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WINTER 2020 VOLUME 18, NO. 1

Nathaly Pinchuk
RPR, CMP
Executive Director

Perspective

On the Road Again: Save Your Sanity

Tips for the busy business traveler

Most of us travel in our jobs. At first, it doesn't look so bad. In the good old days, we sometimes flew business class and stayed in deluxe hotels that catered to our every need. Then the cutbacks in recent years pushed us back into cattle class. We all struggle to lift our over-stuffed bags into the already full overhead bins and squeeze into the last middle seat between a former football player and a mom with her newborn. Our business travel is work added to already long workdays. It doesn't have to be fun, but it should be bearable.

Here are a few tips that might save your sanity as you run to the furthest gate in the terminal to catch the last flight home. Sit down, strap yourself in and breathe. Once your heart rate regulates, check out these suggestions.

Have a 'Pack Smart' strategy

No one was happy in 2008 when airlines started charging for checked baggage. Many business travelers learned how to 'pack smart', but many still get it wrong.

Overhead bin space (or lack thereof) can turn into a nightmare. It's best to pack smart with this simple strategy:

Invest in the right carryon baggage. The cheapest and the biggest are not necessarily the best. Choose two equal-sized bags. One bag should fit under your seat and the other flexible so you can slide it between other bags in the overhead bin.

Business-Eye View: The Security Line

Master the security line when you can — it's an art. The shortest line isn't always the best. Before you choose a security

line, do a 'business-eye view': who has unconventional luggage that could be inspected? Who looks like they haven't travelled in a while? Where are the kids? Watch for these situations so you don't get stuck.

Plan an on-boarding routine. This routine makes for a smooth transition from boarding to seat. Organize all your reading material in a compartment or separate bag. When you get to your seat, you can easily access the items. Nothing beats the busy execs who think the aisle is an extension of their office and pull apart their entire bags looking for items while the rest of the passengers are behind them waiting to board.

Consistency is key: Electronics

Pick a designated bag or pocket for your electronics and keep it consistent. This lowers the chance of forgetting or losing items. When packing your electronics, check to make sure you have the correct plugs and adapters.

Recharge your gear with a USB port rather than packing numerous cables. Most devices have a USB connection cable for recharging. This is especially helpful when staying at international hotels because electrical outlets aren't always a given.

Get connected ahead of time: Wi-Fi

Check before leaving to see if your hotel offers free Wi-Fi. Some hotels charge excessive fees and don't offer the best service.

If you want to avoid the internet fees, buy an international data plan from your mobile carrier. Most carriers offer affordable international plans which are usually cheaper than daily local rates. Then, use your phone as a hotspot for internet instead of the hotel's questionable Wi-Fi.

Take Care of #1: Eat, sleep and exercise properly

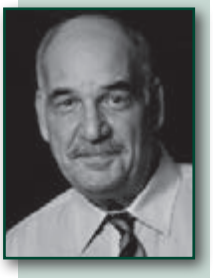
Grabbing a sandwich on the go, working late hours, running to the next meeting — busy business travellers often put themselves second. It's vital to take care of number one- you! Pack your gym gear so you can benefit from your daily workout. Develop a routine that includes proper exercise, healthy eating and getting enough sleep.

One way to maximize sleep, especially for red-eye flights, is to eat before you board. Avoid heavy foods and alcohol as you want to be in top shape when you arrive. The last thing you need is a sugar, alcohol or food hangover.

Last but not least, plan to arrive at the airport and check in **early**. This will give you extra time needed for delays and lineups and should add years to your life!

Travelling may not be as much fun as it was years ago, but it can still be interesting and rewarding.

Nathaly Pinchuk is Executive Director of IPM [Institute of Professional Management].



Brian W. Pascal
RPR, CMP, RPT
President

President's Message

Learn to Shut Down E-mail

The times are changing

Wouldn't you like to just shut off the world for the weekend? Turn off your laptop. Put your phone on 'Do Not Disturb' mode. If you lived in Europe, you may have that option. Europeans appear to have a more relaxed approach to the intrusion of electronics into the bedrooms and the weekends of the nation.

In Germany, Volkswagen has programmed its e-mail servers to stop delivering e-mail to their employees 30 minutes after work and to begin sending them again 30 minutes before the start of a new work day. Other companies have implemented some approach designed to disengage employees completely from the workplace once the formal work day is done.

In France, which has long been known for its overly generous vacation leave allotments, they have passed a law that gives employees the 'right to disconnect' from their phones and e-mails after working hours. If they require employees to answer outside of this time period, they have to pay them an overtime supplement.

