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SUMMER 2018 VOLUME 16, No. 3



Nathaly Pinchuk  
RPR, CMP  
Executive Director

# Volunteering: Give Back and Get More

*How getting involved helps your career*

It's hard to find time to do anything these days. We are stretched beyond capacity. So when someone suggests that we join a professional association and get involved, our first thought is when are we going to find the time to do that? Fair enough. But instead of being an energy drainer, many people find that volunteering with professional associations in their field actually gives them and their career a boost. They truly do find that they are able to give a little of their time and get a whole lot back more in return.

Here are just a few ways that getting involved with a professional association might be able to help your career.

## **Put More Meat on Your Resume**

If you belong to a professional organization, you should include that on your business card and even more importantly, on your resume. This is particularly true if you have a professional designation from your association. These are signals to recruiters and head hunters that you are connected to your career and to other professionals in your field. It would be even better if you include that you currently hold a position in that organization like being a Regional Director or a member of the Regional Executive. All these help you stand out from the crowd and even though you love your current job, there may be a better one for you out there.

## **Make New Contacts**

This is not just networking which is an important aspect of belonging to a professional group or organization. It's about meeting and working with others who have similar jobs

and the same day-to-day challenges and issues that you have. They understand your pressures and they may have some suggestions and solutions for you. The people you meet in professional organizations and at events become part of your professional support group. Many continue to stay in touch and get together whenever they are in the same area of town. Some might even become your friends.

## **Continuous Education**

If you want to succeed in your career, you must have a commitment to professional development and continuous learning. These are two keys to success that mark the most successful leaders in every field of endeavour. Most associations offer professional development days that facilitate the free flow of information and the sharing of ideas that are vital to personal growth. Volunteering with professional associations will also give you additional input on what topics and workshops you'd like to see in the future.

## **Learn the Latest Technology**

Most of us are overwhelmed by some aspects of technology and social media. Professional associations often offer ways to both engage and learn in social media at the same time. Fellow members can give you the ins and outs of the Twitterverse while others can show you how to get the most out of the business platforms. There is usually a mix of members involved. More experienced members can help with things like improving your resume or networking, while younger members may be more familiar with the latest social media platforms.

## **Research Material**

One of the benefits of belonging to a professional association is that they often have a wealth of information and research that you can access. Some of it will be available online and other information will come to via newsletters and reports. You will not likely be interested in all of the information and research that comes your way, but you will be sure to find some things that can help you today as well as in the future.

## **Be a Mentor or Find One**

One of the other benefits of volunteering is the opportunity to find or become a mentor. Having someone to guide you through your early and middle career can be extremely beneficial. They can give you advice based on experience in your field and help you resolve and overcome barriers to your career success. If you already have the experience, you can pass it along and help a newbie find their legs in your common profession. Other than your own success, there is nothing better than seeing someone whom you've helped reach their chosen goals at work and in life.

If you're already a member of an IPM's Associations, be sure you check out the options to assist or build your chapter and the many ways you can give back to get more. We're looking for people just like you in all regions including new chapters that we hope to launch soon. If you're not, what are you waiting for?

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

Perspective



Brian W. Pascal  
RPR, CMP, RPT  
President

President's Message

# Marijuana at Work: Safety First

*Walking the Tightrope*

Employers are facing a whole lot of new issues because of plans by the federal government to legalize marijuana. Workplace policies in a number of areas will be reviewed and rewritten. This includes the whole murky, may I say smoky, areas of employee drug testing and whether employee can use medically prescribed marijuana products in or near the workplace. Many employers are worried, rightfully so, about their right to control their working space and to maintain a safe and healthy workplace for everyone.

So where do things stand today? There are some cases in court about workplace drug testing and others about the constitutional rights of citizens to use medicinal marijuana in any form they choose. Right now, there is very limited allowance for drug and alcohol testing unless there is an established substance abuse problem. We are waiting for regulations about where people will be able to use and smoke medical marijuana.

What can a reasonable employer do besides wait for direction from the authorities? That's a good question and one that companies and their legal counsels are trying to work out. In Quebec, a special working group has been formed with lawyers and business executives to brainstorm on this problem and come up with recommendations for employers. It's still early but here are a few of their suggestions.

First of all, they recommend that at the workplace, safety should be the number one priority. Whatever legal changes will develop, employers must take the necessary measures to



protect the health, physical safety and well-being of their workers. Cannabis might soon be legal, but it affects physical behaviour and can be detrimental to the health and safety of employees. That means recreational marijuana use can and should be prohibited in or near the workplace. What people do on their own time may be up to them, but employers should not permit cannabis use at work.

