

HR

PROFESSIONAL

RE-EVALUATING REASONABLE NOTICE FOR OLDER EMPLOYEES

How
redefining
“senior” is
redefining
reasonable
notice in the
workplace



**IMMIGRATION:
THE NEW NORMAL**

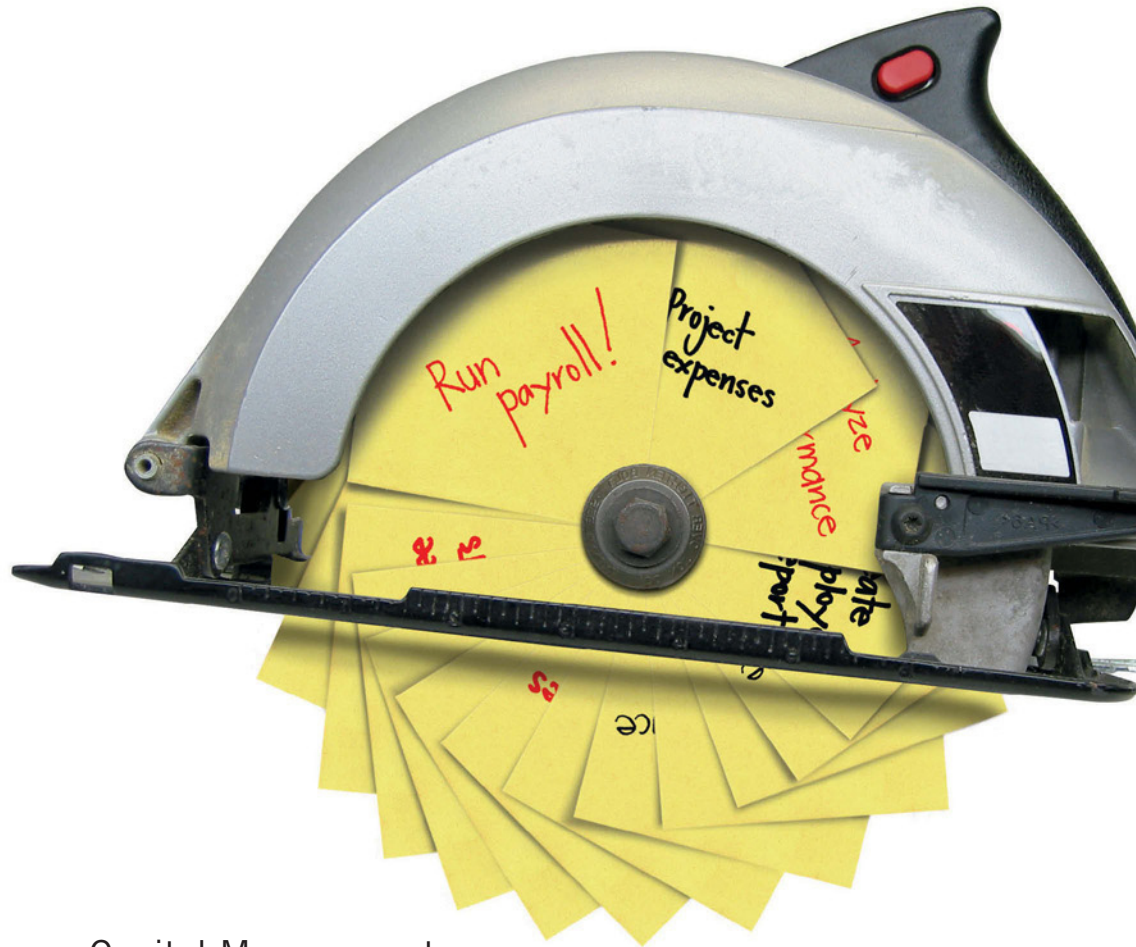
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CONTENTS



VOLUME 28/NUMBER 7

OCTOBER 2011



FEATURES

20 Re-evaluating Reasonable Notice for the Older Employee

How redefining “senior” is redefining reasonable notice in the workplace.

By Melissa Campeau

38 HR-101: Unlocking the Potential of Flexible Benefit Programs

One-size-fits-all plans simply won't do the job as demographics and costs change.

By Gord Simle

45 Immigration: The New Normal

Lawyer Evelyn Ackah discusses Canada's aging population, and why we must aggressively recruit foreign workers.

By Laurie J. Blake

DEPARTMENTS

CONTRIBUTORS 8

EDITOR'S LETTER 10

LEADERSHIP MATTERS 13

Futureproofing the HR Profession

LEGAL 19

Social media: new challenges & risks for employers, Part 1

FINANCE 30

Analysis of data essential for operational decisions

HUMAN CAPITAL 33

Are you executive level material?

OFF THE SHELF 51

Latest book reviews

TECHNOLOGY 54

How to identify a competent IT Architect

UPFRONT

The latest human resources news 14



Cover image: ©www.shutterstock.com

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OCTOBER 2011



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Laurie Jessome is a partner at Cassels Brock & Blackwell LLP. She provides advice to, and advocates on behalf of, employers on all aspects of the employment relationship. She is also involved in workplace safety matters and workplace investigations. Her legal column appears on page 19.



BERNIE KEIM

Bernie Keim is vice-president, member services and regulatory affairs at CGA Ontario. He penned “Operational Risks Unavoidable – Analysis Prudent,” for the magazine’s recurring finance column, on page 30.



GORD SIMLE

Gord Simle, a partner in Morneau Shepell’s Calgary office, has over 30-years’ experience in group benefits consulting. He has in-depth expertise in plan design, underwriting and financial management of group benefit programs. He discusses the need to re-examine the definition of flexible benefits, on page 38.



JEAN KELLEY

Jean Kelley is the founder of Jean Kelley Leadership Alliance. Her work there, coupled with her books, “Dear Jean: What They Don’t Teach You at the Water Cooler,” and “The Get a Job Keep a Job Handbook,” has earned her the name “North America’s workplace coach.” Learn how to play the executive game, on page 33.



“Zero”

The number of hours that are left before the first wave of Canadian Baby Boomers begin to retire

You can't ignore the numbers. With the first wave of Baby Boomers beginning to retire this year and millions more set to retire in the next few years there will soon be an unprecedented flood of Canadians leaving the workforce. Contact us today to learn how we can help your retirees gain the crucial health and dental coverage they need, so they can enjoy the same type of security they enjoyed while working – all at no cost to you and with no administration. After all they've done for your organization, you'll feel better knowing that you've done the right thing for them. And, your bottom line.

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EDITOR'S LETTER

HR PROFESSIONAL

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WHAT GOES AROUND, COMES AROUND

I firmly believe that neither time nor history is linear. No, indeed, they are circular and you do get the chance to have “do overs.” Here I am again (for those of you who may recognize me from *Workplace News* days), happily filling the editor’s chair of a national magazine for HR professionals, contemplating the best ways to ensure our editorial/writing team brings you, our readers, the best and latest information to help you meet the challenges of the global workplace.

And, here I am, 30 years out of university (gulp) getting my oldest daughter ready for her freshman year at the University of Guelph. It may be her time, but it’s so energizing thinking about her upcoming university life and the challenges and adventures ahead of her. I think I’m enjoying all of it more this time around.

Of course, the downside to “do overs” is that we often repeat the not-so-good times as well. The news on the radio could be a rehash of the fall of 2008, with tales of more economic woes and rapid market fluctuations. And, what about those London riots, shades of the late 70s/early 80s – a little Clash, anyone?

I may be dating myself, but guess what: according to writer Melissa Campeau’s research for our cover story on reasonable notice, I and my fellow boomers represent some 45 per cent of the Canadian population. As it has since the 60s, this huge population wave has had a dramatic impact on the workforce, lifestyle trends and economics. Now that the boomers are heading into what used to be called “the golden years,” we’re changing what it means to be a senior citizen. Check out Melissa’s article and discover, as she did, how redefining “senior” is redefining reasonable notice in the workplace.

And, as the boomers head toward retirement, who will replace them in the workplace? Immigration lawyer Evelyn Ackah brings a fresh perspective on changes to the Temporary Foreign Workers Program, and talks about Canada’s need to aggressively recruit skilled and professional workers, wherever they are.

Of course, boomers aren’t the only generation leaving their mark on the workplace. Employment lawyer Laurie Jessome offers case studies and a number of helpful tips about how to address the use of social media in your organization.

As always, I’m interested in hearing your take on what’s happening in the HR field, and about the articles appearing in *HR Professional*. Check out our website, www.hrpromag.com, for my contact information.