The Europeans are moving in this direction because they have a different approach to work than many North Americans or Asians. The Germans, for example, have the reputation of being strong and focused workers with an intense desire to get things done. They believe that you also need to take time off for self-care and relaxation and return to work ready and refreshed for the next challenge. No one would doubt the Germans success in all aspects of business and productivity.

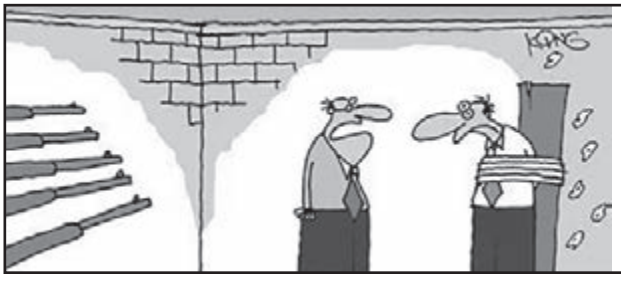
There are also legal frameworks and moral codes in France and other continental European countries that make generous vacation time mandated by law and viewed as a necessary and fundamental aspect of life. Not only do they have lots of vacation time, but everyone is expected to take it all in the year that it is earned- a novel concept to overworked and vacation-deprived Canadians. They also don't go to work sick. They have up to six weeks of paid sick leave and both peers and employers provide encouragement to stay home if employees are not well.

It's certainly different here and not necessarily better. In North America, many of us are cracking away at our smartphones at all hours of the day and night. One study by a major software company in the US estimated that 83 percent of professional workers said that they regularly checked email after work. Two-thirds of those surveyed took their smartphone or laptop on vacation with them. Over 50 percent report that they send e-mails while having dinner with family and friends. What is wrong with us?

We do not have the legal or societal frameworks to help us slow down. We also have an innate drive to try to add one more piece to the great puzzle we are creating. I call this an addiction to technology and working.

More organizations on this side of the Atlantic are trying to change their workplace culture when it comes to the use of e-mail after working hours. In fact, one study showed that about one in four major North American corporations created

continued on page 15...



"Your sales have been so bad lately that firing you wasn't good enough."

INSIDE THIS ISSUE

Ontario Court of Appeal Affirms "Cap" of 24 Months' Notice

Good news for employers

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Feature

In recent years, employers in Ontario have watched closely as the notice period awarded by the courts continued to creep over and above the once recognized 24-month "cap". Specifically, notice periods of 30 and even 36 months have been awarded for long-service, high-earning employees nearing retirement.

Thankfully for employers, the Ontario Court of Appeal has recently weighed in to affirm that 24 months of notice remains the "high end" in *Dawe v Equitable Life Insurance Company of Canada*, 2019 ONCA 512 ("Dawe").

The Facts

Mr. Dawe had been employed for 37 years with Equitable Life Insurance Company of Canada ("Equitable Life") when he was terminated on a without cause basis. He was 62 years old, a Senior Vice President and had spent his entire career with Equitable Life. At the time of his termination, Equitable Life offered Mr. Dawe 24 months' notice in addition to some other benefits which Mr. Dawe refused.

On a motion for summary judgment, the Motion Judge determined that Mr. Dawe was entitled to a notice period of 30 months. Alarmingly, the Motion Judge also noted that he would have awarded Mr. Dawe upwards of 36 months' notice; however, Mr. Dawe had only claimed 30 months in his Statement of Claim.

The decision caused considerable stir among employers who otherwise drew on the 24-month cap as a strong negotiating tool when it came to long-service employees. Rarely, and but in "exceptional circumstances" had the cap been exceeded. *Dawe* signalled the continuation of a worrying trend in notice period awards.

Interestingly, the Motion Judge did not base his decision on the presence of "exceptional circumstances," but rather on his own perception of broader factors, such as society's changing views about retirement. Specifically, Mr. Dawe had testified that he intended to retire at age 65. As such, the 30 months of reasonable notice awarded to him by the Motion Judge put him in the same situation as though he had remained at work just past the age of 65.

Overturned on Appeal

In June 2019, the Ontario Court of Appeal overturned the Motion Judge's award of 30 months reducing it to 24 months. The basis for allowing the appeal was the fact that no exceptional circumstances existed which would have warranted a notice period in excess of the 24 months. Indeed, the Court of Appeal found that 24 months remained the "high end" of reasonable notice awards.

Notably, the Court of Appeal did not agree with the Motion Judge's emphasis on Mr. Dawe's retirement plans, stating that these plans did not determine Equitable Life's obligations to him. Indeed, while the Motion Judge was correct in concluding that Mr. Dawe was entitled to a substantial notice period given his senior position, years of service, age and difficulty in finding alternate employment, the Court of Appeal stated that such factors were already recognized and adequately rewarded for with a notice period of 24 months.

