

# ECHO

The Ontario Municipal Human Resource Association Newsletter

## PRESIDENT'S MESSAGE

### Louise Ann S. Riddell, B.E.S, M.A., President, OMHRA

Life is moving forward more quickly these days! March is already here and it seems like we already lived through spring in February.

It looks like the next few months could see some significant changes to our HR world. The press is suggesting that there may be changes to both the Employment Standards Act and/or the Labour Relations Act. We can commit that when any changes are released we will schedule a conference call to share/discuss/review the implications of any amendments. We are also keeping our eye on the TTC and its random drug testing policy and we will continue to keep you up-to-date with our Alerts. It is important for us to be strategically reactive; remember, this time last year we were preparing and anticipating the possibility of the Ontario Registered Retirement Plan. There is never a dull moment in HR!



The Education Committee Members: Jason MacLean, Susan Farrelly, Beverly Petheram, Dara Barry, Kerry Pletch, Jeanette Pillitteri and Sandra McKenzie have prepared another amazing event for us. The OMHRA Spring Workshop 2017: *The Engaged Municipal Leader* will be held from April 5-7, 2017 at the Hilton Niagara Falls/Fallsview Hotel & Suites. We all appreciate the effort put into these educational sessions. We are almost at 100 delegates, so please do not be disappointed register today!

Don't forget that our **ALERTS** (which are all archived on our website) give you quick access to breaking news on advocacy issues, employment legislation, benefits and pensions, arbitrations and collective agreements.

And please do not forget to send information on settlements for the LRIS---it is only current when we update our information.

I am looking forward to chatting with you in Niagara Falls.



Keep Active: **Don't sit if you can stand.** Don't stand if you can walk. **Don't walk if you can run.**

## MESSAGE FROM THE EXECUTIVE DIRECTOR

### **Chrissy Shannon, Executive Director, OMHRA**

OMHRA's Spring Workshop is just around the corner, and we hope to see you in Niagara Falls April 5-7th. Please visit the [Events](#) page on our website, for more information and to register. The event is filling up fast, so register today!

Mark your calendars - the Fall Conference will be held at Blue Mountain Resort September 13-15th, 2017. Blue Mountain Resort is sure to be a great location for our delegates and sponsors – so many things to explore!

OMHRA 2017 membership invoices were issued in January, and I would like to thank those who have paid their invoices. If you don't recall receiving an invoice, or are not certain whether it has been paid, you can [View and Pay Membership Statements](#) by logging in as a member on our website [www.omhra.ca](http://www.omhra.ca). Please contact me if you have any membership changes or questions.

The Ontario Municipal Compensation Survey provided by Mercer saw a 12% increase in participation in 2016, and we hope to see an upward trend again in 2017. Mercer has included an article in this edition of the ECHO regarding the Job Matching meeting that will be offered in May. Registration for these sessions will be announced in March.

I would like to congratulate our Gold Sponsor MROO on their 40th anniversary. Congratulations on this achievement and thank you for being an advocate for Ontario's municipal retirees since 1977!

Happy Spring to all!

Chrissy Shannon, CHRL  
OMHRA



## OMHRA ECHO CONTRIBUTORS

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## LET'S TALK ABOUT EMPLOYMENT CONTRACTS!

### **Stephanie Jeronimo and Julia Nanos, Hicks Morley Hamilton Stewart Storie LLP**

The importance of a well crafted employment contract cannot be overstated. For employers, the circulation of a less than perfect employment contract can be a very costly mistake. Some employment contracts are flawed because they lack fundamental provisions in their entirety. Take for example, an employment contract with no termination provision. Other contracts that appear watertight at first blush, contain improperly drafted provisions which, often to the surprise of the employer, will not be enforced by a court of law.

In order to avoid the hit of an unexpectedly large wrongful dismissal or damages award, municipalities ought to revisit their employment contracts from time to time. The law in this area has been evolving in recent years, so now would be a good time to do some spring cleaning and revisit your contract templates.

#### **Is your termination provision enforceable?**

Entitlement to reasonable notice at common law is a legal presumption which is only rebuttable if the contract of employment clearly specifies some other period of notice. A termination clause serves a number of important purposes including rebutting the legal presumption of common law notice, and specifying what benefits and compensation will continue to run during the notice period – making it easier to anticipate and plan for liability. A properly drafted termination clause is an employer's single most important tool for limiting (and possibly reducing) the cost of terminating an employee.

However, the courts have found that termination provisions which do not comply with minimum standards legislation will be null and void for all purposes, and will not be enforced. We have seen some recent change in the law with regards to termination clauses which purport to limit entitlement at termination to some fixed amount, or to the minimum requirements of the *Employment Standards Act, 2000* ("ESA").

Take for example the recent Court of Appeal decision in *Wood v Fred Deeley Imports Ltd.*, 2017 ONCA 158. At issue was the enforceability of a termination provision which limited entitlement at termination to two (2) weeks' notice. The Court of Appeal found the termination clause to be wholly unenforceable for two reasons. First, it excluded the employer's statutory obligation to make benefit contributions during the notice period. Second, it failed to satisfy the employer's statutory obligation to pay severance. Contracting out of even one of the employment standards and not substituting a greater benefit will render a termination clause void and thus, unenforceable.

When a termination provision is declared unenforceable, it cannot then be used as evidence of the parties' intention. The court will not simply go on to infer that the parties would have intended to substitute a clause that is compliant with the ESA. Rather, the court will view the contract of employment as being silent on the issue of termination.

So what was the consequence of this improperly drafted termination clause for the employer in *Wood*? The employer was ordered to pay damages equal to the terminated employee's salary and benefits for nine months.

Crafting a comprehensive termination clause also means turning your mind to the Duty to Mitigate. The requirement that a terminated employee mitigate their damages may arise where salary continuance is being provided upon termination. The Court of Appeal has made clear that where an employment contract is silent on the issue of mitigation, and salary continuation is provided, there is no duty to mitigate. Therefore, a comprehensive termination clause providing for salary continuance must include precise language that triggers a mitigation obligation.

The reality is that termination clauses that were previously enforceable may no longer be as a result of the changes to the law in this area. Bearing in mind that an unenforceable termination provision gives a terminated employee direct access to the common law reasonable notice regime, it is imperative that municipalities dust off their contract templates and take a good hard look at their termination clauses.

### Are your fixed term contracts enforceable?

Another contractual provision that requires careful drafting is one that purports to assign a fixed term of employment. Fixed term contracts are typically intended to cover fixed term, or fixed task assignments, and should not be used for long-term employment. That said, to avoid a fixed term contract from being found to be indefinite, the employment contract must contain clear and unequivocal language to establish that it is a fixed term contract. Without such language, a court may find the employment relationship to be indefinite in nature. A carefully drafted fixed term provision, which does not provide for automatic renewal, will also mitigate against this finding.

A recent Ontario decision, *Ballim v Bausche & Lomb Canada Inc*, 2016 ONSC 6307, drives home the importance of unequivocal contract language in the context of fixed term employment. The plaintiff had been hired on a contractual basis for the purpose of replacing an employee on maternity leave. The employment agreement did not specify the end date of the contract, however, an accompanying email stated that the contract was for one (1) year. When the employer terminated the employee before the end of the one year period, the employee successfully brought an action for payment to the end of the contract. The court found that because there was no “entire agreement” clause in the employment contract, and because the employment contract was silent on the issue of duration, the employment offer was embodied in both the agreement and the accompanying email. Having regard to the email, and reading the two together, the court found that the terms of the contract established a one-year duration.

Had the contract of employment been more carefully crafted to include clear and unequivocal language establishing the nature of the fixed term contract, and had it included an “entire agreement” clause, the outcome would likely have been very different.

