

Hear about new developments and the latest strategies you need to avoid costly mistakes

# What's New in Employment Law 2013

*A comprehensive half-day update plus hands-on workshops in 3 critical areas*

Get strategic and practical advice from the experts in such key areas as:

- Assessing reasonableness in non-competition and non-solicitation covenants in view of the Court of Appeal's decision in *Martin v. ConCreate*
- Which family-related issues will likely amount to "the next frontier" in light of *Attorney General of Canada v. Fiona Ann Johnstone*
- What employers need to know about the emerging tort of "intrusion upon seclusion"
- New prospects for liability for failure to extend long-term disability benefits beyond the statutory notice period
- What workplace privacy policies should now specifically provide in relation to monitoring computer use by employees
- Changes governing employees' mitigation obligations after *Bowes v. Goss Power (C.A.)*
- The latest on defending against discrimination allegations
- Arguing the fiduciary duties of employees in the post-employment period after *GasTOPS (C.A.)*

**Plus!** Don't miss the Optional Workshops:

**A: Best Practices in Employment Terminations Today**

**B: Drafting Employment Agreements and Other Documentation to Minimize the Risk of "Six-Figure Pain"**

**C: Conducting Workplace Investigations to Minimize Risk Effectively**

## Chair

Stuart E. Rudner, Rudner MacDonald LLP



### DATE & TIME

Wednesday, May 15, 2013  
9:00 a.m. - 12:15 p.m. EDT/EST

### OPTIONAL WORKSHOPS

Wednesday, May 15, 2013  
1:00 p.m. - 5:00 p.m.

Thursday, May 16, 2013  
9:00 a.m. - 12:00 p.m.  
1:00 p.m. - 4:00 p.m.

### LOCATION

Osgoode Professional  
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# What's New in Employment Law 2013

*A comprehensive half-day update plus hands-on workshops in 3 critical areas*

**Get the latest law on legal obligations and risks**

**“Very practical – excellent speakers”**

**Rajeev Sharma**  
Vice President  
General Counsel &  
Corporate Secretary  
Ricoh Canada Inc.

**E**mployment law continues to develop at a rapid pace. A plethora of recent court cases and human rights decisions, in areas including the rise of accommodation requests based on family status and employee social media activity, means that employers and their representatives will be grappling with new and demanding workplace employment law issues in the coming year.

This *Osgoode Professional Development* program will provide you, in one information-packed half-day, with the latest law, strategies, tips and tools that you will need to be fully informed about recent developments and ready to minimize claims and reduce liability.

If you are a human resources professional, in-house counsel, an employer, manager or lawyer in private practice, don't miss this opportunity to get a comprehensive update and practical advice on the employment law issues most likely to hit your desk this year.

**Plus**, take advantage of the Optional Workshops which will provide in-depth instruction in the following areas:

**A. Best Practices in Employment Terminations Today**

**B. Drafting Employment Agreements and Other Documentation to Minimize the Risk of “Six-Figure Pain”**

**C. Conducting Workplace Investigations to Minimize Risk Effectively**

**Register now by visiting** [www.osgoodepd.ca](http://www.osgoodepd.ca), **calling** 416.597.9724 **or** 1.888.923.3394, **emailing** [opd-registration@osgoode.yorku.ca](mailto:opd-registration@osgoode.yorku.ca) **or faxing** 416.597.9736.

## Chair

**Stuart E. Rudner**, Rudner MacDonald LLP

## Faculty

**Lauren M. Bernardi**  
Bernardi Human Resource Law LLP

**Sarah C. Crossley**  
Norton Rose LLP

**Barry Fisher**  
Barry Fisher Arbitration & Mediation

**P.A. Neena Gupta**  
Gowling Lafleur Henderson LLP

**Peter Israel**  
Israel Foulon LLP

**Anthony Kunkel**  
General Manager, Mitchell Partners  
Investigation Services

**Lorenzo Lisi**  
Aird & Berlis LLP

**Natalie C. MacDonald**  
Rudner MacDonald LLP

**Catherine M. Milne**  
Turnpenney Milne LLP

**Ronald S. Minken**  
Minken Employment Lawyers

**Edward Nagel**  
Nagel & Associates, Forensic Accountants

**Elaine Newman**  
Arbitrator

**Lior Samfiru**  
Samfiru Tumarkin LLP

**Lisa Stam**  
Baker & McKenzie LLP

**Loreta R.E. Zubas**  
Zubas & Associates

# Agenda

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Wednesday, May 15, 2013

**8:30 Registration and Continental Breakfast**

**9:00 Chair's Welcome and Introductory Remarks**

Stuart E. Rudner, Rudner MacDonald LLP

**9:05 What's New in Human Rights**

Lorenzo Lisi, Aird & Berlis LLP

Catherine M. Milne, Turnpenney Milne LLP

- Recent law on accommodating disability, family status and other protected grounds
- Defending against allegations of discrimination – proving a negative
- What happens when a complainant breaches a confidentiality provision of the settlement?
- Update on damages in human rights claims

