

June 2012

## Welcome to the June 2012 Toronto Chapter Newsletter

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Welcome to the June edition of 'HR Matters', your HRPATO Toronto Chapter Newsletter. We had a great turnout at our TO Connects event last month and share a few pics in our Events section. Our Mentoring Meet & Mingle this month was also a blast! The Mentoring Program is a rewarding way for members to enhance their careers, develop skills and nurture business relationships while giving back to the HR community. If you have not yet signed up, just click and pick: <http://www.hrpa.ca/HRPACChapterSites/Toronto/Pages/MentoringProgram.aspx>

We will soon celebrate another successful year at the Summer Social event and recognize our members who have achieved their CHRP designation as well as award our HR scholarships.

Stay in touch with Toronto Chapter news, events and programs... Join our LinkedIn Group and get in on the conversation!  Follow us Twitter @HRPATO  Not on Twitter? Read our Tweets on the [HRPA Toronto Website](#).

## New Members' Orientation Meet-up



Are you a new/recent member of the Toronto Chapter - HRPATO? If so, please join us for our very first exciting and FUN-filled **New Members' Orientation Meetup @ The Novotel Hotel, Thursday, September 27<sup>th</sup> - 5:30 p.m. to 8 p.m.**

At this Meetup, you will have the opportunity to learn more about YOUR Toronto Chapter and the HRPATO, mingle with the Board of Directors and network with other Human Resources professionals who are part of our prestigious community. You will also gain firsthand information on essential contacts and the great services and programs we offer. Finally, we will share with you an overview of Toronto Chapter's structure, values and mission.

Here is your opportunity to build lasting partnerships and have FUN! Unwind after work through networking and light refreshments! Please mark this important date in your calendar!

## Call for Volunteers – Government Relations Committee



### The Government Relations Committee Needs You!

*What does the Government Relations Committee do?*

The Government Relations Committee continually reviews HR issues impacted by government regulation. They also look at government instruments and processes, seeking potential areas for improvement. Finally, they identify current HR issues that might benefit from government-based solutions.

*What do Government Relations Committee volunteers do?*

- ✓ Represent HRPATO Toronto members on government relations issues
- ✓ Provide recommendations and support to the HRPATO Toronto Board of Directors
- ✓ Act as point of contact for HRPATO Toronto members enquiring about government relations issues
- ✓ Inform and contribute to shaping the government's direction on HR issues

*What is the commitment?*

Your time commitment will include a quarterly meeting plus ad hoc time spent working on deliverables. Recertification points can be earned for your time.

Your MemberPerks® account gives you access to valuable discounts, offers and value-added services from some of the world's biggest brand name companies and those smaller shops around your home and office that you love to visit. We call them *perks* and we've wrapped them all up and brought them here - nicely organized, and easy to access

Interested? If you're ready for a new challenge and a chance to do meaningful work for the HR profession, **email your resume and cover letter to:** [Recruitment@hrconnects.com](mailto:Recruitment@hrconnects.com)

## **\$20 million award upheld by appeal court**

**By Ronald S. Minken, B.A. (Hon.), LL.B.**



*'4 workers should have provided employer with 10 months' notice of resignation'*

Ontario's highest court has upheld nearly \$20 million in damages against four key workers who quit with only two weeks' notice. The employees worked for GasTOPS, an Ottawa-based supplier of control and condition assessment systems for industrial machinery. When two of them provided two weeks' notice, the company told them to leave the workplace immediately.

Following their resignations, the employees set up a competing business and, shortly thereafter, solicited 12 of their former co-workers, who subsequently resigned from their positions at GasTOPS to join the competing company. GasTOPS sued four key employees claiming they were in breach of their fiduciary duties for misappropriation of confidential information, trade secrets and corporate opportunities. Additionally, the employer claimed the four employees failed to give reasonable notice of their intention to resign.

The employees argued Gas-TOPS had waived its entitlement to a longer notice period when it demanded the resigning employees immediately vacate the workplace. However, the Ontario Superior Court of Justice not only found the employees had breached their fiduciary duties but the employees had not provided the employer with reasonable notice of their intention to resign from their employment.