This decision in *Ballim*, in *Wood*, and in the many others like it, tell a story of the unexpected costs that can result when a contract of employment lacks comprehensive and enforceable language. An employment contract can be an excellent tool to assist municipalities in limiting their liability, but they must be periodically reviewed and keep up with changes in the law.



Stephanie Jeronimo and Julia Nanos specialize in labour and employment issues facing municipalities. If you have any questions about your employment contracts or any workplace issue, please contact Stephanie at 416-864-7350 or Julia at 416-864-7341.

## THINKING BEYOND CHANGE AND INNOVATION – ENGAGING PEOPLE TO DRIVE PERFORMANCE DURING CHANGE

**Siobhan Brown, MA, CMP, PMP, CTDP, Program Director, TidalShift Inc.**

Change, change and change again. For many organizations, constant change is the new reality. To remain competitive, organizations need to consistently innovate. According to studies conducted by Tech Pro Research (2015), 92% of companies recognize the importance of innovation to the success of the organization. However, with every innovative concept, there is work that must be done to make it happen. Individuals may be asked to behave differently, upgrade a skill or learn a new process. As a result, many people resist the introduction of an innovative offering since more individual change will be required.

Good change management enables people to get back to their day-to-day operations faster and feel more satisfied with the change experience. This requires business partners to plan and think strategically when executing new change initiatives.

### What is getting in the way?

Fear of the Unknown is a major reason for resisting change. The less individuals know about the change, the more their fear will grow. In the absence of frequent, two-way communication, gossip will start and the rumours tend to be far worse than the truth.

Leading an innovative change initiative means not springing it on employees. The organization needs to be ready for the change and leaders need to support the innovation. Expectations also need to be communicated so that people know what they are responsible for.

Non-reinforcing rewards systems can also derail the change. People will likely resist the change if they do not see the benefits or if there is a mismatch with the reward and desired behaviour. For example, if you want people to demonstrate teamwork, but give financial incentives for individual contributions, staff are likely going to take self-serving actions. The rewards must encourage behaviour that is congruent with the change, otherwise people will revert to old behaviours.

### Overcoming Barriers to Change and Innovation

Expect that some people will resist when new ideas are introduced. Consider the following tips to help overcome challenges and increase commitment to the change:

1. **Explain the need:** Resistance can be reduced by beginning with an explanation of the need for the innovation. Every new idea requires change. People need to understand why this change is happening. Provide as much information about what is going to change, what will remain the same and what will be improved upon. On-going communication is critical to the success of the change. Leaders can build trust and a sense of security among staff by providing more details about the innovation.
2. **Encourage participation:** Leaders also need to assess the team's readiness to accept the new innovation and anticipate employee reactions to the change. Some individuals will be excited about the opportunities the change will bring. While there may be good business reasons for change, other employees may feel threatened by the process, reluctant to adopt the change and

resist the innovation altogether. Leaders need to acknowledge losses and be prepared to offer support, training, and coaching to help those who will be “on the fence” as to whether or not they will get on board with the new idea. Most importantly, leaders need to invest in the time to build commitment. Involve people in the process early. To increase engagement and buy-in, solicit input from staff to assist in the creation of a shared vision of the future.

3. **Sustain the change:** Executing a new idea will require alignment of systems, structures, policies, procedures, and strategies to ensure sustainment. HR business partners are critical to make this happen. Collaborate with cross-functional departments to identify gaps, possible impacts of the change on the business and areas for further improvement. Ensuring that the change is aligned with the organization’s culture and values is key to making the change stick beyond implementation.

Addressing employee concerns can aid in reducing resistance. By thinking strategically, leaders can build more momentum for the change, and lead innovation with increased success.

**Reference:**

Tech Pro Research (2015). *IT innovation report 2015: Top companies, key tech drivers, and biggest roadblocks*. San Francisco, CA: Tech Pro Research.



Siobhan Brown, MA, CMP, PMP, CTDP is an experienced Program Director at TidalShift Inc. She is a certified Change Management Practitioner and Project Management Professional, an award-winning author, instructor, and keynote speaker.

## WORKPLACE VIOLENCE – REQUIREMENTS AND RECENT DEVELOPMENTS

### **Kevin MacNeill, Partner, Emond Harnden LLP**

Ontario's *Occupational Health and Safety Act* (OHSA) was amended in June 2010, by Bill 168, to include new requirements for employers to address and prevent workplace violence. As a result, dealing with violence in the workplace has become a priority for employers. Although there are few decided OHSA prosecution cases to date dealing with the requirements relating to workplace violence, we are beginning to see some cases work their way through the system. Recent incidents of workplace violence have resulted in significant fines against employers who have failed to meet their statutory obligations. Those decisions assist in clarifying the statutory requirements and the extent of an employer's obligations in respect of workplace violence.

Ontario is by no means alone in its efforts to explicitly address workplace violence through its occupational health legislation. Many other jurisdictions in Canada have also adopted specific workplace violence prevention regulations. In jurisdictions where workplace violence has not been expressly addressed (i.e., New Brunswick and the Yukon), there are, nevertheless, general duty provisions in the legislation which would require employers to take steps to protect employees against workplace violence. Although Quebec's legislation does not specifically address violence in the workplace, provisions in Quebec's labour standards legislation dealing with "psychological harassment" would appear broad enough to cover workplace violence.

### **Significant fines for contraventions of workplace violence requirements**

The general offence provisions set out in Part IX of the OHSA apply to contraventions of the workplace violence requirements. Individuals found guilty of contravening these requirements are subject to a fine of up to \$25,000 or to imprisonment for a term of not more than twelve months, or to both, while corporations may be fined up to \$500,000 (s. 66). The actual amount of the fine that may be imposed will depend upon the circumstances of each case.

Where workplace violence actually occurs, the fines imposed to date have been quite significant. For example, Kinark Child and Family Services, an agency providing mental health services to children, was fined \$125,000 under the OHSA (August 2016). This followed an incident in which two staff members were attacked by a resident youth at a detention centre. The workers suffered both physical and psychological injuries. The employer pleaded guilty to failing to provide information, instruction and supervision to protect a worker from workplace violence or the risk of violence from a resident. In addition to the fine of \$125,000, the employer was also required to pay a 25% victim surcharge.

Similarly, the Centre for Addiction and Mental Health (CAMH) was fined \$80,000 following an incident in which two of its workers were attacked and injured by a patient at one of its facilities (July 2016). The patient had a history of violence and was not taking the necessary medication. CAMH pleaded guilty to "failing to develop, establish and put into effect measures and procedures including safe work practices" to protect workers on the night shift from workplace violence. CAMH was also subject to the 25% victim surcharge.

## Charges against employer dismissed

The recent decision in *Ontario (Ministry of Labour) v. Royal Ottawa Health Care Group* (July, 2016) is of particular interest for employers. One of the few trial decisions dealing with OHSA charges relating specifically to workplace violence, the decision shows that an incident of workplace violence is not, in and of itself, sufficient to establish that an employer failed to comply with its obligations under the OHSA. The Royal Ottawa Health Care Group was charged with “failing as an employer to develop and maintain the measures and procedures for summoning immediate assistance when workplace violence occurs”, as required under section 32.0.2 (2b) of the OHSA.

This charge, as well as charges under each of sections 25(2)(a) and (h) of the OHSA (duties to provide information, instruction and supervision and to take reasonable precautions to protect worker safety), were laid as a result of a violent incident at the Royal Ottawa Mental Health Centre. A patient in a recovery program had attacked a number of workers. During the attack, calls for assistance were made following the employer’s “Code White” program. A Code White could be triggered by a worker dialing a three digit number on various phones in the workplace. Once triggered, a Code White would lead to an announcement being made which would prompt other staff to respond and assist.