That sounds simple and it may get challenged as we move along. But the experts suggest this approach. The use of prescribed medical marijuana is trickier for a number of reasons. Employees can request accommodation from their employer if they have a prescription. Employers should require them to provide documentation from a doctor, even if the employee claims that they need it without documentation. That's where the duty to accommodate may butt up against workplace health and safety.

It will not be easy for employers to walk this tightrope of competing rights and responsibilities. That's why the experts

suggest safety and policy first. The employer has to ensure that all of its employees have a safe and healthy workplace. Start with that, and then develop a code of policies that can cover employee rights and wrongs when it comes to the use of marijuana and the workplace. Over time, the smoke will lift and the situation will be clearer for both employees and their employers.

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

## INSIDE THIS ISSUE

### PERSPECTIVE

*Nathaly Pinchuk* .....2

### PRESIDENT'S MESSAGE

*Brian Pascal* .....3

### FEATURES

#### Bonus Payments

*Ruben Goulart* .....4

#### Investigations in the #MeToo Era

*Dan Palayew* .....6

#### Unpaid Bonuses

*Duncan Marsden and Lorelle Binnion* .....9

#### Compensation Policies

*Judy Suke* .....10

#### Independent Medical Examinations

*Michael Murphy* .....12

#### Power of Networking

*Kathy Follett-Lloyd* .....13

#### Managing the People

*Staff Writer* .....14

### ASK THE EXPERT

#### Workplace Flexibility

*Paula Morand* .....8



**Ruben Goulart**  
LL.B.  
Partner,  
Bernardi Human  
Resource Law LLP

# Terminating Employees: Don't Forget Bonus Payments

*Ontario Court of Appeal rejects "active employment term"*

We are often asked to assess an employee's pay in lieu of reasonable notice package with employers who are planning on terminating an employee on a without cause basis. We ask the employer if they have an employment agreement or contract that limits the employee's entitlement to a statutory minimum or some other fixed amount.

If the employer does not have such an agreement or has one that would likely be deemed unenforceable following analysis, we then advise the employer of our assessment of that employee's notice period entitlement based on factors such as the employee's age, salary, length of employment and the character of their employment (their position).

We also get asked if the employee's pay in lieu of notice would include their bonus entitlements, especially in situations where an employee receives a substantial amount of annual remuneration by way of bonus or incentive payouts. These payments are usually determined through a formula based on either the employee's performance or perhaps the company's overall performance. More often than not, the formula for such payments is a combination of these two factors.

We must know whether the employer had a written bonus plan that limited an employee's entitlement to bonuses by having the payment tied to active employment. Simply put, is there a document, agreement, employment contract or plan that confirms that an employee must be actively employed at the time that the bonus payment would be made?

"These payments are usually determined through a formula based on either the employee's performance or perhaps the company's overall performance."

This was one of the issues addressed in a 2015 Ontario Court of Justice matter, *Paquette v TeraGo Networks Inc.*, 2015 ONSC 4189. This case dealt with an employee, Mr. Paquette, who was a 14 year employee at TeraGo Networks Inc. ("TeraGo") and held a fairly significant level of responsibility within the company at the time of his termination, which was effected without cause. Mr. Paquette subsequently brought a motion for summary judgment to assess his entitlement to a severance package.

The Court determined that Mr. Paquette was entitled to 17 months' pay in lieu of reasonable notice but rejected his claim for his lost bonus during the assessed notice period. The Court's rejection of his bonus entitlement was premised on the fact that TeraGo's Bonus Program unequivocally stipulated that an employee had to be "actively employed" in order to receive their bonus and that Mr. Paquette was not actively employed when receiving income following his termination.

This conclusion appeared to be in line with what most employment law lawyers would advise, which is that an employee would be precluded from a possible entitlement to bonuses if there was wording in a company's bonus plan or incentive payment program that stipulated that an employee would

have to be actively employed in order to avail themselves of such payments.

However, in 2016 this matter was appealed to the Ontario Court of Appeal in *Paquette v. TeraGo Networks Inc.*, 2016 ONCA 618 (CanLII). In the appeal, the Ontario Court of Appeal determined that an employee would in fact still be entitled to his bonus payment regardless of an "active employment term" in the company's bonus program plan.

The reasoning applied by the Court of Appeal was that there was nothing limiting Mr. Paquette to his common law entitlement, either in TeraGo's bonus program or with respect to an employment contract.

As such, once it was determined that Mr. Paquette was entitled to a common law notice period which was calculated at 17 months, then Mr. Paquette would be entitled to all forms of remuneration he would have earned during his notice period, including his bonus payments.

In simple terms, the Court of Appeal determined that there was nothing in Mr. Paquette's contract or bonus plan that "unambiguously alters or removes" his common law entitlement regardless of whether there is wording that stipulates that one must be actively employed in

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Feature

## Terminating Employees

... concluded from page 4

order to be entitled to one's bonus.