Cheers,

Laurie

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LEADERSHIP MATTERS

BY DAPHNE FITZGERALD, CHRP, SHRP

FUTUREPROOFING THE HR PROFESSION

CONSIDER THIS: ACCORDING TO RECENT PREDICTIONS BY STATISTICS CANADA, BETWEEN 2021 AND 2026, CANADA'S LABOUR FORCE GROWTH WILL SLOW TO AROUND 0.2 – 0.7 PER CENT PER YEAR THANKS TO RETIRING BABY BOOMERS.

By 2031, when all of Canada's baby boom generation has reached retirement age, StatsCan predicts a labour force participation rate of just 63 per cent.

Obviously this will have big implications on organizations and the HR profession in particular. Over the next 20 years, the war for talent, especially for the highly skilled individuals needed to compete in a knowledge economy will be acute. And, Canadian organizations won't just be competing for these brains with their competitors across town—they'll be fighting for talent with organizations from around the world.

But looming talent shortages are just one piece of a workplace revolution set to engulf Canadian organizations over the next couple of decades. HR professionals face forces—economic, demographic, technological, social, and environmental—that will fundamentally shift everything we take for granted about employees, work and organizations. If we are to meet these changes successfully, and build Canadian organizations that are equipped to compete, and, indeed, harness these forces to our advantage, then we need to build a new kind of HR profession that marries business savvy and strong analytical skills with human resources skills and knowledge.

A new kind of HR

In June, the Human Resources Professionals Association (HRPA) hosted its first HR Symposium—a special event to initiate dialogue between the Association and the HR academic community.

The event hosted about 25 HR academics from Ontario colleges and universities and featured a presentation on demographics and Canada's future by economist and *Boom, Bust and Echo* author David Foot. Its aim was to get HRPA, the members and organizations it represents and HR

academics working together to prepare the next generation of HR professionals for the massive changes workplaces will be facing in the coming decades.

Futureproofing the profession will require updated HR curricula at Ontario schools informed by business needs and which reflect not just current requirements but those anticipated. Just as we at HRPA must use Canada's future business needs to create professional development that ensures our members can tackle these challenges, so must Canada's Human Resources College and University faculties develop HR programs that build the next generation of professionals.

And HRPA is in the unique position of acting as a conduit—working between academia and Canadian HR leaders and organizations to channel business wants and needs to help build HR programs for our up-and-coming HR leaders.

In between the foundation that Canada's human resources schools provide at the beginning of a young professional's career, and HRPA's certification and ongoing professional development that follows, we can build a profession that not only understands the issues and challenges facing Canadian organizations in the 21st century, but can turn them to their advantage.

HRPA looks forward to the beginning of a longstanding and productive dialogue between the Association and our membership and the academic community. **HR**



Daphne Fitzgerald, CHRP, SHRP is Chair of the Human Resources Professionals Association (HRPA).

IS YOUR REWARD PROGRAM FAIR?

A RECENT RESEARCH REPORT, "REWARD FAIRNESS: SLIPPERY SLOPE OR MANAGEABLE TERRAIN?", BY WORLDATWORK, HAY GROUP AND LOYOLA UNIVERSITY CHICAGO PROFESSOR OF HUMAN RESOURCES, DOW SCOTT, PH.D., REVEALS THE TOP FIVE CONCERNS IN REWARD FAIRNESS TODAY. IT ALSO IDENTIFIES THE CRITERIA THAT HAVE THE BIGGEST IMPACT ON EMPLOYEE PERCEPTIONS OF REWARD FAIRNESS, AND UNCOVERS WHAT WORKS – AND WHAT DOESN'T – IN IMPROVING PERCEPTIONS OF FAIRNESS.

THE TOP FIVE CONCERNS IN REWARD FAIRNESS ARE:

1. CAREER DEVELOPMENT OPPORTUNITIES
2. MERIT INCREASES
3. BASE PAY AMOUNTS
4. NON-FINANCIAL RECOGNITION
5. EMPLOYEE DEVELOPMENT/TRAINING

THE TOP THREE CRITERIA THAT IMPACT REWARD FAIRNESS ARE:

1. INDIVIDUAL PERFORMANCE
2. WORK RESPONSIBILITIES
3. OVERALL ORGANIZATION PERFORMANCE

WHEN ASKED WHAT WORKS PARTICULARLY WELL IN IMPROVING THE PERCEPTIONS OF REWARD FAIRNESS IN ORGANIZATIONS, RESPONDENTS OVERWHELMINGLY IDENTIFIED EFFECTIVE REWARD COMMUNICATIONS, FOLLOWED BY EXTERNAL BENCHMARKING, REWARD STRATEGY AND DESIGN, AND NON-FINANCIAL RECOGNITION PROGRAMS.



Source: Business Wire/
WorldatWork/Hay Group

HRPA members say Human Rights Tribunal mandate needs to be reviewed

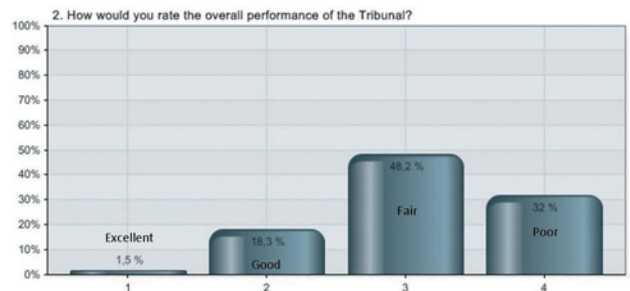
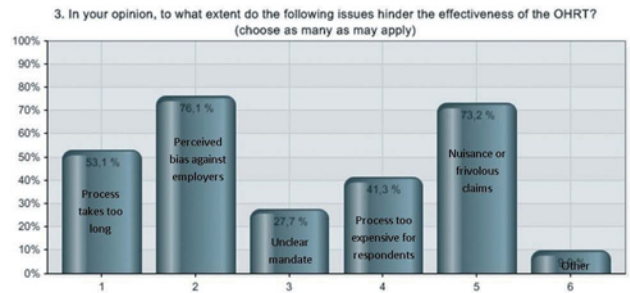
Almost one-third of HR professionals (32 per cent) recently surveyed by the Human Resources Professionals Association (HRPA) rated the overall performance of the Ontario Human Rights Tribunal as poor. Some 48.2 per cent said it's fair, 18.3 per cent said it is good and 1.5 per cent said it is excellent. A strong majority (81.7 per cent) of respondents said the HRTO's mandate needs to be reviewed.

The quality of the adjudicators and mediators is unpredictable, said one respondent, which pressures employers to settle monetarily for certainty. There is also no opinion about the frivolousness of claims until it's too late in the process, said another.

"The reverse burden of proof and the assumption of guilt on the part of the accused make it a kangaroo court that is a disgrace to our justice system," said one HR professional.

A mandatory pre-screening process for all complaints was the most popular (89.6 per cent) way to fix the HRTO, found the survey, followed by specially trained judges, similar to those in family law courts, a move towards an evidence-based system (75.9 per cent), new standards so the tribunal uses rules similar to the courts (47.2 per cent) and reversing the decision to bring back the \$10,000 cap on damages the HRTO could award for mental anguish (36.3 per cent).

When it comes to expenses, 62.1 per cent of respondents said employers should not have to fund their defence when human rights complainants receive legal aid free. One-quarter (24.2 per cent) said the current system is okay, while 13.7 per cent were unsure.



Almost all (87.4 per cent) HR professionals feel the government should conduct a follow-up review of the HRTO and 30.5 per cent feel the tribunal should be dismantled (though 41.2 per cent disagree and 28.3 per cent are unsure).

"The (tribunal) serves an important purpose but the reputation is, it has a red carpet roll out for complaints and a built-in bias for the employer," said one respondent.

"I don't think it needs to be dismantled, it just needs to be overhauled," said another.

Source: HRPA, with files from the Canadian HR Reporter.

NEW HRPA Certificate Programs

The Human Resources Professionals Association (HRPA) has partnered with several Canadian experts on a series of Certificate Programs for its 2011-12 professional development calendar.

The comprehensive, multi-day programs including—certificates in HR Law, Labour Relations, Innovation, Leadership, Executive Compensation, Project Management, Strategic HR and HR Metrics—are quite intensive and perfect for individuals looking to develop and certify skill-sets in core HR and leadership disciplines.

