

October 27 & 28, 2010 | Sutton Place Hotel | Toronto

The Canadian Institute's

10TH ANNUAL ADVANCED FORUM ON

EMPLOYMENT LAW

Cutting-Edge Strategies, Critical Advice & Essential Updates to Help you Resolve your Employment Law Disputes



NEW FOR 2010:

- New trends in the **duty to accommodate** arena
- Avoiding **discrimination claims** when dealing with the **aging employee**
- Managing the more sophisticated **privacy issues**
- Managing **executive compensation contracts** and handling **executive terminations**

FULLY UPDATED:

- Handling **terminations** properly – to avoid **wrongful dismissal** claims
- Obtaining the latest developments on **overtime class actions** and tips on how to avoid them
- Managing your challenges under **workplace violence and harassment** laws by learning from others' mistakes and successes
- Answering your questions: code breaches, jurisdictional issues and latest developments in the **human rights** landscape

New this year! Each session will have an interactive element built into it by the speakers!

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Please see inside for details

CO-CHAIRS:

Catherine Milne
Partner, Turnpenney Milne LLP

Peigi Ross
Partner, Dunsmore Law P.C.

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Davis LLP
Dunsmore Law P.C.
Gowling Laffleur Henderson LLP
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Hicks Morley LLP
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REDUCE YOUR RISK OF MAKING SERIOUS AND COSTLY ERRORS!

Human rights claims seem to be on the rise, damages awards may be creeping higher and frivolous claims are not always being nipped at the bud. Today's employers continue to face ever more **complex challenges** in their dealings with employees. Whether you are a lawyer advising a client, an HR Manager implementing a new policy or In-House Counsel recommending certain action – **avoiding expensive, damaging and time-consuming errors** is absolutely crucial. In order to do so, you **MUST** stay up-to-date on recent trends and latest legal developments in the employment law arena.

The Canadian Institute's 10th **Annual Advanced Forum on Employment Law** is an all-encompassing conference that will provide you with the updates, skills and strategies you need in order to protect from the increasing risk of litigation. Our **skilled faculty** will discuss the **top issues that many employment lawyers, in house counsel and HR managers asked this conference to address**, including:

- Strategies for managing **human rights claims** and how to prevent them
- Avoiding discrimination claims when dealing with the **aging employee**
- Meeting your **duty to accommodate** mental health, stress and addictions
- Practical techniques to reduce your risk of **constructive and wrongful dismissal** claims
- Plus! Sessions on **privacy, pay equity, overtime class actions** – from both a plaintiff and defence perspective
- ...and much more!

Don't forget to take advantage of our **interactive pre-conference workshop, Essential Elements of Policy, Protocol & Procedural Development & Rollout.**

Register now! Call toll-free at 1-877-927-7936, or register online at www.CanadianInstitute.com/employmentlaw.

We look forward to meeting you at the conference in **October!**

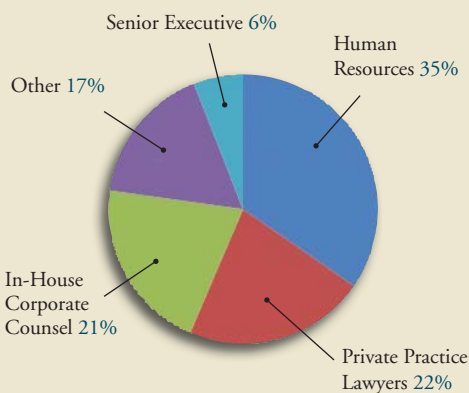


This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification in Civil Litigation/Labour Law.

Conference – 11 hours

Workshop – 3 hours

PAST ATTENDEE PROFILE



NEW THIS YEAR MORE INTERACTION

This icon denotes sessions where speakers will be integrating audience response solutions from **Turning Technologies Canada** into their session. This is your chance to interact directly with speakers and delegates, participate in live polls, and collect valuable information from the experts and your peers.

DISTINGUISHED FACULTY

Co-Chairs:

Catherine Milne
Partner, Turnpenney Milne LLP

Peigi Ross
Partner, Dunsmore Law P.C.