The take away from this Court of Appeal decision again reinforces the necessity to have carefully drafted employment contracts that clearly and "unambiguously" confirm what payments would form part of one's entitlement upon termination and more importantly, that the wording clearly articulates an employee's **disentitlement** to common law damages upon termination.

Therefore, if the Court finds that an employee is in fact entitled to common law damages, then it is likely that the

Court will then award the employee any and all forms of remuneration for the period that the Court assesses as being that employee's period of pay in lieu of reasonable notice.

*Ruben Goulart is a Partner with Bernardi Human Resource Law LLP and can be reached via email at [RGoulart@hrlawyers.ca](mailto:RGoulart@hrlawyers.ca).*

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**Dan Palayew**  
LL.B.  
*Partner,*  
*Borden Ladner*  
*Gervais LLP*

# Workplace Investigations in the #MeToo Era

*Time to update your internal policies*

The #MeToo era has officially hit Canada – and it entered with the force of a hurricane. In January 2018, a number of Canadian politicians were forced to resign from provincial and federal politics as a result of sexual misconduct or harassment allegations. It is likely that this trend will continue and more high-profile resignations will come.

The #MeToo hashtag emerged as a movement in the fall of 2017 following a wave of American high-profile celebrities being accused of inappropriate sexual behaviour in the workplace. According to an article posted on Forbes Human Resources Council, the hashtag took off with haste on social media – with 12 million posts during the first 24 hours on Facebook. The same article asked the following question: “As we become more sensitive to the topic, are employers at more risk of being called to task for something that happens under their watch? The consensus seems to be yes.” We agree and encourage employers to review their obligations to employees when it comes to workplace sexual harassment.

## **(1) Employers’ Obligations Regarding Workplace Harassment**

In most if not all Canadian jurisdictions, employers have been legally obliged to take sexual harassment allegations in the workplace seriously for some time. We refer to the Ontario example in this article.

The Occupational Health and Safety Act (OHSA) sets out the rights and duties for occupational health and safety of all parties in the workplace. The

requirements for violence and harassment in the workplace establish minimum standards and set out the rights and duties of all those who have a role in dealing with workplace violence and workplace harassment – including sexual harassment.

The OHSA defines workplace sexual harassment broadly as:

- engaging in a course of vexatious comment or conduct against a worker, in a workplace because of sex, sexual orientation, gender identity or gender expression where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- making a sexual solicitation or advance where the person making it is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know the solicitation or advance is unwelcome.

Employers are required by the OHSA to have a policy in place regarding workplace harassment and to establish a program to implement the terms of the policy. The program must contain a number of components, including: (1) how incidents will be reported generally; (2) how incidents involving the conduct of the employees’ employer or supervisor are to be reported and to whom.

Employers are required to investigate incidents and complaints of workplace harassment. Employers are also required to inform employees in writing of the results of the investigation and of any corrective action that has or will be

taken as a result of the investigation. Employers must also continually review their workplace harassment program – at least annually – to ensure that it is adequately implementing the workplace harassment policy. If an employee fails to comply with its obligations under the OHSA, it may face a fine of up to \$500,000 (for corporations), \$25,000 for individuals and (in extreme circumstances) up to 12 months imprisonment for individuals. Employers also would be vulnerable to complaints made against the employer by a harassed employee under the Ontario Human Rights Code to the Human Rights Tribunal.

## **(2) What is an Appropriate Investigation?**

Good workplace harassment investigations have at least three components. They should be (1) timely, (2) fair, and (3) comprehensive in scope. Workplace harassment investigations can be time consuming for employers and the staff tasked with managing the investigation. For that reason, a number of employers will retain outside assistance from a lawyer or another investigator to assist with the investigation and with compiling a report.

Not all investigations require the same amount of time and expense. An allegation involving a single incident of misconduct can often be dealt with expeditiously.

However, some allegations of misconduct involve incidents that date back a number of years and include a number of allegedly inappropriate actions.

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Feature

# Workplace Investigations in the #MeToo Era

... concluded from page 6

In these more complex investigations, the Ministry of Labour recommends the following steps be taken:

- a review of details of the incident or complaint, including any relevant documents;
- an interview or interviews with the worker alleging harassment;
- an interview or interviews with the alleged harasser, if he or she works for the same employer;
- an interview or interviews with the alleged harasser, if he or she is not a worker and if it is possible and appropriate;
- separate interviews with relevant witnesses;
- examination of relevant documents or other evidence that pertains to the investigation (such as emails, notes, photographs or videos);
- a decision about whether a complaint or incident is workplace harassment; and
- preparation of a report summarizing the incident or complaint, the steps taken during the investigation, the evidence gathered, and findings (such as whether workplace harassment occurred, did not occur, or that it was not possible to make a determination).