Upcoming Certificate Programs include:

- Labour Relations – starting October 4. With Scott & Associates Inc.
- HR Law for HR Professionals – starting October 5. With Osgoode Hall Law School
- Strategic HR: Delivering Business Results Certificate – starting October 12
- Comprehensive Project Management Certificate Program – starting October 24
- Innovation Skills For Leaders Certificate – starting November 9
- The Leadership Suite – several modules through Fall 2011 and Winter 2012. With Forrest & Company Ltd.
- Accredited Executive Compensation Program – starting October 5
- Workforce Analytics (HR Metrics) Certificate – coming soon

For more information, please visit www.hrpa.ca/certificate.



NO SMELLY LUNCHES ALLOWED

INTERNATIONAL MINING GIANT BHP BILLITON HAS DEFENDED AS "EFFECTIVE" ITS STRICT OFFICE ETIQUETTE POLICY, WHICH BANS WORKERS FROM EATING PUNGENT FOOD, THROWING JACKETS ON THEIR CHAIRS OR LEAVING POST-IT NOTES ON THEIR MONITORS OR KEYBOARDS AFTER HOURS.

THE COMPANY OUTLINED ITS "OFFICE ENVIRONMENT STANDARD" IN A MEMO EMAILED TO EMPLOYEES IN BRISBANE THIS MONTH. THE ETIQUETTE MEMO STATES:

- OTHER THAN WORKSTATION IDENTIFICATION AND FIRST AID OR FIRE WARDEN SIGNAGE, NOTHING IS TO BE PLACED ON WORKSTATION DIVIDERS, WALLS OR DOORS AT ANY TIME;
- ADDITIONAL CLOTHING MUST BE STORED IN DESIGNATED STORAGE AREAS DURING THE WORKDAY AND NOT ON CHAIRS OR AT WORKSTATIONS;
- FOOD MUST NOT BE EATEN AT YOUR WORK STATION;
- FOOD THAT EMITS STRONG ODOURS IS NOT ALLOWED AT ALL;
- MOBILE PHONE RING TONES KEPT AT LOW VOLUME AND FORWARDED TO VOICE MAIL WHEN OUT OF OFFICE; AND
- NO IPOD OR MP3 PLAYERS TO BE USED IN THE OFFICE. EMPLOYEES' CLEANLINESS IS MONITORED BY THE OFFICE CLEANERS. THE TONE AND VOLUME OF EMPLOYEES' VOICES AND THEIR LANGUAGE IS SUPERVISED BY SENIOR COMPANY EXECUTIVES. NO EMPLOYEE COMPLAINTS HAVE YET BEEN RECEIVED.

Source: Sydney Morning Herald/
Brisbane Times

4 REAL-LIFE "HORRIBLE BOSSES" TYPES

WHILE MANY BOSSES ON TV AND IN THE MOVIES MAY BE OVERTHE-TOP, REAL PEOPLE DO HAVE REAL GRIPES WITH THEIR REAL BOSSES. CONSIDER SOME TYPICAL BOSS BEHAVIOUR REPORTED IN THE OFFICE PULSE: HEADING OUT FOR LUNCH (56%), WORK-TIME GABFESTS WITH FAMILY AND FRIENDS (45%), PLANNING PARTIES AND GETAWAYS (42%), RUNNING ERRANDS (30%) AND SKIPPING OUT EARLY (10%). UNLIKE THE PICTURE PAINTED BY JENNIFER ANISTON'S MOVIE CHARACTER, ONLY A SMALL PERCENTAGE OF EMPLOYEES (3%) INDICATED THEIR BOSSES ENGAGED IN SEXUAL ACTIVITY DURING THE WORKDAY.

HERE ARE FOUR OF THE COMMON TYPES:

1. THE "TIME IS MONEY" BOSS

OVERWORKS EMPLOYEES BECAUSE THEY RELY ON THEM TOO MUCH, TENDS TO MAKE THEM FEEL LIKE THEY ARE SQUEEZED AND MUST FOCUS ONLY ON WHAT IMPACTS THE BOTTOM LINE.

2. THE "WORKAHOLIC" BOSS

WORKS SO MUCH AND TENDS TO BE COMPELLED TO DO ALL OF THE WORK HIMSELF, LEAVING EMPLOYEES TO FEEL MICROMANAGED.

3. THE "JUDGE AND JURY" BOSS

SPENDS A LOT OF TIME TAKING LUNCH, MAKING PERSONAL CALLS WHILE IN THE OFFICE OR RUNNING ERRANDS - PASSING JUDGMENT ON THOSE IN THE OFFICE. EMPLOYEES MOST AFFECTED BY THESE BOSSES HAVE NO WORK LIFE BALANCE AND ARE VERY UNHAPPY WITH THEIR LIFE, ARE GENERALLY BETWEEN 35-54, WORK IN A SMALL OFFICE AND/OR MAKES BETWEEN \$40-\$75K.

4. THE "EMPTY SUIT" BOSS

AN UNPRODUCTIVE BOSS MAY OR MAY NOT BE EASY TO SPOT BECAUSE THEY TEND TO BE OUT OF THE OFFICE A LOT AND MIGHT BE ONE OF THE EASIEST TO DEAL WITH. HE OR SHE MAY LEAD YOU TO EXCESSIVE DRINKING.

Source: Office Pulse



Over-qualified immigrants at risk of poorer mental health

Many recent immigrants end up in jobs for which they are over-qualified, putting them at risk of poorer mental health within a relatively short period of time, according to a recent study from the Institute for Work & Health. This is a concern, given that about half of recent immigrants who are working end up in jobs for which they are over-qualified.

Immigrants were considered over-qualified if the skills required in their current job in Canada were lower than their level of education, or lower than the skills required in their previous job before arrival in Canada or expected job when they decided to immigrate. The study found that about 52 per cent of these immigrants were over-qualified based on their education levels, 44 per cent based on their experience and 43 per cent based on their expectations.

Moreover, immigrants who were over-qualified in any of these three ways reported declines in their mental health over the four-year period (although not in their general health), and this decline

could be traced to their general dissatisfaction with their job situation.

"Canadian immigration policy selects highly skilled, healthy immigrants to be admitted into this country," says IWH Research Associate Cynthia Chen, the lead author of the study. "Without proper recognition and use of their foreign educational credentials and work experiences, it is unlikely that new immigrants will achieve their potential in the Canadian labour market."

She points out that immigrants receive very little information when applying to come to Canada about the types of work they are likely to end up in and how long they may remain in jobs for which they are over-qualified.

"Immigrants should be made more aware of these challenges when they apply to move to Canada," Chen says, "because this study shows that unmet job expectations increase the risk of a decline in mental well-being over a relatively short time."

HR

Source: At Work (Spring 2011); Institute for Work & Health



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SOCIAL MEDIA NEW CHALLENGES AND RISKS FOR EMPLOYERS – PART 1

Ten years ago, the Internet was mostly a collection of stand-alone sites containing information carefully selected by the website owner. Today, it's become a publishing platform for anyone with a computer or a smartphone. While this ability to access and publish information is usually viewed as a positive development, it does present challenges for employers.

Very little of the Internet is monitored in any way, allowing anyone with Internet access to publish anything – often anonymously. Broadly speaking, there are two types of inappropriate content that can cause damage and disruption to your workplace: unauthorized and inappropriate disclosure of confidential or private information belonging to the company or, worse, to its customers; and disparaging comments about your company or any of its products and employees or customers.

Most employers have procedures in place to protect their trade secrets and proprietary information, including customer lists, trade secrets, know-how, strategic plans, marketing strategies, and research and development. Employees are frequently asked to sign confidentiality agreements; access to key company information is usually restricted to those who are on a “need to know” basis. However, not all sensitive information is under lock and key. Employees can easily leak confidential information on many different modes of communication on the Internet, such as blogs, chat rooms, social networking sites and message boards.

Even in the absence of any malice or intentional disclosure, careless blogging about ongoing work projects could contain unauthorized disclosure of confidential client or company plans. The most famous example of this phenomenon occurred in March 2010, when the Israeli Defense Forces reportedly called off a planned air strike on the Gaza strip because a member of the Israeli forces posted the following on his Facebook page: “On Wednesday we clean up Qatanah, and on Thursday, god willing, we come home.”

A less extreme but still disturbing example can be found in *Chatham-Kent (Municipality) v. CAW-Canada, Local 127* [2007] OLAA No. 135. The arbitrator considered whether the employer, a municipal nursing home, had just cause to terminate an employee who had blogged about her experiences as a personal care worker for the aged residents.