The Crown argued that the Code White program was ineffective stating that there were delays in both summoning assistance and in assistance being provided. Since the program was ineffective, the Crown asserted that the employer failed in its OHSA obligation to have measures and procedures in place for summoning immediate help. Their position was that the occurrence of the violent incident itself showed that the employer contravened the OHSA. The employer argued that its obligation was limited to having a policy and program in place that included procedures for summoning immediate help. Its position was that it did not have to establish the effectiveness of the program, or even that the program was implemented.

The Court carefully considered detailed accounts from witnesses and found that the nurses on duty that night had the ability to immediately call for assistance through the Code White procedure. The Court concluded that there was a program in place in the workplace for summoning assistance immediately, and that it functioned properly. Based on that finding, the Court proceeded to dismiss all three charges.

It is interesting to note that the Court did consider the effectiveness of the employer’s workplace violence program, particularly the measures and procedures for summoning immediate help. This means that an employer will not satisfy its obligation simply by having a “token” workplace violence program in place that is ultimately insufficient. An employer must ensure that its program meets the purposes, requirements and intent of the OHSA. However, the fact that the Court rejected the notion that the violent incident itself established that the employer failed in its obligations is, nevertheless, significant and provides greater clarity on this issue for employers and other workplace parties. The Court expressly stated that, while this was an unfortunate incident, “not every accident or workplace injury implies fault.”

## In our view

Dealing with violence in the workplace will continue to be an important priority for employers. The significant fines that may be imposed for contraventions of the OHSA workplace violence requirements drive home the importance of compliance. Employers should ensure that they properly assess the risk of violence in their workplace, and reassess that risk when work conditions change. Employers should also ensure that their workplace violence policies and programs are carefully crafted to ensure they

meet the requirements of the OHS Act. In the event that an incident of violence occurs in the workplace, those assessments, policies and programs will be key factors in determining compliance with the OHS Act.



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For further information please contact Kevin MacNeill at [kmacneill@ehlaw.ca](mailto:kmacneill@ehlaw.ca) or 613-940-2767 or Amanda Sarginson at [asarginson@ehlaw.ca](mailto:asarginson@ehlaw.ca) or 613-940-2765.

## BUILDING A VIBRANT AND HEALTHY RETIREMENT COMMUNITY TOGETHER

### HOLLY EWING-MURPHY, VICE PRESIDENT RETIREE BENEFITS, ENCON GROUP INC

This year, the Municipal Retirees Organization Ontario (MROO)—one of the Gold Sponsors of OMHRA—celebrates its 40th anniversary! In addition to representing OMERS retirees and providing a wide range of programs and services to over 19,000 of its members, MROO also offers comprehensive retiree benefits plans designed by retirees for retirees. We congratulate them on this important milestone and wish them continued success and growth.

We also want to take this opportunity to look back at the road MROO has travelled to research, develop and deliver one of the best retiree benefits programs on the market today.

If your organization does not offer health care benefits in retirement, your employees may be interested in the MROO insurance program when they retire.

#### A look back at where it all began

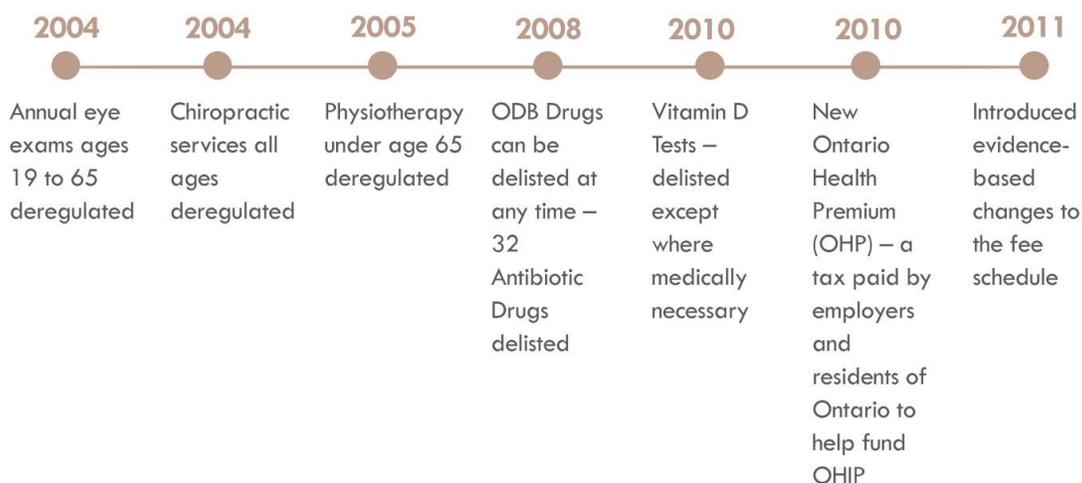
MROO's Health Insurance plan has enviable roots. It was initially designed over 30 years ago. The premise was simple: to close the gap between what is covered by the government and what is not with an affordable, accessible insurance plan. And it was a big step forward to building a vibrant and healthy retirement community in Ontario.

In the early 1980s, MROO members expressed that their OHIP benefits were simply not enough to keep up with their personal health care needs in retirement. They worried about their ability to cope with the costs of treatment and the drugs necessary to manage their chronic conditions on a regular basis, as well as the potential hospital or nursing care costs associated with unexpected accidents or illnesses.

And that's how — in 1984—the MROO Health Insurance program was born.

#### The changing face of OHIP

Since OHIP was first introduced, there have been many changes and revisions resulting in some benefits being delisted and removed:



## MROO continues to support retirees

**First, the bad news:** Though OHIP offers good coverage, there are many medical expenses that are not covered; these include prescription drugs (many are not listed on the ODB formulary), nursing care, vision care and paramedical services. In addition, OHIP can change the benefits they offer at any time. Not all OHIP benefits are portable, which means many of the benefits offered, such as ambulance services, will not be covered in other provinces, territories or countries.

**The good news:** Most retirees in Ontario do have access to basic coverage (OHIP) for medically necessary services provided by hospitals, medical practitioners and dentists working in a hospital.

**Even better news:** MROO's retiree benefits program is reviewed and re-evaluated every year. In line with MROO's philosophy of "affordable benefits for life", MROO continues to improve and enhance the plan to supplement OHIP's deregulation and delisting of benefits. MROO, with the help of ENCON, has continued to make enhancements for more than 30 years. Here is a sample of our plan improvements:

- Added annual eye exams for those under age 65
- Added physiotherapy and chiropractic services for all ages
- Added new services such as Alliance Pharmacy Group (our preferred pharmacy) and YourNurse caregiver service to bring even more value to our insured members
- Offers two travel plans, as well as Convalescent Care and Life Insurance

"Today, MROO plans offer some of the most competitive health benefits in the Ontario seniors' market"

Today, MROO plans offer some of the most competitive health benefits in the Ontario seniors' market and include options for dental care and out-of-province emergency medical coverage.

As the province continues to implement new changes to the health care system, you can take comfort in knowing that your retired employees can have the health care protection they need with MROO's health and dental care benefits program.

For more information, please visit [www.encon.ca/mroo](http://www.encon.ca/mroo) or call ENCON Group Inc., MROO's insurance manager, at 1-800-363-7861. You can also email ENCON at [mroo@encon.ca](mailto:mroo@encon.ca).



## HOW TO NETWORK AUTHENTICALLY

### **Sophie Mathewson, PCC President & Coaching Practice Leader, Prism Group International**

**The four networking rules you should break to connect with others like you're members of a family.**

OMHRA members can network like they are members of a family, with warmth and human connection. Family connections have staying power and are fiercely loyal. While there are many best practices of networking, OMHRA members can break four common networking rules to connect with others and build long lasting, deep interpersonal relationships. While you may already be implementing family-like networking, here are four ways you can practice:

#### **1. Make the time**

*The rule to break: Move quickly from person to person at networking events.*

The best family members sit down, listen, and repeat what you say, showing empathy and understanding. To strengthen professional bonds, understand another's business experiences and challenges by taking time and using active listening skills. This simply cannot be done with speed networking.