### (3) The Way Forward

The #MeToo movement has empowered vulnerable workers to come forward with complaints of sexual misconduct in the workplace. Employers need to be prepared and educated on how to respond and investigate these complaints. We suggest that now is an ideal time for employers to review their internal policies and practices regarding workplace harassment and ensure that they are prepared before a complaint is made.

*Dan Palayew is Partner and Regional Leader Labour & Employment Group with Borden Ladner Gervais LLP and can be reached at [dpalayew@blg.com](mailto:dpalayew@blg.com).*

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**Paula Morand**  
CSP  
Keynote Speaker,  
Leadership Expert

ASK the EXPERT

# Workplace Flexibility: Today's Most Coveted Value

*Keep your employees productive and engaged*

**Q**uestion: What is the most coveted workplace value today?

**A**nswer: Today's worker, from millennial to baby boomer, values workplace flexibility as a priority condition of labour.

Being able to stop work mid-day to run a personal errand, attend a child's kindergarten concert or drive a friend to the airport is considered even more important than the average number of hours worked in the week or the wage earned.

In fact, for the right to flexibility, as in also being able to opt to come in an hour earlier and leave an hour earlier, or work two extra hours a day and then be off for a day, most workers are willing to compromise other rewards or incentives.

The high value placed on flexibility evolved from two other trends: the demand for workers to put in longer work weeks and the insistence that through mobile technology, employees be accessible even while they are at home on their own time.

A growing number of workers put in a 45–47-hour work week. Most of them are still expected to respond to an urgent email or message sent to their home.

The result is inevitable: people feel burned out. They just don't have time to handle routine maintenance in their lives like going for a dental appointment, getting a prescribed medical test, getting a haircut or picking out a birthday gift for their loved one.

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"Proponents believe the employees would be able to better balance their work and family obligations, and the companies would be able to have a predictable and stable workforce if they provided periods of paid leave to deal with family situations."

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If a crisis strikes, like serious illness of a spouse, parent or child, the stress mounts. Many workers have no access at all to a paid leave to deal with such issues and an opportunity to return to their position when the crisis has passed.

The concept of more flexibility in the workplace prompts a growing number of workers to opt out of corporations and set up their own shops out of their homes or small rented spaces. The person works as many or even more hours, including weekends and holidays, but they feel less stressed because they can work within their own schedule. In this day and age, that is gold.

All of this discussion has led to a growing call for a more flexible workplace. Proponents believe the employees would be able to better balance their work and family obligations. Employers would have a predictable and stable workforce if they provided periods of paid leave to deal with family situations.

Many organizations are voluntarily responding. While more and more companies in Canada and the United States are offering more flexibility in work arrangements and expressing

goodwill towards such a possibility, very few have actually formally included such arrangements into hiring contracts for the protection and clarification of their employees.

At this point, a great deal appears to depend on the goodwill of management towards the employee. While employees are grateful for that, it still leaves them in a deferential position and with uncertainty about what they can really expect in the future.

Having formal policies in place would also give HR departments methods of measuring the effectiveness of such policies in relation to employee engagement and retention.

According to a WorldatWork 2015 report called "Trends in Workplace Flexibility," it is senior managers who are loathe to formalize workplace flexibility for fear that it will undermine the control and monitoring they feel they must do to manage their employees.

*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](mailto:bookings@paulamorand.com).*



**Duncan Marsden**  
LL.B.  
Partner/Regional  
Leader, Borden Ladner  
Gervais LLP



**Lorelle Binnion**  
J.D.  
Associate,  
Borden Ladner  
Gervais LLP

Feature

# Court Awards \$170K in Unpaid Bonuses – The Perils of Poorly Drafted Agreements

*A cautionary tale for employers*

The BC Supreme Court recently released its decision in *Kenny v Weatherhaven Global Resources*, adding to the growing body of case law addressing the often disputed question of employees' entitlement to a bonus, both during employment and during the period of reasonable notice of termination of employment without cause.

This case highlights the importance of carefully drafted contractual limitations on bonus eligibility both during employment and following termination of employment. Payment of a bonus is often a legally enforceable entitlement, depending on the terms of the employment agreement. If the employer's intention is to tie bonus eligibility to individual or company performance, this must be explicit and unambiguous.

In *Kenny v Weatherhaven*, the plaintiff's employment was terminated without cause in early 2016. The employer company had failed to meet its financial objectives in 2014, 2015 and 2016, and as such, none of the senior executives, including the plaintiff, received bonuses in those years.

The two issues in this case were (1) whether the employee was entitled to a bonus for the two years prior to the termination of his employment, and (2) whether the employee was entitled to a bonus for the 12 months following the termination of his employment, despite the company's failure to meet financial objectives.