**9:40 What's New Regarding Workplace Violence, Harassment & Bullying**

Elaine Newman, Arbitrator

- Recent cases dealing with how employers should respond to threats in the workplace

**10:15 Refreshment Break**

**10:30 What's New Regarding Social Media, Technology and Privacy in the Workplace**

Lisa Stam, Baker & McKenzie LLP

- Employees' expectation of privacy as a core concept threading its way through the fast-developing social media caselaw
- The decision in *Jones v. Tsige*, the decision in *R. v. Cole* and the new tort of "intrusion upon seclusion"
- You can't take it with you – or can you? Legal issues associated with BYOD policies permitting employees to access proprietary company information on their personally owned tablets, smartphones, etc.
- Who owns the work-generated content on the employee's personal technology following his or her departure?
- The latest on discipline and terminations in relation to the employee's use of social media

**11:00 What's New Regarding the Duties of Departing or Departed Employees**

Lior Samfiru, Samfiru Tumarkin LLP

- The *GasTOPS* decision and others relating to restrictive covenants and fiduciary duties
- Duty to give notice of resignation

**11:30 What's New in Terminations**

Natalie C. MacDonald, Rudner MacDonald LLP

- Recent case law dealing with disability benefits during a notice period
- Current scope of the employee's duty to mitigate
- The relevance of the employee's position in the assessment of the notice period
- "Six-figure pain": recent cases in which employers have been found failing in their duty to investigate properly before dismissing employees; *Wal-Mart*, *Higginson*, etc.
- Extraordinary damages
- Just cause roundup – fraudulent expenses, insubordination, misuse of social media and technology as a basis for just cause

**12:15 Program Ends**

**Optional Workshop A**

***Best Practices in Employment Terminations Today***

**Wednesday, May 15, 2013: 1:00 p.m. - 5:00 p.m.**

***Note: Webcast attendance is not available for the workshops.***

**Barry Fisher, Barry Fisher Arbitration & Mediation  
Peter Israel, Israel Foulon LLP**

Returning for the fourth time and further expanded, this acclaimed workshop provides the tools needed by HR professionals and their legal advisers in this liability-laden, still-evolving area of law. You will be better enabled to avoid costly errors and to address the issues surrounding termination with the best strategies available. More specifically, you will learn:

- What are the statutory requirements for lawful terminations?
- The do's and don'ts of drafting termination letters – and how what to leave out is as critical as what to put in

# Agenda

- How to go about structuring a severance package, and how to deal with claims for bonus, commissions, pension plans, and life and health insurance benefit extensions
- What are the important considerations when dealing with large-scale employment terminations?
- Releases that work: how to draft an effective release and waiver of claims. What effect does a release have in the context of a human rights complaint?
- Best practices for navigating the minefield of the termination interview
- How to deal with requests for references
- What is the role of arbitration and mediation in the termination context, and what key principles govern their effective use?

## 5:00 Workshop A Concludes

**Thursday, May 16, 2013**

## 8:30 Registration and Continental Breakfast

### Optional Workshop B

#### ***Drafting Employment Agreements and Other Documentation to Minimize the Risk of "Six-Figure Pain"***

**Thursday, May 16, 2013: 9:00 a.m. - 12:00 p.m.**

*Note: Webcast attendance is not available for the workshops.*

**P.A. Neena Gupta**, Gowling Lafleur Henderson LLP

**Ronald S. Minken**, Minken Employment Lawyers

**Loreta R. E. Zubas**, Zubas & Associates

Counsel (for both management and employees) grapple on a day-to-day basis with the challenges of making and amending employment agreements. This workshop, led by outstanding counsel, will enable you to maximize the value of the employment contract as a strategic tool for managing risk. Areas covered include:

- Improving on standard precedents in such critical areas as confidential information, conflicts of interest and obligations of the parties in the event of termination
- Managing organizational change and amending work terms without triggering allegations of constructive dismissal
- Making the nexus between the employment contract and organizational policies effective

You'll come away from this workshop secure in the knowledge that you have an enhanced grasp of the best current thinking on the employment-agreement-related questions that matter most.