While the Court of Appeal stated that that there was no "absolute upper limit" in terms of notice period, they reiterated that generally only exceptional circumstances would support a notice period greater than 24 months.

Employers Take Note

The decision in *Dawe* is significant for employers as it affirms that the 24-month "cap" remains intact. Notably, it also signals that lengthy service, high salary and age would generally not constitute "exceptional circumstances" such that a notice period beyond 24 months would be appropriate. This is key as the recent trend of awards beyond 24 months have, for the most part, been centered on such factors.

While employers should be aware of the fact that the Court of Appeal did not entirely close the door on notice periods in excess of 24 months, its decision in *Dawe* has likely strengthened the enforceability of the "cap" on notice periods overall. It will be interesting to see the impact that this decision has on the notice periods awarded by the courts going forward.

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Dan Palayew will be presenting on:
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Brian Sartorelli

Pesident, CEO, IRM (Investigative Research Management)

Social Media Investigations in the Workplace

Factors to consider before you launch

Social media investigations are becoming increasingly popular as an effective tool for conducting background investigations into potential hires, fraudulent Workplace Safety and Insurance Board (WSIB) cases and unexplained absenteeism in the workplace. Social media listening is also an effective means to monitor and detect risk and threat situations in the workplace. A detailed social media search can allow employers access to valuable information they would otherwise not have. In our connected society, people are accustomed to sharing intimate details of their daily lives on various social media platforms such as Facebook, Twitter or Instagram, to name a few. Moreover, they don't always appreciate the implications of this or the extent to which their posts can be viewed and recovered.

Social media investigations as part of the hiring process

Intelligence-led investigations (gathering information prior to commencing physical surveillance) have not only improved investigation success rates, but also saved the employer money. Intelligence obtained through social media is an excellent example of this benefit.

Consider an applicant who has applied for a position within your firm. From all outward appearances, this individual appears to be an ideal candidate and there is nothing in the interview process or the applicant's resume that would indicate otherwise. However, during a pre-employment screening, a review of public social media accounts reveals numerous posts relating to drug use, hate speech or posts indicating that the applicant will call in sick in favour of camping with friends. This new information provides valuable insight and intelligence the client can utilize to make a more informed decision regarding the applicant's suitability.

Social media is also a useful tool when considering partnerships with other businesses or Request for Proposal (RFP) applicants. Negative reviews, lawsuits and information about financial status can be obtained through social media and open source intelligence investigations. With such critical intelligence available prior to the signing of a contract, there is less risk of partnering with someone who may have recently declared bankruptcy or been twice sued, for example.

Utilizing social media intelligence for WSIB claims

Your organization has an employee who is currently on leave due to a workplace injury. After reviewing the employee's file, the client identified several red flags, such as:

- Subject is eager for a quick settlement
- Instant legal retention
- Injuries are inconsistent with the accident
- Subject has a long claims history
- Subject isn't available during work hours
- No witnesses to the accident
- Subject has unrealistic physical limitations
- Incident occurs parallel to news of layoff, termination or transfer.

After noting these red flags, the raw data would be provided to your investigative partners. Raw data is compiled from the original employment file and would include information such as the employee's address, phone number, date of birth, employment history, family status and the reported injury. After reviewing this data and ensuring it is accurate, certified OSINT professionals will commence an intelligence-led social media investigation by searching, analyzing and documenting public posts.

Historically, reviews of social media accounts have allowed professionals to locate detailed vacation logs, and uncovered the subject engaging in hobbies (such as hiking, surfing or skateboarding) while allegedly injured or pursuing alternative employment. Additionally, this intelligence may provide valuable clues as to when or where surveillance would be best conducted, based on the time the subject most frequently posted online.

Using social media to investigate employee absenteeism

Social media investigations aren't only relevant to investigating employees on a claim. Employers may also consider reviewing the social media activities of staff who are

continued next page...

Feature

Brian Sartorelli will be presenting on:

Workplace Investigations

at IPM's April 23, 2020 Ottawa Conference and May 6, 2020 Toronto Conference

For details, go to www.workplace.ca (click on events)

Feature continued...

Social Media Investigations

... concluded from page 6

frequently away from the workplace due to reported sickness or injuries. Professional social media investigations have unearthed various activities by employees who are supposed to be off sick, including hunting trips, Black Friday shopping as well as alcohol and drug dependencies.