### **Trial court decision**

In a 1,596-paragraph decision, the Ontario Superior Court of Justice found in favour of GasTOPS, determining the four employees were to provide 10 months' notice. "Failure of an employee to provide adequate notice will entitle the employer to an award of damages. Generally, reasonable notice is meant to give the employer time to hire and train a replacement," said the trial judge in reaching this conclusion. "In determining the time required to hire and train a new employee, one must look at the nature of the employee's position and the area of work that the employer was competing in.

"(GasTOPS) attempted to persuade the employees to either withdraw their letters of resignation or, in the alternative, provide more reasonable notice. In my view, (the employer) was entitled to accept, as it did, the breach of the employment contract by (the employees) and ask them to immediately leave the premises. It appears (GasTOPS) probably paid (the employees) to the end of the notice period."

Finally, the court found the employees should have provided 10 months' notice of their intention to resign. "If (the employees) had given 10 months' notice, which would have been reasonable, the (employees) would have continued to owe (to the employer) a duty of loyalty and good faith which would have prevented them from establishing their own company and competing... in the area of aviation maintenance software," said the court.

"I have no doubt that the (employees) resigned when they did in order to have an opportunity to compete for the GE and the U.S. Navy opportunities that were almost at the point of fruition for (the employer)." For the employees' breaches of fiduciary duty and lack of reasonable notice for resignation, along with pre-judgment interest and trial costs, the court awarded GasTOPS more than \$19.5 million - consisting of damages of \$12.3 million, pre-judgment interest of \$3 million and costs of \$4.2 million.

### **Appeal court's decision**

The employees appealed the Ontario Superior Court of Justice's decision arguing:

- two of the employees did not owe a fiduciary duty to GasTOPS
- the "accounting period" to determine the damages should not have been 10 years
- certain amounts should not have been included in calculating the amount of damages
- the employees should not be held jointly and severally liable for the damages awarded
- trial costs should not have been awarded on a full indemnity basis.

After reviewing each of the issues raised by the employees, as well as the employer's cross-appeal seeking that the employees be "permanently restricted from using the information taken in breach of confidence or should be required to disgorge (the employees') profits," the Ontario Court of Appeal found no reason to interfere with the trial judge's decision and dismissed both the appeal and cross-

appeal on all fronts.

### **What employers should know**

Although providing reasonable notice is commonly associated with the duties of an employer, this decision clearly shows there are instances when reasonable notice is also the employee's responsibility. So the decision should not be taken lightly. Both parties to an employment relationship should be aware of this decision's potential application in the employment context.

It should not be assumed by either employees or employers the usually acceptable two weeks' notice of resignation will be sufficient in every case. It must be determined whether the position from which the employee is resigning is one for which the employer would have difficulty finding a relatively quick and reasonable replacement. If so, a more reasonable amount of notice of resignation may be required.

Furthermore, the decision by the Court of Appeal reinforces that employees who violate this responsibility knowing their actions will harm the employer may be held financially accountable by the courts, and such amounts can be extreme.

It will be interesting to see whether this decision is appealed to the Supreme Court of Canada and, if so, whether it will uphold the decision, reduce the award against the employees or overturn it completely.



**Ron Minken** heads [Minken Employment Lawyers](#) – a [Global Award Winning](#) Employment Law Firm located in Markham in the Greater Toronto Area, Ontario, Canada. He is well known by clients and the business community, both nationally and in the United Kingdom and the United States, as an energetic and passionate proponent for Employment Law. He is privileged to be in the ranks of world business leaders who have been invited to speak at the [Canada-United Kingdom Chamber of Commerce](#) at the [High Commission](#) in the [Canadian Embassy in London, England](#). Ron is a regular contributor to *Magazine For Business*, *Canadian Employment Law Today*, *Canadian HR Reporter*, *The Canadian Employer*, *Canadian Safety Reporter*, *Law Times* and *HR Professional*. With almost 25 years of experience, Ron has also been recognized as one of Canada's

Top Employment Lawyers by Canadian HR Reporter in its Canada's Employment Lawyers Directory. Ron gratefully acknowledges Kyle Burgis and Sara Kauder for their assistance in preparing this article.