Speakers:

Karen Bock Ph.D.
Partner, Davis LLP

Christopher A. Chen
Executive Compensation Lead, Hay Group

Sarah Crossley
Partner, Ogilvy Renault

Senka Dukovich
Legal Counsel, Pay Equity Commission

Jonathan L. Dye
Partner, Heenan Blaikie LLP

Michael P. Fitzgibbon
Founder and Partner, Watershed LLP

Jeff Goodman
Partner, Heenan Blaikie LLP

Jason Hanson
Partner, Osler, Hoskin & Harcourt LLP

Norm Keith
Partner, Gowling Lafleur Henderson LLP

Barry Kuretzky
Senior Partner, Kuretzky Vassos Henderson

Michael G. McFadden
Partner, Ogilvy Renault

Daniel J. Michaluk
Partner, Hicks Morley LLP

Hugh R. Scher
Scher Law Professional Corporation

Louis Sokolov
Partner, Sack Goldblatt Mitchell

M. Kate Stephenson
Director of Legal Services
Human Rights Legal Support Centre

J. Lynn Thomson
Partner, Hicks Morley

Rachel Turnpenney
Partner, Turnpenney Milne LLP

David A. Whitten
Partner, Whitten & Lublin LLP

Natalie Wiley
Legal Counsel, UFCW, Loc. 175 & 633

Workshop Leaders:

Andrew Bratt
Heenan Blaikie LLP

Daniel A. Lublin
Partner, Whitten & Lublin LLP

Register at 1-877-927-7936 (416-927-7936) or www.CanadianInstitute.com/employmentlaw

8:10 Registration Opens – Coffee Served

8:50 **Opening Remarks from the Co-Chairs**

Catherine Milne
Partner, Turnpenney Milne LLP

Peigi Ross
Partner, Dunsmore Law P.C.

9:00 **Critical Human Rights Issues: Code Breaches, Jurisdiction & Trends**

Peigi Ross
Partner, Dunsmore Law P.C.

M. Kate Stephenson
Director of Legal Services, Human Rights Legal Support Centre

Has the combination of the direct access model and the absence of cost consequences during a human rights claim created a rise in volume of human rights claims being initiated? Lawyers are often eating up a lot of time before the tribunal, only to find that it lacks jurisdiction. What has been the impact of the direct access model? How is the tribunal dealing with the growing backlog of claims? What means and measures is the tribunal using to deal with frivolous claims? What is the tribunal's jurisdiction?

- Analyzing the new rule changes of the Human Rights Tribunal of Ontario: obstacles, impacts and tips
 - Section 34 Application: rules of procedure governing applications under the *Human Rights Code*, Part IV
 - Transition Application Rules: rules of procedure for transition applications under sections 53(3) and 53(5) of the *Human Rights Code*
- Rule 1.5: Powers of the Tribunal; how far do they go? *Fleming v. The City of North Bay*
 - Is the tribunal taking a more proactive role in hearings? What are the limits to the tribunal's role?
- How is the tribunal handling pre-hearing procedures?
 - Are employers often successful in whittling down frivolous claims by using preliminary objections?
 - Techniques for employee-side lawyers to defend against these preliminary objections
 - Since the damages cap has been removed, how are damages being assessed? Are they on the rise?
- Strategies for bringing and defending claims before a Human Rights Tribunal
- What is the Court's jurisdiction over human rights issues?
- Will the Court follow the Tribunal in awarding nominal damages for breach of the *Code*? What are the trends?
- Strategizing: does one bring a human rights claim before the tribunal or a wrongful dismissal claim before the Court in an attempt to obtain higher damages?

10:15 Networking Coffee Break

10:30 **Duty to Accommodate: Critical Trends to be Aware of**

Michael P. Fitzgibbon
Founder and Partner, Watershed LLP

Hugh R. Scher
Scher Law Professional Corporation

- Understanding the duty to accommodate
 - Recent case law and latest trends
 - What is the latest on undue hardship?

- Dealing with the soft issues and intricate cases, i.e. employer gives a poor performance review to an employee resulting in the employee going on LTD, claiming stress/anxiety. Tips on dealing with these situations.
- Overcoming some common employer challenges
 - A 3-ring-circus: insufficient medical information
 - Employer-in-the-middle: the interplay between the employer, the employee and the insurer
 - Impact on the company/business
- Practical techniques for the HR Manager trying to meet the employer's duty to accommodate

New Boundaries of Accommodation: Case Study

An employer finds that an employee spends on average 2-3 hours of his workday on the internet. The employee is not visiting porn or gambling sites, but is 'wasting much' of his time on the internet. The employer client asks her lawyer for advice on how to proceed. The lawyer advises that the employer take disciplinary action. When the employer warns the employee to cut down his internet usage, the employee returns with a letter from his psychologist, stating that this was a "web-based addiction" and that the employer must accommodate him.