The employer asserted that the employee's breach of her confidentiality agreement, insubordination and conduct unbecoming a personal care worker constituted just cause for the termination of her employment. The employee was severed after the nursing home discovered that she had created a blog that was available to anyone with Internet access, in which she published resident information and pictures without first obtaining the consent of the residents. The employee had also posted commentary disclosing and occasionally mocking the resident's medical conditions and complaining about her allegedly unfair and incompetent managers. Her blog entries also included her supervisor's first name and initials. When confronted with the blog entries, the employee said she had believed them to be private and only accessible to her friends.

The arbitrator held that the employee's comments regarding her co-workers and supervisors were insolent, disrespectful, contemptuous of management and a clear attempt to undermine the reputation and authority of management at the nursing home. The arbitrator also held that the employee's postings regarding the resident's care, condition and images also clearly constituted a breach of the confidentiality agreement she had signed upon accepting employment.

Further, even if the employee had mistakenly thought that the blog was private, which was doubtful, she had a duty to exercise due care when setting it up and should have reviewed the “Permissions” settings carefully. In light of the clear breach of the confidentiality agreement, the disparaging comments made about the nursing home and its staff and the employee's lack of diligence in safeguarding resident information, the nursing home had just cause to terminate the employment relationship.

Although the arbitrator in *Chatham-Kent* placed a great deal of significance on the existence and specific terms of the confidentiality agreement between the employee and the nursing home, the lack of such an agreement will not be fatal to any employer seeking to justify terminating an employee who engages in similar conduct. Employees owe a duty of good faith and loyalty to their employers that prohibits them from using or disclosing confidential information or from engaging in behaviour that causes, or may cause, harm to the employer. **HR**

Laurie Jessome is a partner with Cassels Brock & Blackwell LLP.

RE-EVALUATING REASONABLE NOTICE FOR THE OLDER EMPLOYEE

How redefining “senior” is redefining
reasonable notice in the workplace

BY MELISSA CAMPEAU



NOT TOO LONG ago many of us had a particular – and unflattering – impression of what

it meant to be a senior: increasingly diminished, physically frail and thankfully retiring into the world of golf games and senior socials.

But as boomers approach the traditional retirement age, many are turning that image on its head. Today's senior population is increasingly fit, healthy, fully engaged in their communities and careers, and not necessarily in a rush to leave the workforce. And now that the mandatory retirement age has been lifted in most provinces in Canada, their employment will not necessarily have to end at 65.

This may be a welcome change for those who want or need to stay employed beyond 65. But how will the influx of this new breed of senior affect the landscape of the workforce and the nature of “reasonable notice” when an employer wants to terminate an older worker?

THE BARDAL FACTORS

Conversations with lawyers about employee terminations will often reference *Bardal* – a 1960 Ontario Court decision of *Bardal v. Globe and Mail*. This decision laid out four elements to help define (case by case) what reasonable notice for a terminated employee might be. Namely, it cited character of employment, length of service, age of the employee and the availability of similar employment.

“Over time, each of the *Bardal* factors have been questioned and debated,” says Stuart Rudner, a partner in Miller Thomson’s Labour & Employment Law Group. “For example, the age factor has been used to suggest that those who are closer to traditional retirement age will find it harder to find new work,”



he says, referring to the belief that potential employers may engage in age discrimination when hiring.

“Others have argued that those individuals would not have worked much longer anyway,” points out Rudner, “so the applicable notice period should be shorter.”

THE NEW GOLDEN YEARS

Possibly thrusting the *Bardal* age factor into further debate is evidence suggesting the senior population in Canada is evolving into a very different character. Sherry Cooper, global economic strategist and executive vice-president at BMO Financial Group, presented compelling theories about senior boomers in her 2007 book, *The New Retirement* (Penguin Group Canada).

Boomers currently make up a remarkable 45 per cent of Canada’s labour force, and more than half of

them are over 50. Cooper tells us an enormous wave of boomers entering traditional retirement age will crest in 2025 and they will redefine what this stage in life will look like. She predicts they will enter their senior years with great energy and creativity, working well beyond age 65, and mostly by choice. Even when finances would allow boomers to stop work, Cooper predicts the majority would be unsatisfied by a life of total leisure, finding the adjustment to a life without a sense of purpose or schedule quite difficult. “Many will miss the trappings of their former jobs,” she writes.

Therefore, Cooper envisions that many will elect to exit the workforce more gradually. And with a looming labour shortage, she suggests employers and the government will adopt more flexible employment policies that will keep some of the boomer brainpower in house, one way or another.

“Today’s **senior** population is increasingly fit, healthy, fully **engaged** in their communities and careers, and not necessarily in a rush to leave the **workforce**.”

SHORTER NOTICE PERIODS...

Until 2025 and beyond, what might happen is largely a matter of conjecture. Right now, reasonable notice cases are assessed individually, so consistency and even predictability can be lacking.

“[The current system of determining reasonable notice] is supposed to tie into how long it will take you to get a job, although there’s no scientific analysis to any of this,” says Barry Fisher, LL.B., a Toronto-based mediator and arbitrator specializing in labour and employment law.

The changing senior workforce, though, might suggest that older workers in Canada have a smoother road ahead, if they find themselves searching for employment opportunities. This, in turn, suggests an impact on reasonable notice periods, presumably making them shorter

based on the expectation that the highly motivated, energetic and experienced boomers will be better able to find comparable work.

“You can absolutely imagine an older worker who is vibrant and hardy and has all sorts of employment potential and opportunity,” says Christine Thomlinson, an employment specialist and founding partner at Rubin Thomlinson LLP.

...OR LONGER NOTICE PERIODS

The idea of a senior workforce with fewer barriers to entry is still more of an idea than a reality, however. “I’ve never read a case where anyone even argued that older workers now have an easier time finding work,” says Fisher.

“In the typical fashion of law, both sides [on the length of reasonable notice argument] are going to be

arguable,” says Peter Israel, a senior partner at Israel Foulon LLP. He suggests that the more people need or choose to work longer, the more people will be in the workforce competing for the same jobs. “Therefore, some would argue that this should increase the reasonable-notice rate, since workers are not going to be able to replace the employment,” he says.

This may or may not be the case, depending upon the supply of labour. “When the mandatory upper age limit was raised in Ontario and we talked to our employer clients, they were all in a tizzy,” says Thomlinson. “How are we going to employ all of these older workers? And what about the younger workers coming up? How will we ever manage?”

In reality, this change happened as the workplace was also facing a labour shortage. “So we saw no increased issues around that need, because the fact is employers need older workers right now,” Thomlinson says. It may be interesting over time, she says, “but the labour shortage is still alive and well.”

“As of yet, there are no significant decisions that have addressed how the changing population and the elimination of mandatory retirement will impact the *Bardal* factors,” says Rudner, “particularly the impact of an individual’s age upon their entitlement to notice of dismissal.” Adds Rudner, “The reality is that it may still be difficult for older workers to find new employment, so age may well continue to be a relevant factor.”

CAREER REDIRECTION AND FLEXIBLE REASONABLE NOTICE

When an employee is fired, and a reasonable notice award is in dispute, the court will require that the employee look for comparable work for the length of the reasonable notice period. According to lawyer Christine Thomlinson, this is an area where more flexibility may come into play in the future.

“We’re certainly seeing an increase in our older workers who are saying, ‘That’s great that I could get this long notice period if I go to court and prove that I’ve looked for comparable work for, says, 24 months, but I don’t want to do other comparable work and I certainly don’t want to have to look for it for the next 24 months.’” In some cases, she says, clients want to take their career in a different direction, so they structure a deal with the employer that may not get them the entirety of what they’re entitled to, but will still allow them to move on to the next new thing in their professional lives.



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SETTLE REASONABLE NOTICE IN ADVANCE

To help navigate these murky waters a bit, and remove some of the questioning about reasonable notice rates, Rudner suggests a pro-active plan. “I advise our clients to have every single employee sign an employment agreement that, among other things, specifies the amount of notice of dismissal that they will be entitled to in the absence of just cause.”

Rudner says in many cases employers object, arguing that employment agreements should only be used for executives and upper-level employees. “In my view,” says Rudner, “this is short-sighted, as every employee is entitled to notice of dismissal, and therefore it would be beneficial to clarify every employee’s entitlement up front and avoid uncertainty.”

PERFORMANCE, AGE AND DISCRIMINATION

“Another issue that arises as a result of the aging workforce is employers may be faced with individuals who slow down, make more mistakes or are otherwise less productive than they used to be,” points out Rudner. In the past, employers were often able to tolerate such dips in performance, knowing that the employee was going to retire fairly soon.

ANOTHER REASON FOR SHORTER NOTICE PERIODS

Beyond highly employable senior boomers finding work more easily, lawyer Christine Thomlinson sees another reason notice periods may grow shorter in coming years.