Put it in action: Check your stopwatch at the door. Seek quality conversations, not quantity.

#### **2. Let conversations flow organically**

*The rule to break: Have your list of questions ready*

At family gathers, people often gravitate to family members who supply a gentle give-and-take during conversation and avoid those who ask questions intensely. Avoid aggressively asking questions of another person in a rapid fire manner. Instead, the conversations grow organically and the relationship strengthens based on trust and mutual respect. Most importantly, LISTEN to what the other person is saying, not saying, or telling you through body language and respond with genuine curiosity questions that will continue to engage the other person.

Put it in action: Let conversations flow. Be gentle, not intense, during your conversations.

#### **3. Help others first**

*The rule to break: Give and receive*

Sometimes, to further a family we must help others before ourselves. We find this to be true professionally as well. Put simply, reciprocity does not happen immediately. This long-term benefit is founded on trust and desire to support those in your network by helping others first.

Put it in action: Be altruistic. Expect to not receive an immediate benefit.

#### **4. Connect with non-influencers**

*The rule to break: Connect with speakers and those who are well known*

At conferences and events, speakers, event coordinators, and influencers are busy. Many people try to connect with these industry celebrities, making each connection attempt less memorable for them. Instead, consider building strong relationships with people before they become industry famous. It's like building a relationship as a child with a cousin who grows to become the head of a very large company. Instead of seeking out industry celebrities, look for non-influencers in your industry who have strong leadership potential. As they rise over their career, they will take you with them.

Put it in action: Look for potential, not fame or fortune.

There is power in a real, authentic relationships. Restoring warmth and familial social skills when networking can help you to grow personally and professionally over the long term. So at the spring OMHRA conference or another industry event, network like a family member and create lasting relationships that will support you throughout your career.

(Adapted from TTI SI, Director of Global Marketing)



## WORK-LIFE BALANCE FOR LEADERS. IS IT EVEN POSSIBLE?

### **Audie McCarthy, President and CEO of Mohawk College Enterprise**

We hear a lot about work-life balance these days. As leaders, is it even possible?

In many cases, you can't fully turn off work when you get home and, inevitably, family commitments will sometimes happen during work hours. But you can fully engage with work, family and community by making deliberate choices about what to pursue and what to decline, and including your family in these decisions.

As Marty Hazell, senior director, strategic initiatives, Planning and Economic Department, City of Hamilton, told me, "Leadership isn't a 9 to 5 job. It can be exhausting and stressful. To be able to stay in the game for the long run, the most effective leaders are able to prioritize the demands for their time and maintain a healthy work-life balance."

It may be that balance is not about keeping your work and personal life separate. As Laura Vanderkam, author of *I Know How She Does It* says, you sometimes have to get creative. For example, you may wake up early on Sunday to do a couple of hours of work so you can spend the rest of the day baking and tobogganing with your kids. Or you may have to rethink what is ideal. For example, if you can't be home for family dinner, have family breakfast instead.

It is also important to take time to read a book, pursue a hobby or catch up on sleep. While it might seem indulgent or like you don't have the time, taking care of yourself will also benefit your organization.

Paul Armstrong, vice-president, Mohawk College says, "As leaders, you have a critical role to ensure that the organization is healthy and capable of achieving the strategic priorities and goals. Invest the time in yourself to maintain your health and wellness. The investment in you will contribute significantly to the overall success of your company or organization."

And as you strive for balance, it is beneficial to ensure all of your team members are taking care of themselves. Here are five tips for fostering work-life balance in your organization:

- 1) Avoid praising team members for staying late or working weekends, as it will encourage other employees to do the same. While sometimes extra work will be needed, it should not be the norm.
- 2) Lead by example. Don't be seen regularly working extra-long hours.
- 3) Encourage vacation time and take it yourself. "Be disciplined in taking time to recharge, whether that be through vacation time, adequate rest or involvement in extracurricular activities. Work should not be your life but a part of your life," says Natalie Bubela, Chief Executive Officer, Muskoka Algonquin Health Care.
- 4) Create a policy regarding when e-mails, voice mails and other work-related communications should – and shouldn't – happen.
- 5) Consider providing flex-time or work-from-home options for team members.



Mohawk College Enterprise is a business-to-business corporation established by Mohawk College to prepare people and companies with the skills and expertise required to succeed in today's fast-paced world. Through our expert trainers, we provide training and customized solutions with the latest techniques and technology. Teaching performance management principles is part of our Future Ready Leadership Program, a series of customized leadership training sessions held one day each month, over eight months. This highly sought after program will help develop emerging leaders and provides; critical thinking skills and valuable insight that will prepare and address organizational change management. Audie McCarthy is president and CEO of MCE. For information, please contact Audie at 905-575-2525 or [amccarthy@mcecor.com](mailto:amccarthy@mcecor.com).

## EMPLOYEE BENEFITS – UNDERSTANDING OUT OF COUNTRY TRAVEL

### **Kevin Routley, Vice-President, Selectpath Benefits & Financial**

It's that time of year when people head south to seek out the sun. Before you travel, make sure you understand your coverage within your employee benefit program.

Out of Country coverage is designed to provide benefits during a medical emergency while plan members or their dependents are temporarily outside of Canada for business, education or vacation.

What is considered a medical emergency for the purposes of out of country coverage will depend on the terms of each group insurance plan. It is imperative that you realize what type of coverage you have as it can be the difference between a paid claim and a personal bankruptcy!

Some examples of what might be considered a medical emergency under a typical program:

- A sudden, unexpected injury
- An acute episode of a medical condition that was not identified or being treated prior to departure from Canada.
- An unexpected and unforeseen acute episode of a previously identified medical condition that was stable and controlled at the time of departure from Canada.

Most group plans with out-of-country coverage provide coverage for medical expenses that are incurred during the initial treatment of a medical emergency. Some examples of out of country expenses that may not be covered by group plans are:

- Non-emergency care or follow up care after the initial emergency treatment. (The follow up should be done at home).
- Expenses related to pregnancy or delivery in the final trimester or at any time during the pregnancy if the patient's Canadian physician considers the pregnancy to be high-risk.
- Continued medical care following an emergency outside Canada if the patient's medical condition permits a return to Canada for treatment.

Plan members with a medical condition may want to check with their doctor before traveling, if they are advised it is safe to travel, they may still wish to call their insurance company for clarification of their employee benefits coverage.

Although many programs provide "sudden and unexpected" wording in their contracts, there are a few plans that have pre-existing conditions clauses. Although they are sold as similar programs, the wording of a pre-existing conditions clause is much more restrictive as many contracts see a change of prescription as being a pre-existing condition.

## Ensuring adequate coverage for extended periods outside of Canada

Students, vacationers and business travelers planning to leave the country should ensure they have ongoing coverage with their provincial healthcare plan, since this coverage must be in place in order for an insurer's coverage to apply. In addition, plan members should be aware of any trip limits associated with their group plan. When traveling outside of Canada for periods beyond their trip limit, plan members may want to consider purchasing additional coverage.

Ultimately, employers and employees should be aware that not all out of country programs are the same. Common sense is the best indicator of your ability to facilitate coverage. Out of country emergency coverage is for emergencies. Please be certain that you understand the coverage you have before you leave home.

If you suffer a medical emergency while out-of-country, contact your insurance provider as soon as possible to assist you in facilitating coverage.

Enjoy safe travel everyone!