Many individuals, HR and CEOs alike, check into the social media and report they have "done some digging". Several dangers present themselves through viewing a person's profiles without the proper training and tools, including: alerting the subject of the investigation; gathering potential evidence that is not in accordance with the rules of evidence; not documenting properly; jeopardizing future investigations or surveillance.

Steps to take before conducting your own social media investigation

Before conducting your own investigation, it's important to consider if you're equipped to do so. Social media investigations should only be considered when using alias accounts and IP blockers. Digital footprints, such as code which cannot be controlled by the user, are often left behind during such explorations. If a subject becomes aware that their boss has recently been looking at their social media account, the investigation may be compromised before it begins. As such, it is of utmost importance that prior to conducting a social media review, you consult an experienced professional investigator.

In conclusion, billions of public social media posts provide an enormous amount of information that can be used to investigate most workplace scenarios. This investigation should be carried out with the utmost respect to one's personal expectation of privacy and conducted by trained professionals. Social media investigations will save employers thousands of dollars when conducted with caution and expertise.

Brian Sartorelli is President and CEO of Investigative Risk Management and can be reached via email at brians@irmi.ca.

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Made to Measure: 90 Days of Probation Suitability

Draft a termination clause that works

Duncan Marsden
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Tommy Leung
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Associate, Borden Ladner Gervais LLP

Feature

With two recent Alberta decisions regarding probationary periods in *Dalskog v. Crowsnest Pass Ecomuseum Trust Society*, 2019 ABPC 36, and *Christensen v. Tollcorp Enterprises Inc.*, 2019 ABPC 49, it is time for a refresher on probationary periods. Some employers believe they can simply end a probationary relationship without repercussion, because section 55(2)(b) of the Alberta *Employment Standards Code* (the "Code") states that termination notice is not required when an employee has been employed by the employer for 90 days or less (note that this recently changed from 3 months to 90 days). However, this may not be so simple and employers need to be careful in drafting employment agreements.

The Common Law Creature

The merging of section 55(2)(b) of the Code and probationary periods is common, but inaccurate. The two are distinct concepts. In fact, the word "probation" does not even exist in the Code. Probationary periods exist in the realm of the common law and come with their own set of rules.

What is the Common Law Test?

Under the common law, there is a presumption of reasonable notice even for employees with 90 days of service or less. However, an employer can rebut this presumption. An employee will not be entitled to common law reasonable notice if their employment was terminated during a probationary period, subject to the following suitability test:

(1) The employer had given the probationary employee a reasonable opportunity to demonstrate their suitability for the job;

(2) The employer decided that the employee was not suitable for the job;

(3) The decision was based on an honest, fair and reasonable assessment of the suitability of the employee, including not only job skills and performance but character, judgment, compatibility, reliability and future with the company.

If the employer fails to satisfy the above requirements, the employee will be entitled to common law reasonable notice, despite the fact that the employee may not be entitled to statutory notice. For example, an employee who had worked for the employer for just over two months would not be entitled to any statutory notice, but they could still be entitled to months of common law reasonable notice if the employer fails to meet the suitability test.

Can probationary periods be longer than 90 days?

Because probationary periods and statutory notice are distinct concepts, employers can establish a probationary period longer than 90 days. In *Van Wyngaarden v. Thumper Massager Inc.*, 2018 ONSC 6622, the probationary period was set at six months, and since the employer met the suitability test, the employee was not entitled to common law reasonable notice.

The Statutory Being

Although section 55(2)(b) of the Code has nothing to do with probationary periods, where the Code comes into play is when the probationary period is longer than 90 days. Under common law, an employee may not be entitled to any notice if the suitability test is satisfied, but the common law cannot oust statutory minimums established by the Code. For that reason, in *Van Wyngaarden*, although the employee was not entitled to common law reasonable notice, the employee was still entitled to one week's statutory notice.

Takeaways for the Employer

In conclusion, an employer may be attracting further hurdles for itself by describing the 90 day period as a probationary period since it will need to satisfy the suitability test. On the other hand, if the employer does not characterize the 90 day period as a probationary period, it will not be able to rebut the common law presumption of reasonable notice.

One option to mitigate against this "between a rock and a hard place" scenario is to draft a proper termination clause. A valid termination clause also rebuts the common law presumption of reasonable notice. This concept was

continued on page 15...

Duncan Marsden will be presenting on:
Today's Critical Issues in Employment Law
at IPM's May 5, 2020 Calgary Conference
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Feature

Keeping Quiet: Enforceability of Confidentiality Clauses

Monitor social media activities of former employees

Confidentiality clauses are common place in the settlement of a legal dispute. Whether they are included in a release or the settlement agreement itself, they are a useful tool in an employer's dispute resolution arsenal. The recent case of *Acadia University v Acadia University Faculty Association*, 2019 CanLII 47957 (ON LA), shines a light on the value of confidentiality clauses in the employment context.