## **Bonus entitlement during the two years prior to the termination of employment**

The plaintiff employee was an executive with the following contractual bonus provision:

The Executive will be eligible to receive a minimum of 20% and up to 60% of the base salary annually, as a performance bonus, less applicable tax withholdings required by law, based on the achievement of corporate objectives and personal objectives as mutually agreed to by the Company and the Executive.

[Emphasis added]

This clause has two equally plausible interpretations. The plaintiff argued that the clause entitled him to a bonus of minimum 20% and maximum 60% of his base salary, depending on the achievement of personal and corporate objectives. The employer argued that "eligibility is not the same as entitlement", and that the 20% minimum only applied once the required objectives were achieved.

Ultimately, the Court resolved this ambiguity by referencing language in a Change in Control Agreement between the parties, which referred to the bonus as a "non-discretionary bonus", and held that the plaintiff was entitled to a 20% bonus for each of the two years prior to the termination of his employment.

In the face of a true ambiguity, the Courts will employ the principle of *contra proferentum*, which resolves the ambiguity

against the party who drafted the provision. Even if the Court has been unable to resolve the ambiguity by reference to the entire agreement between the parties, it is likely that it still would have found in favour of the plaintiff on this issue.

## **Bonus entitlement during the reasonable notice period**

The general principle is that employees are entitled to pay in lieu of all aspects of employment compensation during the reasonable notice period. This includes bonuses when the bonus is an integral part of the terminated employee's compensation, unless the entitlement to a bonus is limited by the contract of employment or the terms of the bonus plan. However, in order to be effective, a contractual limitation of entitlement to a bonus during the reasonable notice period must be clear and unambiguous.

The plaintiff's contract of employment provided that in the event his employment was terminated without cause, he would be entitled to:

An annual Bonus award for a period of 12 months following the date of termination, based on the Executive's original target award for the year in which termination occurs and payable in lump sum on the date of termination.

The Court found in this case that the employment contract was clear that the employee would be entitled to a bonus award for a period of 12 months following the date of

The employer argued that  
"eligibility is not the same as entitlement"

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Judy Suke  
President,  
Triangle Seminars

# Compensation Policies: Stay Competitive!

Review compensation and maximize employee satisfaction

Getting your compensation plan right will help you to attract and retain the star employees. It will also create loyalty and a dedication to excellence in your existing employees.

There are seven common goals of a Strategic Compensation Policy: to reward employees' past performance – experience/ education; to remain competitive in the labour market – matching norms; to maintain salary equity among employees; to mesh employees' future performance with organizational goals; to control the compensation budget; to attract new employees (not just salary, but also benefits, vacation, ongoing training and sales incentives); and to reduce unnecessary turnover.

Formal compensation policy statements cover the following:

- The rate of pay within the organization and whether it is to be above, below or at the prevailing community rate
- The ability of the pay program to gain employee acceptance while motivating employees to perform to the best of their abilities
- The pay level at which employees may be recruited and the pay differential between new and more senior employees. Be careful that in your vigour to recruit star employees, this does not get out of proportion
- The interval at which pay raises are to be granted and the extent to which merit and/or seniority will influence the raises

- The pay levels needed to facilitate the achievement of a sound financial position in relation to the products or services offered

When determining what market rates to pay employees, research the pay rates in your city and province. This is something that should be done annually, especially when the economy is unsettled.

### Tips for the Hiring Process

When hiring consider the following: experience / education / extra courses / bilingual ability / communication skills / teamwork skills / collaboration skills / self-motivation / drive / energy / stress tolerance / openness to change. To ensure the perfect fit, consider investigating and using a personality testing site.

In all of your dealings with compensation, abide by the law. Know the laws that govern employment in your province.

### Motivating Employees Through Compensation

Creating Pay Equity is important. "Research clearly demonstrates that employees' perceptions of pay equity, or inequity, can have dramatic effects on their motivation for both work behaviour and productivity." – (Ramon J. Aldag, 'Organizational Behaviour and Management')

Simply defined, pay equity embraces the concept of fairness. Individuals are paid according to their inputs (abilities, skills, experience, education), and outputs (the value of the work performed, stress level, responsibilities); and then the outcome (salary and benefits) are compared to other jobs both within the organization and externally.

To make sure that you are fair, create a Job Evaluation System for your company. Consult the managers and star employees to rank the following: (Suggestions from [www.payequity.com](http://www.payequity.com))

Each job would have columns for Level 1, Level 2, Level 3, Level 4. Employees would then know exactly what they need to do to move up the ladder.

Skill

Education

High School

College Certificate

Appropriate University

Experience

1-3 Years

3-7 Years

7-10 Years

10-15 Years

Additional Specific Courses

Effort

Physical Demands

Mental Demands

Problem-solving

Risk tolerance

Stress Tolerance

Responsibility

Equipment / Process

Material / Product

Safety of Others

Working Conditions

Hazards

Travel

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Feature

# Compensation Policies

... concluded from page 10

Through competence-based pay (sometimes referred to as skill-based pay or knowledge-based pay), we are able to encourage employees to strive towards excellence in their role.