Kevin Routley is Vice-President at Selectpath Benefits & Financial - one of Canada's largest independent employee benefits consulting firms. His clients benefit from his straight forward approach to total compensation strategies where he challenges the traditional models of employee benefits. His innovative strategies have transformed the marketplace, breaking from tired, traditional solutions to create measurable long term savings for his clients.

## HAVE YOU HEARD?



Selectpath is proud to announce the addition of Cindy McNair as our Human Resources Practice Leader.

Cindy joins us with several years of providing successful team engagement in human resources within several municipalities in and around London.

Cindy has experience in all areas of Human Resources including recruitment & selection, policy development, employee engagement, legislative compliance, compensation planning, collective bargaining, on-boarding and outplacement/career transition. Cindy is also well known for her work within charitable boards and non-for-profit organizations within the City of London.

Selectpath welcomes Cindy in sharing our passion for clients and the communities in which we work. We invite private sector business owners and public sector executives to contact Cindy and her team for all your human resource requirements.

Please visit [www.selectpath.ca](http://www.selectpath.ca) to discover the strategies and opportunities that Cindy can provide. Selectpath is Ontario's largest independently owned employee benefits, pension, insurance and wealth management firm.

## HOW TO CREATE AN EFFECTIVE WORKFORCE MANAGEMENT STRATEGY

### **Mairead Walsh, Head of Marketing & Communications, Softworks**

If your organization is attempting to function without an effective workforce management strategy, they will struggle to achieve the level of productivity, cost effectiveness, flexibility and agility required to compete and adapt to today's marketplace.

Your workforce management strategy needs to focus on all the activities that are required to manage and sustain a productive, cost-effective and happy workforce. This means consistent policies and procedures around managing employee time and attendance, scheduling and absences.

In today's highly regulated global economy this is no easy task. Areas such as compliance now extend far beyond local, state, and national borders. The job of ensuring compliance and keeping up with legislation and regulations has become increasingly difficult and complex. As more and more organizations are discovering, failure to comply is very serious and can result in hefty fines and legal implications, along with a fall in employee morale and bad publicity.

It is for these reasons you need to ensure that your organization has an effective strategy in place for workforce management that includes the areas of time and attendance tracking, staff scheduling, absence and leave management, regulatory and legislative compliance.

In order to develop an effective workforce management strategy you need to include the following six areas.

1. Standardization of processes and policies.
2. Automation of time and attendance tracking.
3. Automation of employee scheduling function.
4. Review employee/manager self-service options
5. Implementation of proactive absence management procedures.
6. Formalization of flexible, remote and mobile working strategy.

Let's look at each in detail.

#### **1. Standardization of processes and policies**

First and foremost you need to standardize your rules and policies. Consistency and transparency is key when it comes to managing employee time and attendance, scheduling and leave. Employees need to clearly understand the processes and policies behind procedures, and be confident that they are being applied fairly across the organization. Furthermore, external organizations need verifiable proof including auditable trails that employers are implementing policies in compliance with all applicable laws and regulations.

#### **2. Automation of time and attendance tracking**

I can't even imagine that there can be an organization, out there, that wants its managers to spend their time managing time sheets to the detriment of managing their team. In these technology driven times, it makes no sense not to automate time and attendance tracking. By doing this, you free-up

departments such as HR, finance and operations for more strategic tasks, and give your line managers the time they need to manage their team. Moreover, you improve data accuracy, reduce payroll errors and control labour costs. Automating time tracking has been proven time and time again to bring significant and tangible benefits to an organization.

### **3. Automation of employee scheduling function**

One person too many hours on a schedule is a costly mistake, and in many cases can mean the difference between profit and loss. With automated scheduling you can pre-plan your schedules to optimize your cost revenue ratios. They enable supervisors and managers to accurately create schedules that align labour with forecasted demand, while adhering to company policies and regulatory compliance. Depending on the requirements of your organization, you can choose from an out of the box, quick to install web-based scheduling solution, to a bespoke real-time scheduling and optimization system.

### **4. Review employee/manager self-service options**

If you offer managers and employees self-service facilities you can increase productivity across your entire organization. Employee self-service enables employees to enter their leave and scheduling requests via their computers, tablets or phones and then route these requests to the appropriate person for approval. This both empowers employees and gives them greater control over their hours, absences, leave, shift swap requests etc.

Giving employees more control over their working lives is a proven method of attracting, retaining and motivating them. Furthermore, automation reduces the pressure on line managers and improves employee relations as it is viewed as a fair and just system.

### **5. Implement proactive absence management procedures**

Absenteeism is not something that is confined to a few sectors of the economy. It is one of the most persistent obstacles to productivity, profitability and competitiveness. It causes overtime, late deliveries, dissatisfied customers and a decline in employee morale amongst workers who are expected to cover for an absent employee. The indirect costs often exceed the direct cost of absenteeism. In order to manage absenteeism effectively, you need to take a proactive approach.

By using an automated solution to manage absence you ensure that you have procedures that are led by senior management, implemented by line managers and monitored throughout the process so that action can be taken at the earliest opportunity. Automated proactive absence management systems provide a solution for the entire workforce by provide real time analysis, streamlining and standardizing internal processes and policies and ensuring your organization is compliant with all relevant regulations and legislation.

### **6. Formalization of flexible, remote and mobile working strategy**

Organizations today need a flexible and agile workforce, ready to scale up and down as appropriate to cater for the demands of the marketplace. By the same hand, employees today are looking for a better work-life balance. The so called 9 to 5 or eight hour working day originated out of necessity during the Industrial Revolution in Britain in the 1800s. So much has changed since then in terms of how, when and where we do business. It makes you wonder why so many organizations are holding onto a working schedule that was created over 200 years ago.

To Generation Y-ers, a 9-5 shift can seem like a prison sentence! Flexible working brings many benefits to an organization including better retention rates, reduced costs and improved productivity.

An effective workforce management strategy will assist you to operate more agilely and make more informed decisions based on actual real time data. Organizations that utilize the latest advances in workforce management technology and implement the tools and processes that assist them to better align employee schedules, activities, and costs with business goals and objectives will be the most likely to experience considerable and measurable gains.



Mairead Walsh is head of Communications & Resources at Softworks. She has published numerous papers, articles and case studies on workforce management topics. You can read more on [Softworks.com](http://Softworks.com). Connect with Mairead - <https://www.linkedin.com/in/walshmairead>

## LATE-CAREER EMPLOYEES IN THE WORKFORCE

### Bill Winegard, Executive Director, MROO

Recently MROO reps attended a meeting of "late-career" librarians at the Ontario Library Conference. The outpouring of conflicting experiences and concerns was revealing.

- Going for promotions vs resigning themselves to going nowhere.
- Opportunities to mentor millennials vs being dismissed and disregarded by millennials.
- Wanting to retire while they still had energy vs using that energy to put the crowning touches on their careers.
- Tired of the grind but still wanting to contribute.
- Caregiving pressures at home that favour retirement vs empty nests that let them work all they want.
- Working because they weren't sure they had enough to retire vs the joy of working knowing they could retire anytime.

Ironically, that same week, the Economic Advisory Council for Canada's Minister of Finance issued its report urging the expansion of Canada's labour force, including retaining 55-69 year-olds, to improve Canada's productivity.

We've heard the facts about the retirement of the baby boom.

- In the 60s, for instance, OMERS had 20 active employees per retiree; now it's closer to 2 working members per retiree.
- In the 60s, Canadian public sector employees typically retired at age 65; now it's more like 61 or 62.
- In the 60s, the life expectancy of a 61-year-old Ontarian was 77 (male) or 81 (female); now it's 84 and 87.
- While the workforce participation of 55-69 year-olds in Canada is 54%, it averages 62% in Norway, Sweden, New Zealand, Japan and the USA.
- Even in OMERS, 35% of 55-65 years-old pension recipients have some form of part-time or seasonal employment; among 65-75 year-olds, it's nearly 25%; among private-sector retirees the numbers are higher.