- Certain addictions are viewed as disabilities under the *Human Rights Code*...is this a new realm of potential addictions? To what extent are "general addictions to the internet" considered to be disabilities under the *Code*?
- How broad is the definition for addiction under the *Human Rights Code*?
- What does the case law say? *British Columbia (Public Service Agency) v. British Columbia Government and Service Employees Union*
- How should lawyers advise their clients? How should management/employers deal with these issues?
- How have learning disabilities been dealt with during the duty to accommodate?

12:00 Networking Luncheon for Delegates & Speakers

1:15 **Avoiding Discrimination Claims when Dealing with the Aging Employee**

Karen Bock
Partner, Davis LLP

Rachel Turnpenney
Partner, Turnpenney Milne LLP

Bob is 60 years old and doesn't want to retire...but he's not as efficient as he used to be. His productivity has gone down and I don't have the budget to hire someone new until he leaves...what do I do?

- What are the employer's/employee's rights?
- To what extent does an employer need to accommodate the special needs of an aging employee?
- Can an employer terminate an aging employee whose productivity has significantly declined?
- When is an employer at risk of successfully being sued for age discrimination? How does an employer protect against this risk?
- Can an employer ask the employee to retire and come back as a consultant? What are some other strategies?
- Does a 59-year-old require an enhanced notice period?
- Forward-thinking:
 - What are some of the issues companies will face with the aging workforce over the next few years?
 - How should a lawyer advise an employer client?
 - What policies/procedures should be implemented to protect the employer from exposure?
 - Is "succession planning" discrimination?
- Are there certain industries/titles where aging employees don't pose as great a problem? Is this factor taken into consideration when discrimination issues arise?

Debate

Where pension plans are in place for employees and the benefits have vested, there's often no clause that states the employee DOES NOT have to be actively employed in order to start collecting benefits. Can the employee collect and still be employed? Can s/he continue to contribute to the pension plan? What's the interplay between continuing employment and drawing of pension benefits?

2:15 Networking Coffee Break

2:30 **Managing the More Sophisticated Privacy Issues**

Moderator & Speaker

Karen Bock Ph.D.
Partner, Davis LLP

Panelists

Jason Hanson
Partner, Osler, Hoskin & Harcourt LLP

Daniel J. Michaluk
Partner, Hicks Morley LLP

Workplace privacy issues have become more prevalent. Managing employees in light of new legal obligations and rising expectations has become an integral part of every organization's approach to risk management, security and human resources. After providing you with a brief review of the major workplace privacy developments of the past year, the session speakers will delve into some of the more sophisticated privacy issues facing today's employers.

- The law of workplace privacy in Canada: a brief overview and update
- What HR policies should employers have in place to protect themselves, their employees and their clients from data breaches?
- What kind of monitoring policies are likely to be deemed to be reasonable and necessary? When will an employer have crossed the line?
- Special considerations for specific workplace monitoring technologies: electronic communications, GPS, social media monitoring and video surveillance
- Can you monitor an employee's personal email and phone conversations? What are the limits?
- Collecting information from the internet in the recruitment process. What are the limits? Best practices for minimizing potential liability
- When can an employer terminate an employee for "off duty" conduct? When is griping about an employer online on social media sites like Facebook actionable?
- What is an employer's obligation when being asked to release information of unionized employees to their union? Do unions have an automatic right to the info?

3:30 **Reducing your Risks: Doing Termination Right**

Jonathan L. Dye
Partner, Heenan Blaikie LLP

Michael G. McFadden
Partner, Ogilvy Renault

Constructive Dismissal

How far can an employer go in its downsizing and restructuring before crossing the line to constructive dismissal?

- Constructive dismissal risks when implementing cost savings measures in the current economic climate
- At what point does a dismissal become a bona fide constructive dismissal that an employee can successfully argue – leaving the employer exposed?