## **Family-Friendly Benefits and Strategies**

When choosing the right benefits package consider the various benefits being offered:

health, dental, life insurance, retirement programs, employee assistance plans, stress management, family counselling, marriage counselling, legal aid, financial planning. Then, look at the type of work your employees do and what they need.

Examine

- The relative performance shown by each benefit
- The estimated cost of each benefit
- The total amount of money available for the entire benefits package
- The possibility of a flexible benefits plan (where the employee chooses what they need)

## **Helping Employees Balance Work and Home**

Here are some things for you to think about to assist your employees.

- Work-at-home arrangements/telecommuting
- Flexible work hours scheduling
- Customized career paths (Younger workforce wants to know where they can go in the organization.)
- Time off for child or family related activities

“Research clearly demonstrates that employees’ perceptions of pay equity, or inequity, can have dramatic effects on their motivation for both work behaviour and productivity.”

- Employee-accumulated leave days for dependent care
- Transportation pooling (offer special parking)
- Recreational and Social Services (Time or payment for gym, company activities)
- Charity Committee (People don't have time for it when they get home.)
- Team Sports (bowling, baseball, hockey)

## **Awards and Recognition**

According to Gallup research, the number one reason employees leave their organization is not because they were not being paid enough; they leave because they were not given enough appreciation.

Maya Angelou said, “I've learned that people will forget

*what you said, people will forget what you did, but people will never forget how you made them feel.”*

Show your people that you care. Remember the important words: reassurance, inspiration, enjoyment, understanding, recognition and appreciation.

The success of all compensation incentives depends on communicating the plan to the employees and having a powerful and effective performance review system. When your people sense that they are valued and compensated fairly, they will enjoy higher levels of achievement and success.

*Judy Suke is President, Triangle Seminars (www.triangleseminars.com) and can be reached via email at judysuke@bell.net.*

**Philip H. Gennis, J.D., CIRP**  
Senior Principal



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# Independent Medical Examinations & the Duty to Accommodate

*Helpful instruction for employers*

All Canadian human rights laws require employers to accommodate disabled employees to the point of undue hardship. However (much to employers' chagrin) none directly address the employer's right to medical information in the context of accommodation. All are silent about questions like: Is an employer entitled to seek medical information from an employee who seeks accommodation or who misses work as the result of a disability? What medical information are they entitled to request from an employee? And in particular, can an employer require an employee to undergo an independent medical examination?

Fortunately, there is helpful guidance for employers on how to manage the accommodation process, particularly with respect to IMEs. The recent Ontario Divisional Court decision of *Bottiglia v. Ottawa Catholic School Board* clarifies that employers are not only permitted to seek IMEs in accordance with applicable human rights legislation, but IMEs are sometimes required for employers to effectively meet their duty to accommodate. While the Court doesn't spell out all of the circumstances in which IMEs might be necessary, inadequate or unreliable medical information is certainly one reasonable justification. But even when an IME is justified, employers should be careful not to "tip the scales" when providing information to the independent medical examiner, or else risk undermining the accommodation process.

## **The Circumstances.**

Bottiglia was a school board employee with thirty-five years of service who went off on sick

leave in 2010. For about two years, the employer received information from the employee's psychiatrist indicating only that Bottiglia would be off on medical leave until further notice, and a full recovery would take a prolonged period of time. Eventually, Bottiglia gave the employer a "Five Point Plan for Resumption of Career," which he had prepared with his psychiatrist's help. The Plan stated Bottiglia could return to work, but was limited to working two days per week for four hours each day, with work hardening over a period of six to twelve months. The employer, however, believed an IME was warranted based on some inconsistencies between the "Five Point Plan" and previous fitness to work assessments that Bottiglia's psychiatrist provided, and the fact his return to work date coincided exactly with the end of his entitlement to paid leave.

**The Complaint.** Bottiglia initially agreed to attend the IME. But he later refused because the employer, when providing background information to the IME doctor, expressed its suspicion that Bottiglia's return to work was premature and based on the imminent expiry of his pay rather than his actual fitness for the job. Bottiglia ultimately resigned, and filed a human rights complaint claiming his employer discriminated against him on the basis of disability. He argued his employer improperly required him to attend an IME before it would permit him to resume his duties, then breached the terms on which he had agreed to do so by giving the IME doctor misleading information.