While the Advisory Council acknowledged that some older workers need to retire, particularly in physically demanding employment, it set forth a number of potential incentives to encourage others to remain in the workforce, including:

- employers considering flexible work-schedule options for employees for whom the 9-5, Monday-Friday schedule no longer works.
- governments considering the New Zealand employment standards regulation that offers all workers the right to request changes in working arrangements, gives employers a month to respond, and provides a review mechanism to ensure that employers act in good faith when they deny such requests.

- accessible and forward-looking retraining programs for older workers, including digital literacy if needed.
- increasing the financial advantage to individuals who defer taking their CPP or Old Age Security pensions past age 65, including possibly extending the advantage of deferral past the age of 70.
- ensuring that employers identify and deal with cases of age discrimination.
- government promoting the broad economic benefits of retaining older workers—in particular, by helping the public to understand that retaining late-career workers will not diminish the number of jobs available for younger Canadians.

Whether it's the angst of individual late-career employees or their importance to the Canadian economy, you as HR professionals are right in the centre of this issue, with important roles to play.



## LEADERSHIP COACHING FOR THE NEW HIRE – MINIMIZING RISK WHILE MAXIMIZING POTENTIAL

### Neville Knowles, Leadership Solutions Consultant, Knowles Leadership Group

On-board coaching helps the newly hired or promoted expedite their assimilation into the leadership role, organization and become productive earlier.” It minimizes transitional risk while maximizing potential!”

According to studies more than 50% of senior executives entering a new position perform significantly below expectations, resign or are terminated during the first 18 months. The risk of failure can be even higher when the new executive has been brought on to manage a change initiative, turnaround or department merger. When a new hire doesn't succeed, the costs can be substantial, including expenditures on: search, relocation, severance, and training. These costs can reach many times more than the annual executive salary given intangible costs like the loss of moral, momentum and growth opportunities for the organization in redirection.

Opinions on a new leader's effectiveness begin to form surprisingly quickly, and once formed, they're very hard to change. If successful in building credibility and securing early wins, the momentum likely will propel the new leader through the balance of their tenure in the position. Conversely should the new hire dig themselves into a hole early, they face an uphill battle from that point forward.

If it takes an individual six months to a year to become fully productive -- or, worse, to find out that a match made in heaven could have been made somewhere else -- then the cost of bringing that executive on board goes off the charts.

Leadership coaching can cut that time radically, by a half or more, so that individuals are up and running sooner -- and the organization begins to achieve a return on investment earlier.

It's relatively easy for a newcomer to join an organization and learn the reporting relationships; the budgeting processes ... all the structural things. It's not as easy to go in and learn the culture norms... how to communicate and work effectively with a new boss, peers, direct reports and other stakeholders.

For example, if you have to give your first presentation at a monthly senior management or divisional meeting, you need to understand how those meetings operate. Are they simply for sharing information, or is there interaction? Do the meetings tend to stay on a rigid agenda or are they more free-flowing? If you are scheduled at 10:30, do you have a high degree of certainty that you will actually be speaking at 10:30? And how should you structure your presentation at that meeting so that it both is effective and makes a good impression?

Very often, newly hired individuals can cover ground like this on their own, but the presence of a coach helps them address issues like this sooner and in a focused fashion. This accelerates their assimilation into the organization and, ultimately, their productivity.

A coach can also help identify how an organization measures success by asking questions like, “What have you noticed about people who have succeeded here? What have you noticed about people who

failed here?” The answers to questions like these can provide broad brushstrokes of how things work in a new organization.

Common traps that trip up new hires or the promoted early include:

- Sticking with what you know. What worked for you in your previous role or organization might not serve you or others in your new role given cultural differences or expectation differences. Commencing the new role with a beginners mind and seeking to understand serves all best.
- Jack rabbit starts. You feel you need take action and you try too hard, too early to put your own stamp on the organization. You are too busy to learn and understand resulting in bad early decisions that catalyze early resistance.
- Setting unrealistic expectations. A clear mandate isn't negotiated with established objectives and timelines of delivery to suit the upstream leader and/or stakeholders. What do they expect in the first 60 to 90 days, six months and first year? What does the new hire expect in the way of supportive access, work style and authority?
- Attempting to do much too early. You rush off in all directions, launching multiple initiatives in the hope that some will pay off. People become confused with no critical focus on key initiatives.
- Coming in with “the” answer. You come in with your mind made up, or you reach conclusions too quickly about “the” problems and the solutions. You alienate people who could help you understand what's going on, and you squander opportunities to develop support for good solutions.
- Misdirected learning. Spending too much time and focus on the technical part of the job and not enough on supportive leadership, cultural and political dimensions of the new role.
- Neglecting horizontal relationships. Spending too much time and focus on vertical relationships and not enough with peers and other stakeholders. You miss what it will take to succeed and you miss early opportunities to build supportive alliances.

In today's highly competitive work environments, individuals and organizations can always apply more capital or more technology to a given situation, but *there is no substitute for leadership effectiveness*. On-board coaching creates time by building critical velocity to enable newly hired executives to assume their positions more rapidly and most importantly on a solid foundation of interpersonal relationship with those upstream, in team and laterally. Investments in onboard leadership coaching mitigate risk while maximizing potential and delivers long-term cultural benefits.

Neville Knowles is the founder of the Knowles Leadership Group of London, Ontario. He can be reached at 519 641 5365. His website is [www.knowlesleadership.com](http://www.knowlesleadership.com) .

## ONLINE BULLYING AND HARASSMENT

### Jim Rovers, Senior Vice President, AFIMAC

Today more than ever, online bullying and harassment continue to occur on **social media**. We have all heard of examples involving children being bullied. In some cases, these situations have been very high profile, receiving national media attention. Unfortunately, they do not just involve kids. Online bullying and harassment have become problematic for employers. Most often **online harassment** is peer to peer. Customers and the public can also target your employees.



Recently an arbitrator ruled that the Toronto Transit Commission must investigate and do more to protect their employees from online threats. Police officers involved in the Standing Rock pipeline protest have become targets of online threats. It has been reported that their family members have also been targeted.

Investigating online threats can be challenging and time-consuming. LexisNexis recently reported that 75% of individuals polled indicated they had no formal training on how to conduct an online investigation. Most were self-taught.

The increase in online harassment and bullying is likely to continue. With that being said, you will need to develop a plan to **investigate**. Important considerations are as follows:

- Who is making the threats?
- What is their motivation and why?
- What is the nature of the threat?
- How often and aggressive are the threats?
- What steps will I need to put in place to protect the individual being targeted?
- What local laws exist to protect against online threats?

To complete an assessment, you will need to gather **social media posts** and complete a review. The collection of information can be the most challenging and time-consuming part of the process.



Today many techniques and tools exist that a qualified open source investigator can unearth. To learn more, please feel free to contact me [jrovers@afimacglobal.com](mailto:jrovers@afimacglobal.com)

## TIGHTEN UP: EMPLOYMENT CONTRACTS THAT PROTECT YOUR MUNICIPALITY

### **Lauren Bernardi, Lawyer and HR Advisor, Bernardi Human Resource Law**

While employment agreements are gaining in popularity, many municipalities are still reluctant to implement them. Often the reluctance stems from a belief that it is off-putting to a potential employee to have to sign a termination clause. Similar to a pre-nuptial agreement when getting married, the fear is that the “romance” is lost.

But with so many more employees suing their employers for wrongful dismissal, the cost of this form of “divorce” has increased, making employment agreements even more critical.

This article outlines some of the key considerations when drafting and implementing employment agreements.