- Where is the law on constructive dismissal? What are the case law trends? Analyzing *Shah v. Xerox Canada* (Ontario Court of Appeal)
- What are the employee's obligations at the time of dismissal? Does an employee have a duty to mitigate?
- How are Courts assessing damages for constructive dismissal?
- Does the manner of dismissal impact the employer's exposure (i.e. security walks employee out or public dismissal)?
- Guide to properly dismissing an employee: steps to take
- Where are we on *Wallace* damages?

Minimizing Claims for Wrongful Dismissal

- How is the economic climate impacting how employers are handling the termination process?
- Does the economic climate impact the length of reasonable notice?
- What should employers consider when managing terminations post *Honda v. Keays*

Determining When You Can Terminate Employment for Cause

- 'Toxic' employees
- Performance standards

4:30 Co-Chair's Recap – Conference Adjourns

DAY TWO | OCTOBER 28, 2010

8:25 Coffee Served

8:50 **Opening Remarks from the Co-Chair**

9:00 **Bill 168: Obstacles Encountered and How These Were Overcome**

Norm Keith
Partner, Gowling Lafleur Henderson LLP

Natalie Wiley
Legal Counsel, UFCW, Loc. 175 & 633

- Bill 168: ensuring you remain in compliance
- What issues arose when employers tried to implement procedures to comply with this bill?
- How were these challenges dealt with?
- Have any cases arisen as a result of the new bill?
- A bill 168 template: What does a model plan look like? What checklist should be used for program implementation?

10:00 Networking Coffee Break

10:15 **Mastering Executive Compensation & Termination**

Christopher A. Chen
Executive Compensation Lead, Hay Group

- Executive contract templates: what clauses should be included/excluded?
- Tips for negotiating with executives in light of the new world of corporate governance? Discussion of CCGG guidelines, Say on Pay, clawbacks and the American experience
- Attracting top execs when working with salary freezes
- How much should executives get paid? Executive compensation now and going forward
- Why do they get paid the way they do? Historical impact of tax, legal, accounting and corporate governance on compensation
- What is the market practice for Severance and Change in Control?

11:00 **Understanding & Protecting Against Overtime Class Actions**

Jeff Goodman

Partner, Heenan Blaikie LLP

Louis Sokolov

Partner, Sack Goldblatt Mitchell

- The status of *Fresco v. CIBC* and *Fulawka v. Bank of Nova Scotia* and their potential implications
- Are new class actions of the same nature surfacing?
- Who is at risk of these claims? Big employers? Small employers? Federally or provincially regulated employers?
- Ensuring your overtime procedures and policies are compliant with the statutory requirements
- Correctly classifying employees
- Identifying when employees are entitled to overtime pay
- What are the consequences of failing to keep proper records of employees' overtime work?

12:00 **Networking Luncheon for Delegates & Speakers**

1:15 **Meeting Your Obligations under Pay Equity Laws**

Senka Dukovich

Legal Counsel, Pay Equity Commission

- What are an employer's obligations under Ontario's *Pay Equity Act*? Who is covered by this act?
- Where are we on this front? Recent case law and pending decisions
- Strategies for achieving and maintaining pay equity
- Guarding against pay equity complaints
- How should an employer respond to an audit and investigation regarding pay equity?
- Staying abreast Pay Equity Commission practices and procedures

2:00 **Networking Coffee Break**

2:15 **Employment Law MASH UP: Quick Need to Knows...**

The Sylvester Case: Disability Benefits & The Notice Period

J. Lynn Thomson

Partner, Hicks Morley

When an employee, or soon to be former employee, is entitled to disability benefits concurrent with a notice period, how are these benefits to be treated? Is double recovery a given? Can the employer take credit for third party payments?

Family Status Protection

Sarah Crossley

Partner, Ogilvy Renault

- Status of recent case law:
 - *Falardeau v. Ferguson Moving*
 - *Rennie v. Peaches and Cream Skin Care Ltd.*
- Determining which relationships are covered under family status protection isn't so cut and dry: making sense of tribunal decision inconsistencies
- Drafting specific policies that can protect against exposure in these situations

SPONSORSHIP & EXHIBITION OPPORTUNITIES

Maximize your organization's visibility in front of key decision-makers in your target market. For more information, contact Director Business Development **Daniel Gellman** at 416-927-0718 ext. 389, toll-free 1-877-927-0718 ext. 389 or by email at d.gellman@CanadianInstitute.com

What's Your Litigation Strategy!?