Dr. Rick Mehta was a tenured professor at Acadia University ("Acadia"), represented by the Acadia University Faculty Association (the "Union"). On August 31, 2018, Dr. Mehta's employment was terminated for cause relating to his social media activities. The Union grieved Dr. Mehta's termination. The parties voluntarily agreed to mediation and the matter was resolved. Acadia, the Union and Dr. Mehta voluntarily executed Minutes of Settlement which set out the terms and conditions of the settlement. The Minutes of Settlement included a clause stating that the matter was resolved without any admission of liability or culpability by any of the parties; a payment clause whereby Acadia was to provide payment of an amount to Dr. Mehta; and a confidentiality clause that required the parties "to keep the terms of these Minutes strictly confidential except as required by law or to receive legal or financial advice." The Minutes of Settlement also included an undertaking that "if asked, the parties will indicate that the matters in dispute proceeded to mediation and were resolved, and they will confine their remarks to this statement. Stated somewhat differently, it is an absolute condition of these Minutes that no term of these Minutes will be publically disclosed."

> This decision confirms the inviolable nature of confidentiality clauses when properly executed.

Following the execution of the Minutes, Dr. Mehta took to social media to express his views on the matter, posting the following on Twitter: "Vindicated former professor! Advocate for free speech and institutional transparency in universities." A follower responded to his tweet saying that he hoped he received a nice amount of money. Dr. Mehta responded " All I will say is that I left with a big grin on my face." Not long after, Dr. Mehta tweeted again about the settlement saying "Because I got the vindication that I was seeking. In other words, I have left the university on my term, as opposed to the administration's or union's terms. The NDA that I was required to sign by law is not for my protection."

As a result of the tweets, the Arbitrator directed Dr. Mehta to comply with the terms and conditions of the settlement and delete the tweets, but Dr. Mehta continued to tweet about the settlement. He even went so far as to threaten to release the Minutes of Settlement to the media unless certain conditions were met, before deleting the tweets.

Again, the matter came before the Arbitrator, this time with Acadia arguing that it should not be required to make any payment to Dr. Mehta because of his repeated breaches of the Minutes of Settlement. The Arbitrator agreed, finding that Dr. Mehta repeatedly broke his promise of confidentiality, and noted that settlements in labour law are "sacrosanct" and ruled that Acadia was no longer required to honour the payment provision in the Minutes of Settlement.

This decision confirms the inviolable nature of confidentiality clauses when properly executed. In this case, it paid (literally) for the employer to keep a close watch on the social media activities of its former employee following the settlement of a dispute.

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Kyle MacIsaac and Caroline Spindler will be presenting on:
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The Five Roles of a Master Herder (Part 2)

Leadership redefined

Gail Boone
MPA, CEC
Next Stage Equine Facilitated Coaching

Carmen Theobald
Leadership Coach, True Presence Horse Sense

Ask the Expert

Q: What makes an exceptional leader?

In the Fall issue of the newsletter, you were introduced to the Five Roles of the Master Herder, in particular to the roles of the Leader and Dominant and also the concept of predatory and non-predatory power. This segment introduces the Nurturer/Companion, Sentinel and Predator roles.

Nurturer/Companion

Although it may sound soft, there is ample hard evidence to show the importance of this role. Research shows that the number one reason employees quit their jobs is their relationship with their immediate supervisor. Aside from wanting to minimize turnover, having the ability to create trust and connection with others is the social lubrication required to communicate projects clearly, find solutions to problems and get better results.

Those strong in this role monitor the well-being of others and want to make everyone feel comfortable. If more of an extrovert, they will be able to socialize with a wide variety of people, where as an introvert will be an invaluable source of loyalty and support. This role is the glue that holds a team together.

When the use of the Nurturer/Companion role is out of balance we see: trouble differentiating between assertiveness and aggression, avoiding stepping into leadership, using gossip as a bonding tool, using passive aggressive moves to avoid direct confrontation, and when confronting directly, communicating with frustration or rage.

When this role is used with predatory power, we might see someone using their well-honed social skills to learn private details about co-workers, only to use that information against them for personal gain.

Sentinel

This is the observer, the witness and the lookout. The Sentinel keeps an eye on the environment, culture or larger economic/political/social system. This role is needed to alert leaders when the organization is in danger of losing track of its purpose or needs support or protection. The Sentinel stays on the edges but remains tuned into the group, sometimes smelling smoke before others see fire. When this role is performed well, others can do their job with less stress, knowing they will receive information on changes with time to adjust.