**Boutique Employment Law Firm of the Year in Canada**

## **Examining Organizational Ethics**

**By Susan R. Meisinger**

*A new report looks at some of the elements that motivate employees to report illegal or unethical violations at work. The findings offer some insights for HR leaders interested in creating an ethical workplace environment.*

**Start Saving!**

Membership has its privileges HRPAs combines the buying power of its more than 19,000 members with its extensive business partnerships to bring you exclusive savings at work, home and play.

Years ago, just as Enron was beginning to implode, I met two HR executives who had left the company before the scandal became apparent. When I asked them - individually - what it was like working at Enron and why they had left, they both had the same answer: They were tired of executives pulling them aside, putting an arm around them as they asked them to do something that didn't feel right, and then saying, "Come on, you want to be part of the team, don't you?"

I've often used this story when HR professionals ask me how they can create an ethical culture in an organization where they believe the top executives and/or board members are acting unethically. My advice is always the same: Leave. Despite best efforts and good intentions, no HR executive is going to be able to reshape organizational behaviors when the opposite behavior is being modeled at the top. The two executives who left Enron early - neither of whom had a new job in hand - certainly made the right career decision.

But, at the same time, each HR leader has a responsibility to actively encourage and nourish an ethical culture when it is possible to do so and even when he or she thinks it already exists. HR professionals can't assume "it goes without saying" that the workplace is ethical and that

all employees believe that. HR needs to keep saying it, and take steps to encourage employees to say something when they see something they believe to be unethical or wrong.

Since 1994, the [Ethics Resource Center](#) has conducted the [National Business Ethics Survey](#), a longitudinal research effort examining organizational ethics from the employee perspective. In 2000, ERC began asking about observations of misconduct and whether those observations were reported to an appropriate person who could help address the situation. The most recent *NBES* reveals that, over the past two years, nearly half - 45 percent - of U.S. employees have observed illegal or unethical behavior at work, and 65 percent of them reported the wrongdoing.

That's an all-time high, but while it may sound like good news, is it really? It still means that more than one in three people who saw misconduct decided *not* to report it to anyone. Late last month, ERC released [Inside the Mind of a Whistleblower](#), a supplement to its 2011 *NBES* report. This new report offers important insights into what motivates employees to report illegal or unethical behaviors.

Importantly, the research finds that employees are more likely to report a problem if they believe it will make a difference - that is, that something will actually happen as a result of their effort.

It can take courage to step up and say, "That's wrong!" Employees want to know that their courage will lead to some action and that their company values ethical behavior. Far more employees (72 percent) report a problem when they feel their company rewards ethical conduct; only 57 percent do so when they feel such conduct is not rewarded. Those reporting wrongdoing also need to feel a sense of safety, security and engagement.

When employees see the company as successful and financially secure, reporting rates increase. In addition, reporting employees tend to be more personally invested in their companies: 72 percent of those who are engaged or strongly engaged report ethical violations, compared to 55 percent of those who are weakly engaged or not engaged. Similarly, only 57 percent of employees who intend to stay for two years or less in a company report a problem, while 70 percent of those planning to stay three years or more do so.

The study also finds that, when an employee feels supported at work by their co-workers, professional colleagues and company resources, the likelihood increases that they will report illegal or unethical behavior. Seventy-two percent of those who agree that "my workplace is a close community" are willing to report problems, but only 58 percent of those who disagree make that choice.

These findings show there's a real opportunity to improve an organization's ethical environment by ensuring employee efforts to report problems are recognized and rewarded, by taking steps to increase employee engagement, and by helping employees feel supported and valued in the workplace - all good HR management practice. Employees want to work for ethical organizations, and many of them are courageous enough to report instances of illegal or unethical behavior. HR should make it an easy decision for them.

*Susan R. Meisinger is former president and CEO of the Society for Human Resource Management and is an author, speaker and consultant on human resource management. She is on the board of directors of the National Academy of Human Resources.*

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## Events News and Updates

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### Tuesday, June 21st – Summer Social

**Location:** Radisson Admiral, 249 Queen's Quay West, Toronto

**Time:** 5:30pm - 8:00pm

**Cost:** Members FREE\*, Non-Members \$35

Come join us as we celebrate another successful year and recognize members who have received their CHRP designation, and award our HR scholarships!

