkill. Mr. Miedema's book cites several cases where employers went too far in medical checks, for example.

As well, there is a risk background checks will be used against employers. For example, Mr. Miedema says some of the searches can unearth information about things like age or religious connections. If a job is not extended to a candidate, that person could later sue under human rights laws, claiming discrimination as the primary reason for not being hired.

To get around that, Mr. Miedema suggests employers issue a conditional offer to a candidate and then make it subject to the completion of a successful background and reference checks.

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