When a person overemphasizes the Sentinel, challenges appear like: seeming overly logical, aloof and detached, emphasizing group needs at the expense of the individual, overly focusing on spreadsheets/budgets/data/procedures while becoming oblivious to emotional needs, interpersonal struggles and creative ideas of co-workers. They can become hyper-vigilant and problem focused without offering solutions. They rely on others to intervene in conflict, create new policies and invent new products or business models. Ideally, this role is not left to just one person on the team. Team members need to trade off this role, minimizing the intense anxiety that can occur when it's continually left to one person.

A predatory use of this role may look like a person withholding crucial information or failing to warn of impending disaster as a reaction to feeling devalued or as a power play to undermine designated leadership. Insider trading is also an example of a predatory use of this role.

Predator

When performed well, the Predator role is needed to make those tough decisions. It's imperative to be sensitive to energy and resource drains and to "cull" what is no longer needed in a timely, respectful and sensitive fashion. Learning how to use the Predator role in a non-predatory way is an invaluable skill.

When overemphasized, unwanted predatory behaviour includes: being too quick to fire those who may simply need more support and training, creating environments where colleagues feel attacked which breeds mistrust and paranoia, wanting to win at all costs even when it's not in the best interest of the company, and attaching too much importance to a survival of the fittest and competition mentality.

These roles can be used in a clear sequence of escalation with a struggling employee. Begin with a Nurturer/Companion conversation to check-in with the individual: gain insight into their reality or propose additional training. Next, the Sentinel: communicate what you see about their performance/ behaviour and how it is affecting others. Then, a Leader conversation: point to the vision of the organization, looking at how they can help to create that future and what opportunities could be there for them.

Assuming not much has changed, it's time to move into a Dominant role. After two or three Dominant meetings that are more direct with increasing consequences up to and including the notion of termination (that are actually followed through), if nothing changes, it

continued next page...

Feature continued...

Master Herder

... concluded from page 10

is time to bring in the Predator. The Predator will tactfully and respectfully end the employment relationship. Ideally the escalation through the roles and clarity that is offered along the way will minimize the need for the Predator.

Moving through the five roles provides a way for us to master socially intelligent leadership. It is executing leadership in a way that puts significant responsibility on the "Master Herder" to be able to know what is required and to shift behaviour to match. It puts the emphasis on the self. It asks each one of us to be mindful and intentional about the way we show up to build trust and invite collaboration and cooperation to produce the desired effect. Check out the Master Herder Professional Assessment at *https://masterherder.com/professional-assessment/*

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Paula Morand
CSP

Keynote Speaker, Leadership Expert

Wired for Change: Don't Settle for Status Quo

The most successful mindset supports growth

As human beings, we are not really wired to keep doing what we have always done. We are actually wired to change, to be innovative and to see our world in new ways.

This is a great miracle of life.

We have been fed a philosophy that change is difficult and arduous, but in reality no one is really comfortable with the status quo.

All that is really required to grow ourselves as leaders and take our organizations to the next growth stage is to see ourselves and our world differently. Once we accept that our mind really demands change, it is easy to fulfill that desire.

We acknowledge our natural instinct to grow into something better. We simply start to take our best ideas down the long but exciting road to implementation and impact.

The growth and change that stems authentically from our character is broader than merely trying to reach higher than last quarter's budget figures or imagining how we could add an additional service to a package we currently offer.

That is growth aligned with our past. The real exciting growth comes from the present, from the place where we begin to envision building something entirely new.

To have the distinguishing trait of a successful leader today, we need to be conscious of what was done in the past. We must also anchor our dreams to what is happening right now and what we can creatively anticipate will happen in the future. Otherwise, we will just keep shuffling around in a slightly altered state of status quo.

We acknowledge our natural instinct to grow into something better. We simply start to take our best ideas down the long but exciting road to implementation and impact.

Growth in any organization is about finding a way to encourage more people to become your clients and more ways to produce and deliver services and products that are relevant. Whether you are in a for-profit or not-for-profit organization, there is always the need to create new revenue streams to sustain yourself.

Another aspect of true growth is that it reaches past your own goals to the goals of those who work with you and helps others to achieve what they are seeking as well.

Businesses and organizations that don't grow or think they can stay in the status quo zone will eventually see their piece of the pie get smaller and smaller, and ultimately they will fail.

We all have to keep asking ourselves "what else is possible?"

Being open to amazing possibilities allows us to reframe our ideas about what is possible and to think differently, and that is the impetus for authentic growth. When we have a winning mindset that supports growth, all we need to do is to hone our observation skills and recognize what opportunities look like.