Workers increasingly leap from company to company, job to job and even career to career, more than ever before. Where an employee used to spend his or her working life with just one or possibly two employers, that number will grow higher in coming years. “I think that what we may start to see over time is what appears to be less notice for older workers,” says Thomlinson, since one of the *Bardal* considerations is length of service to the employer, and this will be shorter as the workforce moves around more.

“As a result,” says Rudner, “they could allow older, particularly long-serving employees, to retire with dignity.” Now employers might be faced with a situation where they have a declining performer and no idea how long that individual will continue to work.

“This raises another issue,” says Rudner. “Would it be a violation of applicable human rights legislation to discipline or dismiss an individual as a result of their declining productivity, when that declining productivity is a result of their age?”

Realistically, an employer heading down this path could very well risk running afoul of age discrimination regulations under the Human

Rights Code. To legally prove age discrimination, an employee does not have to prove it was the primary or only reason for termination, it just has to be one of the reasons. If an employee proves age discrimination, then the case is no longer a reasonable notice inquiry, but a more serious human rights dispute.

Fisher recalls a problematic incident from a decade ago, when a client intended to lay off a number of employees. “Defense counsel routinely asked to get a summary of people a company wanted to lay off, and the company would then list the person’s age and years of service and all that,” he says. Fisher says he took a look at the

GROWING DEMAND FOR ACCOMMODATION

“With respect to an aging workforce, accommodation is going to be a huge thing,” says lawyer Peter Israel. And legally speaking, an employer is obligated to accommodate an employee to the point of undue hardship.

“For instance if an older employee has to slow down and can’t produce at the same level, that’s going to force an employer to accommodate that employee, even if that means getting a helper or purchasing a chair or slowing the line down or decreasing production requirement,” says Israel.

When considering employee accommodation requests, suggests lawyer Christine Thomlinson, employers should do a little bit of due diligence. “If an employee said ‘I need to go home at 4 p.m. for a childcare issue,’ an employer would ask for a little bit more information about that,” she says. What is the childcare issue? A few questions to the employee should be able to identify which accommodation requests are truly required and which are less valid. “In the childcare example,” says Thomlinson, “there’s a difference between the employee leaving early to see her child’s basketball game, and leaving early because she has a special-needs child whose daycare provider just quit.”

THE HAYSTACK JUST GOT

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list and immediately called the HR manager.

"Is the average age of the people in your workplace 63?" he asked. "Because the average age of the people you're letting go is 63. There's a problem here." Fisher says that in this case, and in many cases, when instructed to reduce headcount many managers just chose the older person, even without consciously realizing it.

"Very few cases of age discrimination actually involve firing the old guy, waiting three weeks and then hiring the new person," says Fisher. Instead, he suggests, there might be a situation where management is told by head office to reduce their headcount by 10 per cent.

"The president of the Canadian company tells each branch to reduce headcount by 10 per cent. And then the plant manager tells

each of the supervisors to eliminate one position," says Fisher. "It's then left to the foreman to decide which employee to let go, and they're often given absolutely no criteria." He explains that this is where the prejudice and discrimination comes in. "The foremen look around and they might say, so-and-so has lots of sick days or he's got that chronic back problem, so let's get rid of him."

"The downside to the employer of a successful age discrimination complaint is massive," warns Fisher. If a terminated employee can show that but for discrimination he or she would not have been laid off, then his or her damages might be measured in years, not months. And if he or she filed a complaint with the Human Rights Board, the person could be reinstated.

STEPS TO AVOID AGE DISCRIMINATION IN TERMINATIONS

"The Human Rights Code doesn't say you can't fire a 67-year-old," points out Israel. "It only says you can't fire him because he's 67." That leaves open the option to fire someone because of performance.

To help a company terminate on the basis of performance, and avoid human rights issues, "HR managers should set up criteria and give guidance to managers in choosing who is to go," says Fisher. "They should also make absolutely sure that those criteria are documented and not impressionistic or discriminatory."

The best situation is where a company has a policy of consistent and meaningful performance evaluations. "Because if you actually have those," says Fisher, "you can then use business criteria to terminate." **HR**



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ANALYSIS OF DATA ESSENTIAL FOR OPERATIONAL DECISIONS

Gut instincts often serve a manager well. But that ability in and of itself isn't enough – not in today's complex global business environment, and not against international competitors looking for every razor-thin advantage. This makes it all the more crucial for human resources and other senior managers to possess the right information, analyze it and have the managerial instincts to get their operational decision-making right.

Assume, for instance, a firm needs to analyze the pros and cons of adding or dropping a business line or department, or needs to consider closing a store, division or plant to relieve pressure on the financial bottom line. Most companies will have already collected a lot of detail for internal reporting purposes about various departments, business lines or operational venues.

Armed with this data, finance pros working for a retail chain could conduct an internal analysis of their income statement results to examine how different stores are performing relative to others. If working for a manufacturing plant, they could study financial and operating results from various lines of production, or, if it is multi-national, use that information to determine the relative success or lack thereof of operations in each country.

"The fact you've broken down this information into smaller, bite-sized pieces makes sense," says Michelle Causton, MBA, FCGA, a professor of accounting at Canadore College in North Bay, ON. "Now you can start comparing individual divisions or departments, looking for where the profits are; which ones are losing money."

But Causton stressed that the decision around whether to keep a unit operating will often depend on other factors as well, such as what cost savings could be realized, how essential the product is to your core business and customer reaction to a favoured product.

Technology has aided in this endeavour, with multiple software tools available to help capture the myriad data required to make sound decisions. Software-assisted models can also be created and customized to assist managers and executives with decision-making responsibilities. Such models can synthesize and provide a relative

weighting, or priority, to data considered important to business decisions.

Current and historical financial and other sales data might also be included in such a database and relied upon to provide objective facts for analysis when a difficult and/or complex decision has to be made, such as which plant to close down.

Modeling, of course, can also be used under more positive circumstances – to, for instance, assist managers in making decisions designed to keep businesses on a solid footing, taking into account factors such as productivity or return on investment, among others.

Various productivity measures are also available for decision making, such as break-even analysis, contribution margin ratios and gross margin ratios.

A firm's break-even point occurs when its sales equal costs. Break-even analysis differentiates between fixed costs, such as rent, heat, hydro, etc., which don't vary with sales; as well as between variable expenses recorded on a company's books that managers have more control over and can devise strategies to deal with. For example, managers might determine something like, 'We're going to cut back on our advertising in response to declining sales of a product reaching the mature phase of its life cycle,' Causton notes.

Contribution margin ratios measure sales less the variable expenses caused to generate them. Gross margin ratios measure the difference between sales and the cost of sales.

Return on investment is another common business metric. This takes into account the net profit earned divided by the amount of investment required to earn that profit. This can be a valuable measurement – but, Causton claims, it is only useful when comparing investments of a similar nature.

The financial impact of business operational decisions is considerable. But armed with the knowledge and tools available to sort through reams of underlying data necessary to make an informed choice, today's HR managers can hone their competencies and skills in this area. In so doing, they increase their firm's chances of success in a competitive global economy. **HR**

Bernie Keim, CGA, is vice-president of member services and regulatory affairs, CGA Ontario.

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ARE YOU EXECUTIVE LEVEL MATERIAL?

Any successful executive admits there's a game in business. If you're not willing to play, you can't win. So while many aspire to reach the executive level, they won't.

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Why won't they play? "I hate business politics," they say.

But who said "business politics" had to be a negative thing? For example, if your boss does something commendable in the company, invents something new or makes a great speech, it's okay to congratulate him or her. That's not being political or a "kiss up," it's called being gracious and having decorum – two things that will help you climb the corporate ladder.

Aside from technical skills or job-specific abilities, other big components of the game include comportment, how you look, how you speak, your attitude and your daily habits.

Here are 10 key tips to consider on the way to an executive-level suite.



esteem could be driving them to succeed. True confidence is the belief you can do things well. If you doubt your ability, simply look back at your record of accomplishments. Use past successes to build your confidence so it's apparent to others.

“Always remember the people above you are **watching**, and everything you do – or don't do – counts.”

Claim your space

When you're walking in the office, you need to look purposeful and centered. Scurrying, looking harried or trying to blend into the background will make you appear as though you lack confidence. Instead, walk with your full height and claim the space around you. People need to view you as someone on a mission – a mission to the top.