*\*A cancellation fee of \$30 will apply if you cannot attend and fail to cancel within 48 hours of the event. Members may bring one (1) guest for free.*

[Register here](#)

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### Fun and success! HRPATO Connects Tuesday, May 15<sup>th</sup> Photos:

Our HRPATO Toronto Connects Event on May 15<sup>th</sup> was held at Hot House Café and featured speaker Priya Bates, Sr. Director, Internal Communications, Loblaw Companies Ltd. Priya discussed best practices in communicating effectively for success. Thank you to our Sponsor, International Association of Business Communicators (IABC) Toronto.



## Bits & Bytes

### ■ HRPAs Career GPS for Human Resources Professionals



HRPA's Career GPS For Human Resources Professionals - Online assessment tool to help you pinpoint and track your professional development goals.

Online assessment tool to help you pinpoint and track your professional development goals. Built on HRPAs Competency Model, this tool allows you to:

- Benchmark your current ability in 85 HR competencies found in 8 human resource domains.
- Map expected HR competence levels of your current or dream job and compare results to your current ability.
- Access actions and interactions for increasing your effectiveness in any competency you choose.
- Learn about [events and programs](#) that will increase your ability to deliver on your competencies.

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### ■ Are you a CHRP Candidate looking for work experience? Have you heard about HRPAs Edge?

#### CHRP Candidates

The Certified Human Resources Professional (CHRP) designation is the gold standard of HR excellence in Canada. CHRP Candidates have completed their university or college education, including all the academic qualifications required for the CHRP. They have also passed the National Knowledge Exam, a 3-hour exhaustive test of their HR knowledge.

**HRPA Edge** is a paid internship program that connects Certified Human Resources Professional (CHRP) candidates with participating host employers who need additional resources to address, on a short-term basis, their pressing HR needs.

**HRPA** is proud to be partnering with Career Edge Organization, a national not-for-profit and leader in paid internship programs, who will administer the HRPAs Edge program. Career Edge Organization has partnered with over 1,000 organizations to place close to 11,000 interns since 1996



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### ■ HRPAs TORONTO MEMBERS: Buy tickets at 50% off for 2012 Toronto Entrepreneurs Conference

What is Canada's future?



CanadaWorks 2025



Deloitte.

What should decision-makers do today to best position Canadian workplaces for success in 2025? In this report, Deloitte Canada and the Human Resources Professionals Association (HRPA) partnered to address this question by developing detailed scenarios depicting what Canadian society might look like in 2025. The goal of this exercise was to identify strategies that address the very real problems that exist: the sustainability of our industries, the competitiveness of our firms, the quality of our employment, the inclusivity of our workplaces and our level of innovation.

# HR PROFESSIONAL HR HORROR STORIES CONTEST

Turn your best HR Horror Story into a trip for two to Orlando or Las Vegas!

Submit Your Story:



After the success of [HR Professional's 2009 HR Horror Stories contest](#), we're on the lookout again for your best HR yarns--those crazy tales from the workplace that make this profession so interesting!

Send in your HR tales from the trenches—the workplace disputes gone awry, the wardrobe malfunctions, the "courageous conversations" **by July 6, 2012** for your chance to see your story in print, plus some great prizes!

The best stories and anecdotes will appear in a future issue of *HR Professional* and the top 3 stories (as judged by you) will receive some great prizes. Please change names to protect the innocent. Anyone submitting will have their name and organization kept confidential.

Please submit your stories (a few sentences to 500 words max) to **Duff McCutcheon** at the Human Resources Professionals Association: [dmccutcheon@hrpa.ca](mailto:dmccutcheon@hrpa.ca). **Submission deadline is July 6, 2012.**

#### Prizes:

- **First:** Trip for (2) to Vegas or Orlando (winners choice). Includes airfare from Toronto and (2) nights accommodation.
- **Second:** BlackBerry PlayBook (16 GB)
- **Third:** 1-year subscription to HR Professional magazine (non-member) + 1 HRPWA webinar (for HRPWA members)

[Click Here](#) for more information



[Join the Online HR Conversation Now!](#)



## In Closing

We invite you to send us your comments, suggestions, or any information you'd like to share with your professional association.

Please visit our website [www.hrpaontario.ca](http://www.hrpaontario.ca) and contact us by email at [communications@hrpaontario.ca](mailto:communications@hrpaontario.ca)

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