**The Decision.** The Ontario Human Rights Tribunal dismissed Bottiglia's claim, and the Ontario Divisional Court agreed the Tribunal's decision was reasonable. The Court confirmed the employer wasn't restricted by any contract from requiring an IME. In fact, the employer's policy clearly provided for such recourse. The Court also found that the statutory duty to accommodate can, in some instances, require employers to request an IME in order to properly ascertain an employee's ability to work. But that doesn't mean employees must always submit to an IME when the employer asks; the request must still be reasonable and justifiable based on the facts of the particular case. In this case, the inadequate and unreliable medical information provided by the employee was a sufficient basis for the employer to request a "second opinion." And while the Court ultimately upheld the Tribunal's dismissal of Bottiglia's discrimination complaint, it also noted that employers must be careful with regards to the information they provide to an IME doctor to ensure the process is fair and objective. Here, the Court found the employer's suspicions about Bottiglia's motivation for returning to work could be of no value to the medical examiner, and could only serve to colour their judgement. And in such circumstances, an employee may be justified in refusing to attend the IME.

*Michael Murphy is a lawyer with McInnes Cooper in Halifax and can be reached via email at michael.murphy@mcinnescooper.com.*

Feature



**Kathy Follett-Lloyd**  
RPR, CMP  
Associate Director, HR  
Concentrix

# The Power of Networking – Go Beyond Social Media

*Develop a more personal approach*

**T**he cultivation of productive relationships in business will not only set you apart as a leader, it will also contribute to your personal brand as a business professional. No matter which business discipline you manage, genuine connections will enrich your effectiveness and contribute to your personal growth and marketability.

Connecting with other business professionals is not always an easy task and it can be much harder for some than it is for others. The people we want to connect with are busy and oftentimes cautious until they trust in our intentions. We fear rejection and sometimes don't have enough self-esteem to power through our fears or have the courage to initiate a conversation.

So how do you overcome the barriers to successful networking?

Guiding Principles! The five most important guiding principles of networking are Authenticity, Respect, Value, Trust and Practice.

**Authenticity:** Forging a long-term relationship requires preparation and knowing when to share your agenda if you have one. If you are attempting to connect with a specific individual, do your homework. Be knowledgeable about what the person is most known for and be prepared to ask meaningful and thought provoking questions when you finally have the opportunity to meet. If you do have an agenda, focus on the relationship first or you are more likely to have a short-term relationship. Long-term relationships are strengthened by the friendship that develops

over time and friendship is earned through authentic acts of kindness. Most importantly be yourself at all times!

**Respect:** A positive demeanor is essential when trying to earn the respect of a colleague. A positive demeanor, or lack thereof, will dictate how you are perceived and will become the foundation of your personal brand. Demonstrate respect through action when possible as action will qualify your words of respect. Be on time for appointments and planned telephone conversations. Be efficient and respectful of the value of a person's time. Communicate with sincerity. When you eliminate combative communication and converse with an openness that demonstrates their needs are more important than your needs, you are sure to earn the respect of your new acquaintance. A connection that trusts in your sincerity will seek you out for future conversation and interaction.

**Value:** A reciprocal relationship will stand the test of time when both parties offer value to the other. Research may provide you with knowledge of your colleague's greatest need and meaningful conversation will also serve to strengthen your understanding of how you can provide value. Maybe you know someone they want to network with and can be the catalyst to that connection for them.

**Trust:** New connections are often more cautious and judgmental until a relationship is more established. Look them in the eye as it is a sign of confidence and honesty. Discover what you have in common and use it to nurture your connection. Ask a common

acquaintance who is well respected to invite you both to lunch to initiate an introduction. Once a connection is made and a commitment is given, even one as simple as the sharing of a recipe, meet that commitment! An empty promise is sure to impact the trust a new acquaintance will have in your abilities.

**Practice:** The best way to eliminate fear or uncertainty is to practice your craft early and often. Look for opportunities to network everywhere. A casual conversation at a local charity event, a chance meeting at the local theatre or a thought provoking conversation at a professional association meeting are opportunities to practice your craft. Always be prepared to make a powerful connection with someone who will positively impact your life personally and/or professionally. Plan networking events proactively as your calendar will fill up quickly with day to day business needs if you don't take a proactive approach to network planning. Lastly, consider a mentor. Most likely you have a colleague who is fearless at networking events and makes connections with ease. The greatest compliment you can pay that colleague is to ask them to be your mentor. Their wisdom is priceless!

With the inception of social media and ease of electronic communication options, it is easier than ever to stay connected. Although there are more ways to connect and the speed of these mediums is immediate, setting yourself apart requires a more personal approach to networking. Make sincere and

*continued on page 15...*

Feature



**Phillip Gennis**  
J.D., CIRP, LIT  
msi Spergel inc.

# Managing the People

*HR's role in a Financial Crisis*

## **Introduction**

When an organization is in a financial crisis, one of the things that sometimes gets overlooked is the people side of the business. The CEO and the CFO are often huddled with their teams trying to make a determination about which route to follow that will get them out of the current crisis and into something more stable. At this point their only interest is financial. According to Phillip Gennis, Senior Principal at msi Spergel, if HR wants a role in this situation there's a number of things they can and should do.