Build your confidence

Contrary to popular belief, confidence is not about self-esteem or self-worth. In fact, someone can have low self-esteem and still become a high-level executive, as the person's low self-

Speak up

During meetings, always weigh in on the topics discussed. Don't leave a meeting without having an opinion or you will quickly get a reputation for being wishy-washy or not concerned with the company's success. If you're in a meeting and the discussion turns to something you're unfamiliar with or that is not part of your

department's duties, look engaged anyway. Always remember the people above you are watching, and everything you do – or don't do – counts.

Build social capital

Building social capital across the board is critical to upward mobility. Not only should you build with people in your department, but also with people in other departments and in other companies who might be a resource. Social capital simply means building connections with people. Find out some personal information about others, such as their hobbies, their birthdays and their kids' names ... and then talk about these items occasionally to build rapport.

HUMAN CAPITAL

Remember this: People don't care how much you know until they know how much you care. When you're on your way up the ladder, treat people like people and not like objects. Get to know your peers. You never know if one day a peer will be your boss and, even if they aren't, they can make your work life very stressful.

Learn about business

To make it in business you have to know about business. This includes reading about your industry as well as other industries to learn how different companies handle things. If you're well-read you can give examples from other industries and companies of what worked

and what didn't. Remember, in order to be promotable you have to be on top of your game at all times. Being knowledgeable is one way to display your competence.

Do what others won't do

In every department there are a few things that need to get done or that are important to the boss, but no one wants to do them. Find out what those are and then volunteer for the tasks. Yes, some people will call you a "kiss up," but that's OK. Ultimately, you have to please your boss and, to some extent, your peers and direct reports, not the naysayers who have little chance of reaching the top.

Get a mentor

If your company has a mentoring program, take advantage. If you don't have access to such a program, get a mentor on your own. Look through your network and find someone at or near the level you aspire to. Invite the person out to lunch and talk business. Learn what they did to get where they are. When you feel enough rapport and comfort, ask if he or she will mentor you. Most people are honoured by the request and will say yes. If the person declines, don't take it personally. Simply find someone else to learn from.

Look professional

Tattoos and piercings are popular these days, and if you want one, by all means get one. However, when you're at work, keep the tattoo under your clothing as much as possible and remove visible piercings from your face or tongue. Today, it's extremely rare to see executives with visible tattoos and piercings. Twenty years



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from now, it may be more common and acceptable in the executive suite, but for now, keep them hidden if you work in a corporate setting.

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mean shorts and flip-flops. If an executive sees you dressed like that, they're going to view you as "a kid." Even an iPod in your ear can make you look like a kid. When you're on your way up – usually in the 25-40 age bracket – the last thing you want is to be called a kid.

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HR

Jean Kelley is the founder of Jean Kelley Leadership Alliance. Her faculty and trainers have helped more than 750,000 leaders and high potentials up their game at work in Canada and the U.S. Coupled with her books, Dear Jean: What They Don't Teach You at the Water Cooler, and The Get a Job and Keep a Job Handbook, she has earned the name "North America's Workplace Coach." For more information on leadership and availability, email jkkelley@jeankelley.com or go to www.jeankelley.com.



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An apparent slowdown in drug cost escalation over the last couple of years may just be the calm before the storm. Group benefit programs are expected to incur higher than ever drug costs, driving overall costs higher and higher, largely due to the impending addition of many new and expensive biologic-based drugs. New high-end drugs already on the market are driving cost increases as much, or more, than any other component, and we've only just seen the tip of the iceberg of issues looming for group benefit programs.

Studies have shown that the cost of high-end drugs has more than doubled in recent years from around five-to-six per cent of claims to over 13 per cent in 2010 – this group encompasses drugs that cost over \$1,000 per prescription and \$20,000 or more per course of treatment. In practical terms, this means that 10-15 per cent of plan members are driving over 80 per cent of program costs. Averaging costs for high-end

drugs across all plan members will continue to significantly drive up funding requirements. With a steep cost trajectory and the traditional funding approaches currently in place, we may be heading for frightening cost structures.

Even if a program is benchmarked to be best-in-class in terms of design, it won't provide sufficient value if a majority of members don't see a link between the true cost of benefits and the value they receive. A high average cost per plan member, driven by increasing costs to serve high-use members, will continually drive down the value of a program for the 70 per cent of members who are below the weighted average user cost and will be impacted by the cost of subsidization built into traditional rate formats. It will become increasingly difficult to justify a large majority subsidizing a minority of high-use members. Many plan members are already questioning the value of their programs, and plan sponsors are not obtaining sufficient value for their significant investments.



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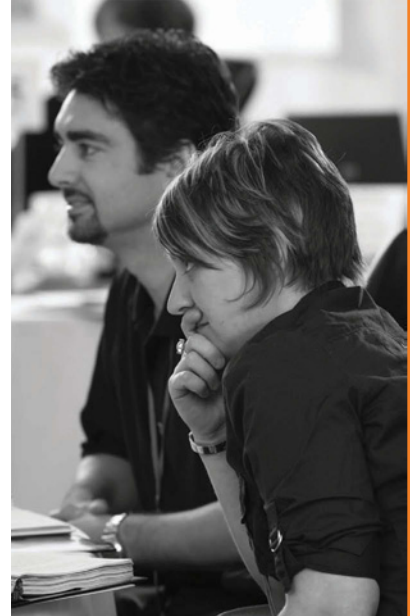


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Aside from escalating drug costs, the other development that is changing the landscape for benefit plan design is the changing demographics of the labour force. Baby boomers have been a dominant influence on plan design for over 25 years; the 50-to-64 age group currently makes up 25-30 per

cent of eligible members and the 40-to-49 age group makes up another 19-23 per cent. Although these two groups still drive most of the claim costs, close to half of the workforce have needs and wants that are very different from those of boomers. 'Gen X' and 'Gen Y' make up the other half

and have different views from one another. This means plan designs have to accommodate at least three very distinct views of what a benefit plan should offer. When we study statistics more closely, we see that younger generations may actually be less healthy than generations that have gone before them – obesity, high cholesterol, high blood pressure, asthma, allergies and diabetes are far more prevalent in young generations than ever before.

Our traditional 'one size fits all' plan designs are completely incapable of handling either these mounting costs or the diversity of needs.

This is the point in the article where you're no doubt expecting the statement: "flexible benefit programs are clearly the answer." This is partially true; however, the traditional "Option 1, 2 or 3" approach to flexible programs, and how they've been designed, has to undergo a rethink for the statement to be accurate.

Choice and the ability to align program offerings with needs and usage patterns are vitally important for benefit programs to provide significant value. Flexible benefit programs can be designed to make this happen.

Benefit programs need to provide for basic cost averaging, a fundamental component of all group plans, in such a way that subsidization of high users by low or mid users does not unfairly impact the value of the program for those funding the subsidization.

This can be seen in traditional formats of singles and couples subsidizing families, and low and average claimers subsidizing high claimers. The traditional approach to flexible programs has not handled this



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HR 101

particularly well, as can be seen in conventional three-option flex plans, in which roughly 70 per cent of members end up in the middle option and 10-15 per cent end up in the so-called 'rich' option. Flexible programs can, however, be designed to satisfy the required value equation for both members and plan sponsors.

Benefit programs will have to provide incentives and rewards for improved health status, and effectively foster reduced utilization – flexible programs can be designed to accomplish these goals.

Plan sponsors will need to take lessons learned from the 'true' insurance world (i.e., home and auto insurance) and consumers' experience with financial management and credit during the latest economic downturn, and incorporate these into plan designs – flexible programs can provide frameworks for this.

Benefits themselves mean different things to different people. Cost averaging can be performed in different ways, as can payment for benefits used in programs provided. Financial stability, and managing program growth and costs, can be achieved when we re-examine how we design programs and provide tangible value – flexible programs can make this a reality.

Traditional approaches do need to be re-visited, but a flexible benefit program that is well designed and that fosters financial and benefit understanding – such that true value for all is achieved – is a very powerful thing. We need to move in this direction sooner rather than later. **HR**

Gord Simle is a partner in Morneau Shepell, in Calgary.



