

26TH ANNUAL EMPLOYERS' CONFERENCE
LABOUR AND EMPLOYMENT LAW

UPDATE 2012

THURSDAY, NOVEMBER 1, 2012
TORONTO CONGRESS CENTRE

SPECIAL GUEST KEYNOTE SPEAKER:
THE HONOURABLE JUSTICE KEVIN W. WHITAKER

TOPICS INCLUDE:

- A Terminated Employee's Duty to Mitigate Loss
- Remaining Union Free
- The New Privacy Tort
- Putting Your OHS Due Diligence Program to the Test
- Managing Social Media in the Workplace
- Defending Human Rights Complaints
- Trends in Termination Awards
- New Law on Workplace Accident Reporting Obligations
- Latest Developments in WSIB Experience Ratings and Worker Reintegration
- *Accessibility for Ontarians with Disabilities Act (AODA)*



HRPA MEMBERS:
Receive 8.25 points toward your
HRPA recertification!

8:00 - 9:00 Registration & Breakfast

9:00 - 9:05 Introductory Remarks

9:05 - 9:35 **EMPLOYEE TERMINATIONS AND THE DUTY TO MITIGATE**

Allison Taylor

Employees who are terminated without notice and who do not sign a valid release of their claims have a duty to make reasonable efforts to find new employment to mitigate their losses. This can have a significant impact on an employer's ultimate liability, particularly for long service employees. However, recent court cases have narrowed the circumstances in which employers may realize a saving under the duty to mitigate.

LEARN:

- The scope of employees' duty to mitigate and how relying on it strategically can reduce employers' severance costs, and
- The latest law on how the duty applies to employees with contracts and to constructive dismissal situations.

9:35 - 10:05 **UNION ORGANIZING UPDATE**

Jeff Murray

Unions may be down but they are definitely not out. In order to replace lost members, unions have targeted particular sectors of the economy and are looking to make up lost ground. Find out what you need to know to keep your organization union free.

LEARN:

- How to prevent a union organizing campaign from taking hold at your workplace,
- The "Do's and Don'ts" of responding to union organizing campaigns,
- When employers may be at risk of automatic union certification.

10:05 - 10:25 Break/Networking

10:25 - 10:50 **THE NEW "PRIVACY TORT": IS YOUR ORGANIZATION AT RISK OF BEING SUED?**

Jessica Young

A new "privacy tort" was created earlier this year by Ontario's highest court. This decision could significantly increase the risk of liability for employers who do not meet the courts' expectations for protecting employees' private information.

LEARN:

- What constitutes a "privacy tort" in law, and
- How employers should be managing employee personal information in order to avoid lawsuit.

10:50 - 11:35 **DEMONSTRATION: HOW WOULD YOUR SAFETY PROGRAM STAND UP TO CROSS-EXAMINATION?**

Ryan Conlin and Jeremy Schwartz

You have invested time and money into your OHS program; but, how would it fare under the court's microscope? In this session, you will observe an HR professional put through the rigours of an examination and cross-examination as a witness in our mock, OHS prosecution.

LEARN:

- What it's like to be on the hot seat in an OHS prosecution,
- What kinds of evidence your counsel will need for your defence,
- About common weaknesses the prosecution will look for in your case, and
- How to identify and proactively address shortcomings in your OHS program, before you find yourself on the witness stand.

11:35 - 12:05 Q&A

12:05 - 1:20 Lunch

SPECIAL KEYNOTE SPEAKER:

THE HONOURABLE JUSTICE KEVIN W. WHITAKER

Ontario Superior Court of Justice, former Chair of the Ontario Labour Relations Board

1:20 - 1:50 **HOW EMPLOYERS CAN MANAGE THE SOCIAL MEDIA CHALLENGE**

Landon Young

Social media is here to stay even though many employers may wish it would go away. The challenges raised by social media in the workplace include time-wasting, harassment and disclosure of confidential business information. Learn how to manage these challenges without infringing on employees' rights or harming employee relations.

LEARN:

- How to prepare a social media policy that will protect your organization,
- What employers can and cannot do in restricting employees' social media activities, and
- When social media activities may cross the line to constitute just cause for discipline or dismissal.