### **Employment is a Contractual Relationship Even if it’s Not in Writing**

An employment relationship is a form of contract between an employer and employee regardless of whether or not it’s in writing. The problem is that if you don’t have the terms you want in writing, a court will decide for you, and that decision won’t likely be as favourable as a contract you have written would be.

In addition to providing certainty of their terms, written employment contracts can help prevent expensive wrongful dismissal litigation, protect your confidential information and provide certainty around the rules of disengagement.

### **Form of the agreement**

The word “contract” conjures up images of something complicated and intricate, usually written in legalese.

But it doesn’t have to be that way. An employment contract does not need to be a daunting 15-page document with perplexing clauses. It can be a simple offer letter that reinforces the fundamental elements of the employment relationship between the employer and employee. It can, and should be written in plain language to ensure that both parties understand what they are agreeing to, which also has the advantage of making the contract easier to enforce.

### **Enforceability of employment agreements**

For a contract to be valid, it must include something of value for each party. This is called “consideration”. When hiring a new employee, consideration is your promise to hire and compensate the person and their promise is to perform the work. Once a person is hired, however, you can’t have them sign a contract without fresh consideration, such as a signing bonus or salary increase. In other words, they have to get something new from the agreement.

### **Key Provisions to Include in the Agreement**

There are several provisions that should be included in all employment agreements, which are outlined below.

To avoid having your contracts altered in a way that renders them unenforceable, ensure that HR maintains control over the documents. Too often we have seen situations where uninformed managers have made changes to the agreement when hiring a new employee, causing costly problems.

## Policies

In contract law, if a contract refers to another document, that document becomes a term of the contract as a whole. This is called “incorporation by reference”. If you want to make your employment policies part of the agreement then they must be referenced – and provided – prior to the employee starting to work for you.

## Probationary period

Probationary periods are not automatically implied in an employment relationship. If you want the right to dismiss an employee without notice during the probationary period, you will have to specify that in writing. Be mindful that the *Employment Standards Act* (“ESA”) says that employees who have worked for three months or more are entitled to notice of termination, even if you have a six-month probationary period. In addition, if you extend a probationary period beyond three months and later terminate the employee, you will need to provide the minimum notice set out in the ESA.

## Notice of resignation

There is a misconception that employees must give two weeks’ notice to resign. That’s not an automatic requirement so it is wise to include a resignation notice requirement in the contract, whether it’s two weeks or a month. You may also wish to consider reserving the right to have them leave earlier than the end of the resignation period.

## Termination without cause

A well-drafted termination clause can eliminate most, if not all, wrongful dismissal litigation because you have agreed upfront what will happen when the relationship ends. Although you can limit notice to what is set out in the ESA, you can also agree to a longer notice period based on a formula (e.g., 4 weeks per year of service to a maximum of 52 weeks), if you prefer to offer something more generous.

However, a termination clause will be unenforceable if it is ambiguous or limits notice of termination to anything less than the ESA provides. Therefore, be careful to include all amounts to which an employee would be entitled under the ESA. For example, all benefits must be continued during the ESA notice period (including STD, LTD and pension contributions) and if your termination clause suggests otherwise, it may not be enforceable.

## Right of layoff

Generally speaking, absent an express term in the employment agreement, you can’t lay-off a non-union employee without it being deemed a termination. If you want the right to lay-off employees temporarily, put it in the contract.

## Process When Employment Ends

It is often helpful to spell out what should happen when the relationship ends. This includes the usual provisions such as the return of keys, pass cards and municipal property but can also extend to requiring the person to update their social media pages to reflect that they no longer work for your municipality.

You may also want to outline what procedures are in place regarding any cellphones or electronic devices provided to the employee and the data contained on them. Sometimes employees have personal information stored on those devices and they may seek to have them returned.

## Confidentiality

To protect your confidential information, include a term in the contract that says employees can’t disclose confidential information either during their employment or after it ends.

## Right to make changes

If you make a unilateral change to the employment contract, it may be deemed a constructive dismissal. Therefore, you should include a clause allowing you to make changes on reasonable notice in keeping with the notice you would have to give if you terminated them outright.

## When Employment Agreements May No Longer Be Valid

During the employment relationship there may be times when you need to make changes that would not constitute constructive dismissal because they are either positive or neutral – such as a promotion or lateral transfer. However, those changes may still fundamentally alter the foundation of the relationship. In legal terms this foundation is referred to as the “substratum” of the agreement.

If there is a fundamental change to the substratum, the employment agreement may no longer be valid because the basis on which the agreement was originally negotiated no longer exists. This means that the entire agreement, including any termination provisions, become void.

## To protect your agreements:

- Make sure they state that they will remain in force regardless of any changes to the employment relationship, such as the employee’s position, location or responsibilities.
- When an employee is promoted or transferred, put those changes in writing and stipulate that all other terms of the employment agreement continue to apply, or execute a fresh agreement.

## Conclusion

There is no real downside to a well drafted employment agreement but there is considerable upside to implementing one, having it reviewed by an employment lawyer and keeping it current as employment law changes rapidly. It’s worth the investment.

## ADDICTION AS A DEFENCE TO WRONGDOING? NOT NECESSARILY!

**Julia Nanos and Stephanie Jeronimo, Hicks Morley Hamilton Stewart Storie LLP**

As a human resources professional, it can be frustrating to hear from an employee, only after discipline has been imposed, that the employee suffers from an addiction that may have been a factor in the misconduct. While acknowledging the existence of a disability under the *Human Rights Code*, employers in these circumstances are left wondering why the existence of a disability was not disclosed in confidence before a workplace incident arose, and what impact the disability might have on the culpability of the employee.

As was reported in a recent FTR Now, Arbitrator Randall in *Cambridge Memorial Hospital v Ontario Nurses' Association (Termination Grievance of SM)*, recently upheld the discharge of an employee for theft of opioids even though the employee admitted to having a substance abuse problem post-termination. In Arbitrator Randall's view, the grievor's disability was not a "get out of jail free card."

This case will be of keen interest to municipal employers who are looking to understand the impact (if any) that an employee's addiction might have on enforceability of discipline that has been imposed.

### Overview of the Case

The grievor in *Cambridge Memorial Hospital* was employed as a nurse for approximately 28 years. She had a clean disciplinary record and even was being considered for a promotion to Manager of the Emergency Department. Her employment was terminated by the Hospital only after it was discovered that the grievor had been stealing opioids.

After the discovery of theft, the grievor went off on short-term disability. She then went on long-term disability and entered a rehabilitation program. Approximately one year after the Hospital initially discovered the theft, the grievor was prepared to return to work with restrictions. However, around this time the Hospital conducted another investigation and determined that the theft had been occurring for a longer period of time than was initially thought. It also learned that the opioids that were stolen had been diverted from patients. Further, when confronted with this information the grievor was not entirely honest about the extent of her theft. Due to her lack of honesty, diversion of patient medications and falsification of patient records, the Hospital terminated her employment for just cause.

The Union relied on a line of arbitral awards which state that an addiction defence should give rise to a non-disciplinary approach. In these awards, arbitrators reinstated employees who had been terminated for misconduct (including theft of drugs), when the employee stated their actions were due to an addiction.

The Hospital relied on another line of authorities which states that holding an individual with an addiction to the same standard as an individual without an addiction in regards to a criminal act is not *prima facie* discrimination. The Hospital then argued that there was an insufficient nexus between the grievor's addiction and her misconduct.

Arbitrator Randall dismissed the grievance and relied on the Hospital's authorities. Two recent decisions were also considered to determine if there was a connection between the grievor's addiction and her misconduct. Arbitrator Randall considered the fact that the grievor was unable to admit full

responsibility for her misconduct. The current case was distinguished from the other Ontario cases relied upon by ONA, as most of those cases relied on the compulsive nature of addiction. However, the grievor in this case did not exhibit the same level of compulsion. For example, she did not use the opioids while at work and was able to go on vacation for a period of a few weeks without using opioids.