### Optional Workshop C

#### **Conducting Workplace Investigations to Minimize Risk Effectively**

**Thursday, May 16, 2013: 1:00 p.m. - 4:00 p.m.**

*Note: Webcast attendance is not available for the workshops.*

**Lauren M. Bernardi**, Bernardi Human Resource Law LLP

**Sarah C. Crossley**, Norton Rose LLP

**Anthony Kunkel**, General Manager  
Mitchell Partners Investigation Services

**Edward Nagel**, Nagel & Associates  
Forensic Accountants

When faced with allegations of employee workplace misconduct, are you equipped to conduct a proper and effective workplace investigation? Are you aware of the current law governing the process and the pitfalls that lie in wait? HR departments and counsel who get it wrong can trigger severe consequences. In this workshop, expert faculty (both counsel and investigators) will give you practical advice, strategies, tips and tools for carrying out effective investigations in ways that anticipate, avoid and/or manage critical risks. Areas to be covered include:

#### **Designing The Investigative Process**

- Objectives of the investigation
- Role of the investigator and attributes of effective investigators
- Role of other advisors

# Agenda

## Pre-Investigative Steps

- Getting it in writing
- Benefits of a proper complaint
- Preparing the investigation plan
- Notifying the parties
- Key documentation

## Interviewing

- Do's and don'ts
- Active listening skills
- What to tell the complainant, respondent and witnesses
- Creating questions
- When people are reluctant to complain and why
- Confidentiality and the interview
- Identifying internal biases
- Treatment of possibly off-the-record statements

## Making a Finding

- One person's word against another
- Assessing credibility
- The burden of proof
- Similar fact evidence
- Preparing the report

## After a Finding

- Remedies to consider
- What if the complainant is malicious?
- Repairing strained relationships
- Preventing retaliation and further incidents

## What past attendees of our Employment Law programs have said:

*“Very helpful. Knowledgeable speakers. Highly recommended for HR professionals and legal counsel”*

Jason Lakhan, Senior Legal Counsel, Ricoh Canada Inc.

*“Excellent...[The speakers] know what's happening and speak from a position of credibility and knowledge”*

Leslee Wills, Director, Human Resources, Maple Leaf Consumer Foods

*“Very informative. The speakers...did an excellent job engaging the audience”*

Shelley Phillippe, Human Resources Manager, Invotronics Inc.

*“[The speakers] were all excellent!...all very much to the point..[the materials were] complete and generous”*

Thérèse Laberge, Senior Counsel, Departmental Legal Services  
Department of Justice

*“Materials excellent - will be a very useful tool. All speakers excellent, covered topics well”*

Katrina Swan, Legal Counsel, Office of the City Solicitor  
City of Regina

## Who Should Attend

- Human Resources Professionals
- Senior Managers and Supervisors
- Attendance and Accommodation Managers
- In-House Counsel
- External Counsel who represent employers and/or employees
- Human Resources Consultants
- VPs, Directors and Business Owners
- Arbitrators and Mediators

# Registration

Please complete all registrant information.

**Comprehensive coverage of the key developments in employment law over the past year**

## Employment Law 2013

Conference  Workshop A  Workshop B  Workshop C

I will attend:  On site  Via webcast (single viewer - conference only)

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### Fee Per Delegate

**Conference only: \$395 plus 13% HST for a total of \$446.35.**

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**Conference plus two workshops: \$945 plus 13% HST for a total of \$1067.85.**

**Conference plus three workshops: \$1145 plus 13% HST for a total of \$1293.85.**

Fees include attendance, program materials, continental breakfast, lunch (conference only) and break refreshments. Group discounts are available for both on site and webcast participants. Visit [www.osgoodepd.ca](http://www.osgoodepd.ca) for details. Please inquire about financial assistance and CPD credits.

### Interested in Custom and In-house Programs?

Osgoode Professional Development also offers many of its programs in-house and can customize some programs to your specific needs. If you would like further information, please contact Heather Gore, Program & Business Development Lawyer, at 416.597.8847 or [custom@osgoode.yorku.ca](mailto:custom@osgoode.yorku.ca) or visit [www.osgoodepd.ca](http://www.osgoodepd.ca).



### CPD Credits

**LSUC (ON) CPD:** Pending for the course and workshops. **Quebec/BC/Manitoba/New Brunswick/NWT/Nunavut/PEI and Saskatchewan:** 3.0 CPD/MCLE credit hours towards professional development requirements (3.5 credit hours for workshop A; 2.75 credit hours for workshops B & C). **NSBS CPD:** 3.0 credit hours for the course (4.0 credit hours for workshop A; 3.0 credit hours for workshops B & C); **NY CLE Board (on-site participants only):** 3.5 credit hours for the course (3.5 credit hours for workshop A; 3.0 credit hours for workshops B & C) in the Area of Professional Practice for transitional and non-transitional lawyers. Also eligible for CLE/Insurance Premium Credits Program offered by the **Law Society of PEI** and for Alberta CPD credit with the **Law Society of Alberta**. Questions? E-mail: [cpd@osgoode.yorku.ca](mailto:cpd@osgoode.yorku.ca) or refer to the program website.

### Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

### Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

## Registrant Information

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Firm/Company: \_\_\_\_\_

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### Dates & Times

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**9:00 a.m. – 12:15 p.m. EDT/EST**

#### Optional Workshops:

**A – May 15, 2013: 1:00 p.m. – 5:00 p.m.**

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**C – May 16, 2013: 1:00 p.m. – 4:00 p.m.**

Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

### Location

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[www.osgoodepd.ca](http://www.osgoodepd.ca)
- FAX** your registration to  
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