Growth is not just a means to move your organization or business out of the start-up phase into maturity. Instead, it is essential at every stage of development because there is more to gain and lose once the organization is well established. You cannot plateau and remain sustainable no matter how secure your status is at this moment in time.

Any kind of leadership style can be adapted to growth. Whether you are a bold leader or a quiet leader, an autocratic leader or a servant leader, deep down you have the courage to move from the lane you are in to a faster one and make it a successful manoeuver.

Welcome growth as a mindset into your unique personality and style and go for it.

Paula Morand is a keynote speaker, author and leadership expert who helps high potential visionaries and organizations take their brand and their business to the next level. She can be reached via email at bookings@paulamorand.com.

Feature

Paula Morand will be presenting on:
Bold Courage
at IPM's April 23, 2020 Ottawa Conference and May 6, 2020 Toronto Conference
For details, go to www.workplace.ca (click on events)

To Record or Not to Record

Update your corporate Smartphone policy

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Feature

Jody Wilson-Raybould making public a phone call she secretly recorded between herself and Canada's top civil servant, Privy Council Clerk Michael Wernick regarding the SNC-Lavalin matter set off a heated debate around her actions in recording that call with Michael Wernick's knowledge, let alone consent.

Having a conversation, sometimes a without prejudice or off the record conversation, with a co-worker or your employer, has a different context than emailing or texting with that person. Generally speaking, people accept that someone can take notes during a conversation or meeting, but it would be fair to hypothesize that most people take calls from co-workers or colleagues with the presumption that they are NOT being recorded. From the Jody Wilson-Raybould incident and with the rampant use of smartphones at work, employers, employees and professionals should be thinking about when it is ever permissible or desirable to record any conversation and how can one protect him or herself from being unknowingly recorded in the workplace.

As Attorney General, Jody Wilson-Raybould recorded that call as the Federal Government's top-ranking lawyer speaking with the highest ranked Federal civil servant, in essence her client. From a professional regulatory perspective, her actions are strictly prohibited. For instance, the Law Society of Ontario's Rules of Professional Conduct clearly state that "a lawyer shall not use any device to record a conversation between the lawyer and a client or another legal practitioner, *even if lawful*, without first informing the other person of the intention to do so." Similar provisions exist across provincial legal governing bodies.

From a legal perspective, her act to record the call was not illegal. According to s. 184 of the *Criminal Code*, one can record a private conversation as long as one of the parties involved consents to the recording. This is commonly referred to as the "one party consent" rule. The *Criminal Code* strictly prohibits an individual from secretly recording conversations of others. Such action, if convicted, carries a strict penalty of up to five years in jail.

This issue of whether it is proper (putting aside the issue of legality) to record a conversation is relevant to any profession and workplace not just the Federal government or amongst lawyers and their clients. For instance, the Canadian Medical Protective Protection Association advises that doctors are required to obtain the express consent from their patient first before recording any clinical encounter with their patient. However, the same is not true for patients. Patients can record a conversation with their doctor without their doctor's consent. Think about conversations between two employees in any office or work environment. The relevance of this issue spans all professions and workplaces.

Generally speaking, most employees are subject to the "one party consent" rule. However, just because a recording may be legal under the "one party consent" rules does not necessarily make it welcomed or wanted in any workplace or office setting, or in various professions. What can employers, in particular HR professionals, do to deal with the reality of people using their smartphones to record conversations?

Just as it is the accepted norm (and legally required) for companies to have harassment policies, employers and professionals should think about implementing a "Smart" policy on the use of smartphones in the workplace. This policy could be a part of a larger technology or social media policy, if one exists.

The Smartphone policy should address amongst other things:

1) Create a standard that no employee should record another employee, even it if is a lawful recording, without first at a minimum advising the other person that they are being recorded, if not obtaining their actual consent;
2) If a recording is made, make it available to the other person and to the organization's HR Manager and allow the recorded employee the opportunity to comment on the recording and make any

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Ruben Goulart will be presenting on:
Today's Critical Issues in Employment Law
at IPM's May 6, 2020 Toronto Conference
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Carleen Hicks

Leadership Coach, Facilitator, Clariti Group Inc.

Work–Life Balance is an Oxymoron

Consider purpose instead of time

Work-life balance is a phrase we throw around a lot. Ever since the industrial revolution made possible the adaptation to work en masse, employing millions of people, our western societies have had a distorted definition of balance when it comes to work. As an example, since that same revolution, we've made it illegal to work people to their early deaths with punishing hours (10+ hour work days, 6+ day work weeks, etc.). Yet there are many in our "enlightened" society today who work punishing hours of one kind or another (often voluntarily). Are you one of them?