1:50 - 2:20 **RESPONDING EFFECTIVELY TO HUMAN RIGHTS COMPLAINTS**

Jeremy Schwartz

Five years ago Ontario's *Human Rights Code* was amended to provide direct access to the Tribunal. Several recent Tribunal and court decisions, as well as recent changes to the Tribunal's rules of procedure, have reshaped the way applications unfold.

LEARN:

- How to seek early dismissal of frivolous applications,
- What recent changes to the Tribunal's rules will benefit employers,
- How recent, favourable Divisional Court decisions have clarified the standard of proof at the Tribunal, and
- About the impact of the Supreme Court's decision in *Figliola* on employee forum shopping.

2:20 - 2:40 Break

2:40 - 3:40 **LEGAL ROUNDUP**

In this session we will provide concise summaries of some of the most significant legal developments affecting employers from the past year.

LEARN:

- Termination Notice Periods: Review of the latest trends in employee entitlements to reasonable notice of termination under the common law.
- Workplace Accidents: Review of recent caselaw regarding reporting duties on employers when there is a workplace accident.
- Workplace Safety and Insurance Update: Consideration of the latest developments at the Board including experience ratings and worker reintegration.
- *Accessibility for Ontarians with Disabilities Act*: What these new duties will mean for employers.

3:40 - 4:30 Q&A

4:30 Conference Adjourns

SPEAKERS



JEFFREY D.A. MURRAY

Jeffrey advises and represents employers in all areas of labour relations and employment law. He has extensive experience working with employers in healthcare, manufacturing and construction. Jeff has published articles in *Lawyers Weekly*, *Canadian HR Reporter*, *Canadian Cases on Employment Law* and many other leading journals.



RYAN J. CONLIN

Ryan practises in all areas of labour and employment law with a particular focus on workers' compensation and occupational health and safety matters. His workers' compensation practice includes litigation before the WSIB and WSIAT, claims management, independent operator issues and revenue matters. He is the author of the *"Employer's Guide to Workplace Safety and Insurance"* and co-author of several CLV Reports on *OH&S Due Diligence and Corporate Liability for OH&S Under Bill C-45*. Ryan is also an Adjunct Professor at University of Western Ontario teaching Workplace Health, Safety and Workers' Compensation Law.



LANDON P. YOUNG

Landon advises employers in all areas of labour and employment law. He has particularly extensive experience in achieving positive and cost-effective results for employers facing wrongful dismissal lawsuits. A member of the firm's OH&S Practice Group, he is author of the CLV Special Report *Managing OH&S Inspections and Search Warrants*.



ALLISON L. TAYLOR

Allison represents employers before the courts and tribunals on issues arising out of employment and the termination of employment. Her practice includes wrongful dismissal and human rights litigation, drafting of employment and consulting contracts, and providing advice on pay equity, benefits and similar issues. She is the co-author of *The Corporate Counsel Guide to Employment Law* and co-author of *A Guide to Alternative Work Relationships*.



JEREMY D. SCHWARTZ

Jeremy practises in the areas of labour relations, employment and health and safety law. His experience includes advising and representing employers in arbitration, negotiations, and matters before the Ontario Labour Relations Board, the Human Rights Tribunal of Ontario and in the courts. Jeremy proactively counsels employers to help ensure legal compliance and avoid litigation, and provides strategic and targeted representation when litigation is unavoidable.



JESSICA N. YOUNG

Jessica advises and represents clients in all areas of employment and labour law including human rights matters, wrongful dismissals, labour arbitrations, AODA, employment standards compliance and privacy issues.

PAYMENT OPTIONS

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\$495.00 PER PERSON (\$438.05 + 13% HST) (HST # 121726442RT0001)

(Includes Full Day Conference, Lunch, Refreshments, Materials).

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Toronto Congress Centre

650 Dixon Road, Toronto, Ontario M9W 1J1

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From Hwy 401 – exit Dixon Rd W, turn into The Toronto Congress Centre

From Hwy 427 north – exit at Dixon Rd E, follow until left turn into The Toronto Congress Centre

From Hwy 427 south – exit Hwy 409 E, follow until to Martin Grove Rd, travel south on Martin Grove Rd, turn right on Dixon Rd, turn right into The Toronto Congress Centre

From Hwy 407 – exit Hwy 27 S, follow until Dixon Rd E, turn left into The Toronto Congress Centre

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