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|---|--------------|---------|------|-------|--------|-------|-------|----|-----------|
| Metric Name | Score | | | | | | | | |
| Vacancy Rate | | 10.2% | 5.2% | 7.6% | 10.3% | 11.2% | 12% | 11 | |
| The percentage of positions being actively recruited for at the end of the reporting period. | | 23.1% | 4.9% | 11.5% | 16.9% | 22.5% | 47.4% | 6 | |
| 90 Day Turnover Rate | | 12.2% | 0% | 2.4% | 8.4% | 13.4% | 28.4% | 7 | |
| The percentage of new employees leaving the organization within 90 days of starting their employment. | | 8.8% | 0% | 0% | 4.2% | 16.7% | 22.2% | 6 | |
| 90 Day Voluntary Turnover Rate | | 16.8% | 7.2% | 9.5% | 12.7% | 15.7% | 28.8% | 7 | |
| The percentage of new employees leaving the organization on a voluntary basis within 90 days of starting their employment. | | | 5% | 5.2% | 7.7% | 15.8% | 22.6% | 11 | |
| 90 Day Involuntary Turnover Rate | | | | | | | | | |
| The percentage of new employees leaving the organization on an involuntary basis within 90 days of starting their employment. | | | | | | | | | |
| 1st Year Turnover Rate | | | | | | | | | |
| The percentage of employees with less than 1 year of service who left the organization. | | | | | | | | | |
| 1st Year Resignation Rate | | | | | | | | | |
| Percentage of employees with less than 1 year of service who resigned. | | | | | | | | | |
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IMMIGRATION: THE NEW NORMAL

Lawyer Evelyn Ackah discusses Canada's aging population, and why we must aggressively recruit foreign workers

It's hard to focus on much else lately, when all the news is on the doom and gloom of the global economic scene. But, one thing's for sure: whether market fluctuations, the debt crises in the U.S. and Europe and uncertainty over further recession prove to be short- or long-term issues, there's a larger dark cloud looming on the horizon for most Canadian organizations and their HR professionals. Within the next 10-15 years, the crest of the massive workforce wave of baby boomers will have left the workforce, taking their skills and experience with them into retirement. Organizations need to determine now how they plan to replace this talent.

According to Statistics Canada, much of that replacement workforce will not come from the Canadian-born population. In 2006, only one-third of the Canadian population growth was provided by natural increase; international immigration accounted for the remaining two-thirds. By 2030, deaths in Canada are expected to outnumber births, meaning that immigration would be the only growth factor for our population.

So, what's happening within the Canadian scene to encourage and attract



immigration, and, more particularly, skilled and professional foreign workers? A recent backgrounder from Citizenship and Immigration Canada (CIC) reported that, in 2010, Canada admitted 182,000 temporary foreign workers. Taking into account foreign workers already in Canada, this means there were 283,000 individuals in Canada as temporary foreign workers at the end of 2010.

HR Professional talked with Evelyn Ackah, founder and managing lawyer of

Ackah Business Immigration Law, based in Calgary, AB. Ackah provides her expertise to corporate clients in the development and implementation of immigration strategies to secure desired business objectives and advises clients on immigration matters involving employee mobility and relocation. She assists multinational corporations with Canadian and U.S. immigration and citizenship law, and with the establishment of new businesses and cross-border business travel, in order to

INTERVIEW

facilitate employment, business development or foreign investment. She regularly provides written and oral submissions to embassies, high commissions and consulates throughout Canada, the U.S. and visa posts throughout the world. In addition, she prepares and submits immigration applications pursuant to NAFTA, GATS and the Immigration and Refugee Protection Act.

HRP: Immigration law and policy seems to change frequently. Is there, as has been said, a “new normal” developing in this area?

EA: I use that term with my clients all the time. The government can make significant changes to both the focus and the framework of immigration through either legislation and/or policy. Immigration law and policy is never static and the

IN A NUTSHELL IMMIGRATION IN CANADA: A PORTRAIT OF THE FOREIGN-BORN POPULATION

- The 2006 Census enumerated 6,186,950 foreign-born in Canada, representing virtually one in five (19.8%) of the total population. This is the highest proportion in 75 years.
- Between 2001 and 2006, Canada's foreign-born population increased by 13.6%. This was four times higher than the Canadian-born population, which grew by 3.3% during the same period.
- At 19.8%, Canada had a higher proportion of foreign-born than the United States of America (12.5%) and lower than Australia (22.2%).
- The census estimated that 1,110,000 recent immigrants came to Canada between January 1, 2001 and May 16, 2006. These newcomers made up 17.9% of the total foreign-born population, and 3.6% of Canada's 31.2 million total population.
- Toronto, Montréal and Vancouver were home to 68.9% of the recent immigrants in 2006. In contrast, slightly over one-third (34.4%) of Canada's total population lived in these three census metropolitan areas.
- There were some signs that recent immigrants are choosing to settle in smaller metropolitan areas. Individually, 5.2% of recent immigrants had settled in Calgary, 2.9% chose Edmonton and 2.2% chose Winnipeg. These were all increases from 2001. Another 3.2% of recent immigrants had settled in Ottawa - Gatineau, a slight decline from 4% in 2001.
- The majority (85.1%) of the foreign-born who were eligible for Canadian citizenship in 2006 had become naturalized.

Source: Statistic Canada, Report highlights from 2006 Census



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challenge is staying up with the latest changes. Whatever the “new normal” is – a changed form, for instance – that’s what we have to use. It’s important for organizations hiring foreign workers, and their HR departments, to know about changes and the impact of those changes, which is why I often recommend that they have a particular person – an external advisor or someone internally – dedicated to this area.

HRP: What has caused the government to make changes?

EA: At the height of the employment boom, from the mid-2000s to mid-2008, the emphasis was on finding workers. It was almost impossible to keep up with the demand. Employers were running loose, many not paying foreign workers what they were owed, sending them to work in other provinces without revising work permits and basically not following the terms of employment. When the job market slowed down in late 2008/early 2009, it provided a bit of a breather enabling the federal government to begin introducing more rules surrounding the recruitment and use of temporary foreign workers. The growth appears to be coming back, but it’s not as frenetic as that in the mid-2000s.

HRP: What are some of the recent changes affecting business and immigration?

EA: Most recently, as of April 1, 2011, regulatory changes designed to protect temporary foreign workers (TFWs) will assess each job offer using new criteria. The government will now assess the job offer more fully and ensure compliance with the terms and conditions of work are being met. There is now also a cap of four years on the length of time a foreign worker may work in Canada; this cap did not exist before.

The government is also creating a “bad employers” list. This will be a list of those employers who are not complying and/or not properly treating the foreign workers they hire. These “bad employers” will be banned for two years from participating in the foreign worker program and the list will be posted on the CIC website.

HRP: Who is on that “bad employers” list?

EA: It’s so new that there aren’t any names on it yet. That’s causing some unease because no one knows how strict the government will be. The CIC says employers won’t be added to the list lightly. They’ll get warnings and chances to fix the problems. We are advising our clients not to take any



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chances, and make sure they know and comply 100 per cent with all the rules.

HRP: Why has there been a move to cap the number of years a foreign worker can remain in Canada?

EA: The program has always been for temporary workers, but before the new provisions came into effect, these temporary workers stayed for 5, 6, 7 years. Now, they have to return to their home countries after the four-year period, and they won't be granted another work permit in Canada for an additional four years.

HRP: Why aren't employers helping the TFWs become permanent residents?

EA: Often, it's simply that no one thinks about it, or plans

for it. The process to become a permanent resident takes time and is expensive; it can cost anywhere from \$3,000 to \$10,000 to go through the process. And, once the worker becomes a permanent resident, there is nothing to keep them working for the original employer. One way to solve this type of problem is to discuss the idea of some kind of written retention agreement with the potential new Canadian, in which they agree to pay back some of the legal costs by remaining in the employ of the original employer for a certain amount of time. Employers need to start planning their workforce needs and take into consideration whether they want to get involved in helping valuable TFWs become permanent residents.

HRP: Bill C-35, which was originally called the "Cracking Down on Crooked Consultants Act" came into force on June 30, 2011. What does this mean for employers and TFWs?

EA: It's another way the government is strengthening the protection of TFWs, and employers, by making it an offence for anyone other than an authorized agent to charge fees to consult and conduct business at any stage of an application or proceeding. These agents must be in compliance with legislated requirements, act in good faith and meet industry standards.

Bill C-35 and the other legislative changes we've discussed are generally positive steps. The challenges and frustrations with the new provisions arise because it will take a year or so before we really know how they will be rolled out and how strict or flexible the government will be in enforcing them.

HRP: Are foreign workers and newly arrived Canadians our future workforce? If so, what are the concerns and challenges in integrating them into the Canadian workforce?

EA: Yes, Canada has an ageing population and what are we doing about it? While our recruitment focus should be getting Canadian-born workers to fill jobs first, there are numerous jobs that Canadian workers will not, or cannot, fill. For instance, there are low-skilled jobs that Canadians aren't particularly interested in doing; and, at the other end of the scale, there are some highly skilled jobs that we just don't have the qualified people to fill.