The Fairytale of Balance

The concept of balance has enormous appeal. It sounds like something we should aspire to and master, something that is in our control to effect (you just need more *balance*). Like our ancestors who ushered in the industrial revolution, we often think we can solve today's problems by breaking things down into components and re-mastering them in new and different ways. This would allow us to become far more efficient. We conveniently forget our ancestral innovation was with respect to materials and processes-breaking things down into simple steps and motion so as to re-order work, yielding unseen results for the era. The happy by-product of their results was that by becoming more efficient, you could also save time, giving life to a fairy tale we still believe in today. However, you cannot continually achieve greater and greater efficiencies with something finite like time. And time does not scale.

Balance in our 21st century world has become the "holy grail" of time management. We acknowledge that we control what we do and how we do it. It then makes sense that if we pursue organizational skills that allow us to plan our days mindfully, then logically we can do it all. In this process we have completely forgotten the essential definition of balance — we've skewed it to fit the 18th century fairy tale.

It's time for a reset. Balance (within the context of work and life) is essentially following the common sense of *all things in moderation*. When you look at it this way, doesn't the pursuit of continually striving to do more with less time seem ridiculous? This 18th century notion we carry also assumes we are machine-like, not living beings. We forget that in addition to not being able to iteratively become more efficient (past a certain point), we also have a hard-wired need to be *effective* in what we do. In other words, we need to make a difference through our work or we lose access to hope, sacrificing well-being.

What's Your Purpose?

You cannot make as meaningful a difference moving through life at 185 km/h as you can when you slow down and attend to what is happening in each moment. This allows the moments in life to guide your work (immersing yourself in the meaning and purpose of what you do). When we only have access to high-level "surface" meaning (proverbially checking the box), we derive no lasting joy from it. It doesn't feed our soul. Then this brings on anxiety, self-doubt, vulnerability and many other emotions we thought we'd avoided because *hey, we got the work done*. Not so. No one can avoid the impact or collateral damage to our families and communities of continually ignoring his or her deepest ambitions and potential. So, try this instead. Look at your day from the perspective of what purpose your effort serves rather than how much time it will take. You may realize with this approach that what you thought was really important… just isn't. Saving you time and supporting your well-being.

To quote Viktor Frankl in *Man's Search for Meaning*, "Everything can be taken from a man but one thing: the last of the human freedoms — to choose one's attitude in any given set of circumstances, to choose one's own way."

Carleen Hicks is a Leadership Coach & Group Workshop Facilitator, with Clariti Group Inc. and can be reached via email at carleen@claritigroup.ca.

It's time for a reset. Balance (within the context of work and life) is essentially following the common sense of all things in moderation.

Carleen Hicks will be presenting on:
Leadership & Emotional Intelligence
at IPM's April 23, 2020 Ottawa Conference
For details, go to www.workplace.ca (click on events)

Feature

Features continued...

Learn to Shut Down E-mail

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rules similar to the Volkswagen model on e-mail, including both formal and informal policies and directives to staff. They find that the overall productivity is not dropping as some feared, but is actually increasing.

Who doesn't want increased productivity? Employees are more relaxed when they come to work and thereby more effective and productive during business hours. They are also less stressed and make better decisions. They also don't get sick as often which is a direct benefit to their employer with reduced costs of absenteeism, less money being paid out in company health benefits and fewer employees on both short and long-term disability.

It's not easy to break our addiction to working around the clock, but it appears that times are changing in this regard. Vive la difference!

Brian Pascal is President of IPM [Institute of Professional Management].

90 Days of Probation Suitability

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demonstrated in *Sullivan v KSD Enterprises Ltd.*, 2018 CanLII 109751, where the employer relied on both a probation clause and a termination clause. In that decision, the court found that the employer engaged in a good faith assessment of suitability and was entitled to terminate based on suitability. The court also found that the employer was entitled to use the termination clause as the basis for calculating the employee's notice period.

By having a properly drafted termination clause, the employer will have an additional defence against unexpected common law reasonable notice exposure.

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To Record or Not to Record

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necessary explanation or additions to the recording in writing;

3) Prohibit the posting of "one party consent" recordings to any social media platform; and
4) Make a breach of the "Smart" policy subject to disciplinary action including and up to termination.

The underlying issue surrounding recording one's conversations with co-workers or your boss is one of trust, professional and reputation. We all saw what happened with Ms. Wilson-Raybould because of her unprecedented actions. With a "Smart" policy, employers can be proactive and informative to their workforce as to what is and what is not acceptable conduct.

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