In arriving at his conclusion, Arbitrator Randall determined that the grievor had not fully accepted responsibility for the full extent of her misconduct. The decision also stated that the grievor's addiction to opioids was not "in itself, a defense to termination. Put differently, it is not *prima facie* evidence of discrimination."

Further, Arbitrator Randall also emphasized the importance of deterrence. It was stated that:

It is trite to note that workplace discipline has both specific and general deterrence purposes. At a time when opioid addiction is rampant in the culture and a major issue for healthcare professionals, sending the message that pleading addiction, only after being caught stealing one's drug of choice, should be strongly deterred.

### Implications for Municipal Employers

When considering disciplining an employee, employers should not assume that if the employee asserts he or she has an addiction, there can be no just cause for discipline. Employers should be aware that a non-disciplinary approach might be necessary given the existence of an addiction, but should consider the particular facts of the situation at hand. In addition to the factors that are normally considered at the time of discipline, employers should consider the extent of the addiction or compulsion and its nexus to the particular misconduct at hand, the duration of the misconduct, the nature of the employee's role and the impact on others in the workplace. For example, in certain workplaces, the misconduct may have unique ramifications given the employee's role (i.e. if the employee serves in a position of trust and responsibility, or if the misconduct calls into question the employee's ability to continue in his/her role). Depending on the nature of the misconduct, employers may also consider reporting the misconduct to the police.

Further, consideration should be given to whether the employee has come forward to their employer to disclose their disability in advance of being "caught". If an employee approaches their employer regarding their addiction before the employer has discovered the misconduct, or ideally before the misconduct has occurred, the more likely that a non-disciplinary approach will apply. In these situations, employers will want to consider whether a last chance approach is most appropriate.

Employers should have policies in place to encourage employees to come forward early and prior to any misconduct occurring. Municipal employers should:

- Review current employment disability accommodation policies;
- Review current substance abuse protocols;
- Ensure protocols are in place to respond to employee requests for addiction support resources of assistance programs; and,
- Audit current training and education initiatives with respect to the foregoing.



Julia Nanos and Stephanie Jeronimo specialize in workplace employment issues facing municipalities, including discipline, discharge, and accommodation issues. If you have any questions about any workplace issue, please contact Julia at 416-864-7341 or Stephanie at 416-864-7350.

## HAVE YOU HEARD?

### 2017 Ontario Municipal Compensation Survey

Participation begins in May. **Don't miss this year's Job Matching Meeting.** Look for your meeting invite and survey schedule in the spring.

#### About the survey

Brought to you by Mercer and the Ontario Municipal Human Resources Association (OMHRA). The Survey represents around 60,000 full-time municipal employees from about 60 Ontario municipalities and provides comprehensive job rates for 236 municipal positions.

Visit [imercer.ca/municipal](http://imercer.ca/municipal) for more information.

### The Mohawk College Enterprise (MCE) team extends a warm welcome to two new staff members.

#### Sue Elliot – Manager, Training & Customer Relations

Sue Elliot has more than 10 years of experience in training and development; most recently as an academic training manager with Centennial Training International (CTI) where she worked in Cairo, Egypt for two years. She received an Honours Diploma in Cosmetics Business Management from Seneca College. Additionally, she is a certified instructional designer and Personality Dimensions certified facilitator. Sue will bring a wealth of knowledge and experience to the MCE team along with new perspectives on how to push MCE to reach its vision of being recognized as Ontario's leading expert in corporate training in leadership, technology and health and community services.

#### Carrie Deon – Human Resources intern

Carrie Deon will begin her career in human resources by working for MCE as an intern over the next four months. She received her Bachelor of Arts-Sociology from the University of Windsor before obtaining her Human Resources Certificate from Mohawk College. Since 2000, she has worked as a child protection worker for both the Catholic and Halton Children's Aid Societies. Carrie has a passion for professional and organizational development and will work to strengthen MCE's processes, policies and procedures.

Welcome Sue and Carrie – we are excited to have you both as part of the team!

## “YOUR FEEDBACK MATTERS”

### Fall 2016 OMHRA Conference Evaluation

All Attendees at our Conferences and workshops are asked to complete an Evaluation to provide valuable feedback on the event and to assist with the planning of future events. All feedback is reviewed and discussed by the Education Committee and the OMHRA Board.

The fall 2016 Conference was held at the Nottawasaga Conference Centre in Alliston. Here are some highlights from the feedback completed by attendees from 47 Municipalities for this conference:

- Conference Website: 24% Excellent, 35% Very Good and 14% Good.
- Conference Overall: 25% Excellent, 43% Very Good and 12% Good.  
Comments:
  - “Super venue, catering was wonderful, and organization was top-rate.”
  - “This was my first time and it was well worth it. I gained very good insights and met lots of new people and vendors. It was a little rushed to try and get to all the vendors.”
  - “Fantastic speaker topics, speakers, venue, sponsors, etc. I am so glad to have attended and cannot wait to register for upcoming conferences.”
- Networking/Social Events: 28% Excellent, 25% Very Good, 11% Good.  
Comments:
  - “Networking with colleagues is the best part of conference.”
  - “The mini-golf was lots of fun and entertaining. Thank you OMHRA for providing this.”
  - “It may be difficult for a new member without any other members from his/her municipality to enjoy the networking events as many people sit with their own municipalities.”
  - “Really enjoy activities such as mini putt to take stress off of meeting new people – very much enjoyed.”

Some highlights of feedback provided for Improvements:

- Content of the sessions should match descriptions.
- Ensuring that speakers are engaging and dynamic.
- Would like speakers to share practical examples of what municipalities are currently doing and what their challenges, barriers and successes have been. Sharing of real case studies.
- For speakers presenting on a topic, it’s important to incorporate any new techniques for managing these situations in the workplace. More real-life experiences shared.
- Have stretch breaks between sessions.
- Look at team-building activities on Wednesday for those who do not golf.
- Circulate the OMERS materials if possible.
- Have LRIS as a break-out session.

- Improve sound quality and lighting.
- Eliminate swag bags to save money.
- Select venue with more accommodation choices due to cost and affordability.
- Perhaps mix the seating to provide more networking opportunities.
- With Panel presentations, attendees enjoy a mix of large and small municipalities represented; learning about tangible knowledge on process improvements as well as strategic partnering, and would like the opportunity to engage with the panel through Q &A format.

The 2017 Spring Workshop in Niagara Falls is filling up quickly. If you are attending, you have a role to play in making a better Conference experience for everyone. Please be sure to wear your name tag, seek out the first-time attendees and engage them in conversations, visit the vendor booths and complete the conference feedback questionnaire.

The OMHRA Education Committee thanks all who continue to provide feedback for our events. The feedback is referred to in the continuation of providing relevant, timely and engaging content.

**MARK YOUR CALENDARS**



# SAVE THE DATE

## HR and Security Forum 2017

Understanding and Managing an Ever-Changing Environment

**When:** May 23, 2017

**Where:** One King West, Toronto, ON

**For event information, please email: [info@afimacglobal.com](mailto:info@afimacglobal.com)**

*\*This is a private event. Registrations will be subject to seat availability and approval.*

**AFIMACGLOBAL.COM | 1.800.313.9170**

### Fall Conference 2017



**September 13 – 15, 2017**  
**Blue Mountain Conference Centre**

## WELCOME TO OUR NEWEST OMHRA MEMBERS

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**Nicole Ottolino**, Human Resources Manager, City of Elliott Lake

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## OMHRA ECHO

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