"Human Resources leaders can play a key role in any financial crisis if they are up to date on the organization and they know the details of the crisis. They may not be the primary go-to people but if they are knowledgeable and timely, they can provide useful and valuable advice to the decision makers on the human resource implications of any proposed strategy," says Gennis.

## **Know the Business**

The days are long gone when HR was some sort of private island, removed from the day to day operations of the organization. Today HR is expected to know the business and to be prepared to participate in discussions at all levels of the business. Long before a financial crisis hits, you have to get out of the HR offices and start walking and talking the other parts of the organization. Phillip Gennis says "You don't need to know how to operate the equipment, but you do need to know how many people it takes to run it and what they cost on an on-going basis."

You also need to know your product line or the package of

services your organization is selling or providing, the challenges in making and delivering these to your current customers and the marketing strategies for attracting new customers. When you are educated on all these aspects of the business, you will be in a much better position to give reliable advice on the people issues when a financial crisis arises.

## **Know the Finances**

In a financial crisis, almost all the attention is on the financial aspects of the situation. It may be that loans are coming due or the banks are not happy and threatening to reduce operating lines of credit. In this atmosphere, speed and accuracy of information are vital. HR experts who want to be part of any discussions in this arena have to be able to play by those rules. "What the CEO and the Executive team want at this point are cold, hard numbers. HR should come to the table and be able to speak in that language. There is no time for any other discussions," says Phillip Gennis.

Some of the information that HR should have ready is the total payroll costs that includes all of the benefit packages across the organization. You should also have the information readily available on the people costs by departments as well as any provisions in collective agreements or employee contracts that might kick in if a decision is made on any of the possible plans moving forward. The leadership of the organization needs to know the financial impact of any decisions and HR can help them define the people costs.

## **Know the People**

As HR professionals, we think we know the organization, and we should. But in financial crisis

we need to be able to draw on that knowledge in an instant and be prepared to give direct advice to hard questions. One of those questions might be who are the key people in the organization and who might be expendable if the financial push comes to a shove? Another might be what are the implications of the various routes that an organization might follow to resolve its short-term problems and move to a more stable footing?

You can do some of that homework now before the crisis hits. Start by evaluating all your personnel in terms of their value to the organization. Do it for both the best case and the worst case scenarios. If you had to go to a bare minimum of operations in order to maintain the organization through a transition, who would you recommend that you keep? Who or what sections would you think might be the first to let go if you wanted to cut costs?

## **Know the Possible Paths Ahead**

You might as well get started on this homework now. If you get into a serious financial crisis, there will be a number of possible routes for the organization to consider. The first choice will always be some form of status quo and the questions raised in this avenue will be how to cut costs or scale back operations in order to survive to a better financial place in the future.

If the situation is financially dire, then bankruptcy or insolvency may be on the table. There is also the interim step of some form of legal protection while the organization works through the decisions they have to make. The most popular of those in Canada is the

*continued next page...*

## The Perils of Poorly Drafted Agreements

... concluded from page 9

termination of his employment, and ordered payment of a 20% bonus for this period as well.

This case is another reminder that employers must use clear language if their intent is to implement a discretionary

bonus plan. Employers would be wise to review their bonus plans in light of this decision and other recent jurisprudence in which courts have scrutinized bonus language.

*Duncan Marsden is Partner/Regional Leader with Borden Ladner Gervais LLP and can be reached via email at dmarsden@blg.com.*

*Lorelle Binnion is an Associate with Borden Ladner Gervais LLP and can be reached via email at lbinnion@blg.com.*

## The Power of Networking

... concluded from page 13

authentic attempts to connect in person, add value to every interaction and commit to personal acts of kindness and you will realize the power of a strong network.

*Kathy Follett-Lloyd is Associate Director, HR with Concentrix in Nova Scotia and can be reached via email at kathyfollett333@gmail.com.*

## Managing the People

... concluded from page 14

Companies' Creditor Arrangement Act (CCAA). It gives a company protection from creditors for a period of time to see if they can get their financial act together. This however only applies to large companies who owe over \$5 million to creditors. All of these legal options come with specific rules and guidelines to

follow. Check them out now so that you will be ready if any of them come to pass in the future.

There are numerous ways that HR can play a role when it comes to dealing with a financial crisis. Just remember that it's all about the money. Phillip Gennis says "Do your financial homework before the crisis hits.

Your HR advice can help the CEO and their team not only make a decision, but the right decision, for the organization and the people who hope to keep working there."

*Members Quarterly Staff Writer*



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