Barry Kuretzky

Partner, Kuretzky Vassos Henderson

Are employees looking to milk the system? How long should you wait before suing an employer? How to select the correct forum: Human Rights Tribunal vs the Courts vs ESA complaints. This session will provide lawyers with strategies for advising their employer/employee clients. It will discuss the option of training your employee-clients to undertake some of the work on their own and using the lawyer as a final tactic when employees cannot obtain what they want!

3:45 **Meeting your Legal Obligations During Recruitment & Hiring**

Catherine Milne

Partner, Turnpenney Milne LLP

David A. Whitten

Partner, Whitten & Lublin LLP



Recruiting and hiring can become particularly challenging when having to remain legally compliant. There are so many things that require your attention: what is and isn't legal during the recruitment and hiring stages. What terms and clauses in an employment contract could get you in trouble? This session will cover some of the legal challenges employers face, including restrictive covenants (i.e. non-solicitation and non-competition clauses) and inducement. It will provide you with some examples of legally-compliant and efficient recruiting/hiring policies. It will outline what should be included in a contract. The speakers will help you ensure that your recruiting and hiring process is legally compliant, thereby reducing your exposure. Bring your questions!

4:30 **Co-Chairs' Closing Remarks – Conference Concludes**



INTERACTIVE PRE-CONFERENCE WORKSHOP: OCTOBER 26, 2010
1:00 P.M. TO 4:00 P.M.

Essential Elements of Policy, Protocol & Procedural Development & Rollout

Workshop Leaders

Andrew Bratt

Heenan Blaikie LLP

Daniel A. Lublin

Partner, Whitten & Lublin LLP

This workshop will examine the legal issues arising out of an employer's lack of sufficient policies, protocols and procedures. It will look at policies, protocols and procedures in the context of: social media, performance management, absenteeism, overtime, job expectations, workplace harassment and workplace violence.

- Determining whether or not you need new a policy, protocol or procedure
- Creating them: some successful templates
- Making them enforceable
- Strategies for communicating new policies, protocols and procedures to management and employees
- Best practices for rolling out new policies, protocols and procedures
- Top tips for preventing and dealing with employee resistance

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EMPLOYMENT LAW

Cutting-Edge Strategies, Critical Advice & Essential Updates to Help you Resolve your Employment Law Disputes


TOP REASONS TO ATTEND

- ✓ Overcome challenges and minimize human rights claims
- ✓ Ensure your policies comply with current legislation and case law
- ✓ Gain key strategies to accommodate mental health issues
- ✓ Avoid discrimination claims when dealing with aging employees
- ✓ Meet your evolving obligations to prevent workplace violence

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ADMINISTRATIVE DETAILS

VENUE: Sutton Place Hotel
ADDRESS: 955 Bay Street, Toronto, ON
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Hotel Reservations

For information on hotel room availability and reservations, please contact the Sutton Place Hotel at 1-866-378-8866. When making your reservation, please ask for "The Canadian Institute's Corporate Rate".

Program Materials

Conference participants will receive a comprehensive set of conference materials prepared by the speakers, as an excellent reference source after the conference. If you have paid and are unable to attend, the conference materials will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the conference.

Payment Policy

Payment must be received in full by the conference date to ensure admittance. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization. **Groups of 4 will be invoiced individually at 25% off the available rate at the time of registration. For groups of 5 or more please call 1-877-927-7936 for additional discounts.**

Cancellation and Refund Policy

You must notify us by email at least 48 hrs in advance if you wish to send a substitute participant. Delegates may not "share" a pass between multiple attendees without prior authorization. If you are unable to find a substitute, please notify **The Canadian Institute** in writing no later than 10 days prior to the conference date and a credit voucher will be issued to you for the full amount paid. Credit Vouchers are valid for 1 year and are redeemable against any other conference by **The Canadian Institute**. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the conference date. **The Canadian Institute** reserves the right to cancel any conference it deems necessary and will, in such event, make a full refund of any registration fee, but will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by **The Canadian Institute** for changes in program date, content, speakers or venue.

STEP 1

STEP 2

STEP 3

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