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HRP: The Alberta Federation of Labour issued a press release recently claiming that Alberta employers were turning to TFWs in favour of local workers. Do you think this is the case?

EA: The Labour Market Opinion Process, which is the process an employer must undertake to make an application to hire TFWs, takes about two years to complete and requires that the unions at the employer's workplace are on board. The unions have to agree with the hiring of the TFWs; these TFWs cannot be brought in as some kind of "scab" workers. In fact, many trades are actively pushing to allow more skilled trades workers to come to Canada. Their members are also ageing and there are some extremely skilled tradespeople not only in Europe, but also in Asia and Africa, who could really add value to our workforce.

HRP: Speaking of skills, how is Canada doing in the area of recognizing foreign training and credentials?

EA: We're still a long way from where we should be. Of course, through the TFW program, the employer is identifying the skill sets and the particular worker, or workers, who possess them. But for those thinking of immigrating to Canada, they need to find out how their education and credentials will be accepted here before they come, and what they need to do to upgrade them. There are programs such as Career Bridge, a paid internship program that provides new Canadians opportunities in mid-level professional

positions for 4-12 months. But there are too few of them.

What's worrisome is that many other countries are becoming more aggressive in recruiting immigrants. They recognize they need foreign-trained workers and professionals. Canada is going to get left behind.

HRP: So what does Canada need to do so we don't miss out on recruiting the best of this workforce?

EA: Some Canadian companies are already doing it. I have clients who go all over the world to meet and test skilled workers. But, it's expensive and the drive needs to come from a higher level – the government. For professionals, for instance, the challenges are spaces to be able to upgrade or qualify for Canadian credentialing, as well as creating the spaces to be hired. This is something the government has to do.

HRP: What's HR's role in this process?

EA: HR's role is key. They are often the first people TFWs or new Canadian workers meet within a company when they start a job. More important, if these workers aren't able to integrate into the company, and into the community, they are not going to be happy or want to stay in Canada. This is something that HR can either facilitate or source resources for the new worker. Recruiting and hiring TFWs is expensive, as it is for any worker, and companies need that investment to pay off by keeping the workers they've brought in to do special jobs.

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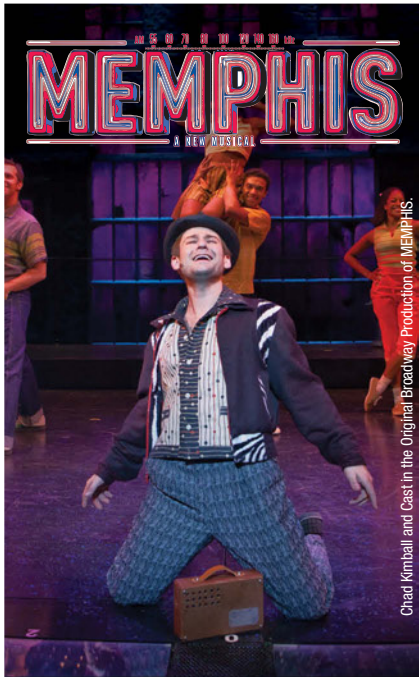
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WHAT'S WORTH READING

Forget Me Not...Canadian Stories of Workplace Tragedy from the Families' Perspective

Threads of Life, 2011

By Scott Williams



Forget Me Not is produced by the Association for Workplace Tragedy Family Support – Threads of Life with funding from the Ontario Trillium Foundation. This publication is dedicated to “every worker who went to work and came home traumatically injured, diagnosed with an occupational disease or...who never came home at all.” Featuring stories from 21 families affected by a workplace tragedy, *Forget Me Not* is a powerful testament to courage and hope in the face of injury and tragedy.

As human resources and/or health & safety professionals, you already know a workplace injury of any kind brings consequences: filling out a hazard report, a near miss, an accident report, arranging for transportation to a hospital or investigating an incident. Each month these numbers are tabulated and analyzed to determine leading and lagging indicators. WSIB claims are continuously evaluated with an eye on NEER costs. All of these documents are produced in a report for senior management. That's the practical side of workplace tragedy.

Forget Me Not tells 21 stories of workplace

tragedy from the point of view of the families. One cannot look away or focus only on who was to blame. The families in this book share their most private and personal stories. None of which were easy to read; all of which brought the reader into their lives, their pain and their hope for the future.

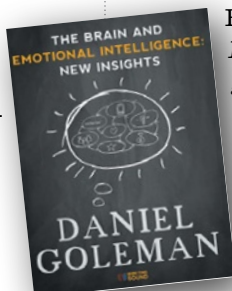
Woven through the stories are stark details of the legal battles the families fought as well as statistics of various workplace injuries suffered in electrical, highway construction, railway, fishery, trucking, construction, elevator shafts and ironwork industries.

The emotional accounts by family members are gut wrenching. *Forget Me Not*, however, is not simply a didactic tale. There are employers who are held accountable, although justice is not served in every story. What *Forget Me Not* does do is to remind us that we are a community and that the human spirit is strong and powerful. That all of the people we work with have loved ones whose lives would be forever changed should one of us not go home.

The Brain & Emotional Intelligence: New Insights

(1st Digital Edition), More Than Sound LLC, 2011

By Daniel Goleman



For many, the book *Emotional Intelligence* is a household name. Few books have impacted leadership, organizational development and career planning as



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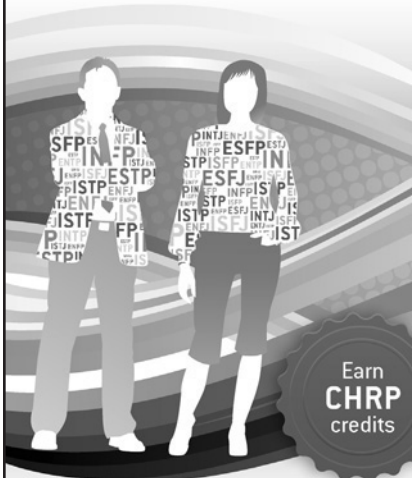
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OFF THE SHELF

Daniel Goleman's landmark work. Those with high emotional intelligence exhibit several key competencies such as adaptability and initiative, the drive to continually improve performance and empathy skills such as sensing how another person thinks or feels. Goleman argues these competencies give an individual the drive to achieve, and the initiative and the interpersonal effectiveness to succeed. These abilities are highly prized by organizations and are the foundation of competency models.

In this E-book, Goleman provides updates to emotional intelligence, integrating the latest in brain science. From brain science data we now know that there are unique brain centres that govern emotional intelligence, distinguishing these skills from verbal, math and spatial intelligence, or IQ, as well as from personality traits. Brain science also tells us that the brain continually reshapes itself, known as neuroplasticity, which suggests that individuals can change their thought

patterns and, therefore, their behaviour.

Brain science also tells us that common beliefs about creativity and the right and left hemispheres of the brain is outdated. Creativity requires the brain to access a large web of connections throughout the entire brain. Goleman also shares how the amygdala, the trigger point for emotional distress, anger, impulse and fear, can become hijacked when the individual is under threat. Designed for flight or fight, the amygdala does not process information very well and we turn to over-learned habits to get us through. We are unable to innovate or be flexible during a hijack. The top five amygdala triggers in the workplace include: condescension and lack of respect; being treated unfairly; being underappreciated; feeling you are not being listened to or heard; and being held to unrealistic deadlines.

Those already familiar with Goleman's work will find this short E-Book a helpful update on emotional intelligence. **HR**

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INDEX TO ADVERTISERS

ADMINISTRATIVE STAFFING

Toronto CFA Society 42

AFFINITY SOLUTIONS

Venngo..... 43

BACKGROUND CHECKS & EXIT INTERVIEWS

Britton Management Profiles Inc..... 43

Commissionaires Canada 37

The Garda Security Group Inc..... 47

BARRISTERS & SOLICITORS

Rubin Thomlinson LLP Inside Back Cover

Stewart McKelvey Stirling Scales 18

BENEFITS

Desjardins Financial Security 5

Special Benefits Insurance Services 9

COMPENSATION BENEFITS

The Co-operators 37

CONFERENCE FACILITIES

Office du tourisme de Québec/Québec City Tourism.. 28, 29

On the Park Events & Conference Centre 51

CONFLICT MANAGEMENT SERVICES/PROGRAMS

Stitt Feld Handy Group 41

CORPORATE EDUCATION

Stitt Feld Handy Group 41

EDUCATION/TRAINING

Humber College 17

EMPLOYEE INCENTIVES & RECOGNITION AWARDS

Cadillac Fairview Corporation 11

HBC Gift Cards 12

EXECUTIVE DEVELOPMENT & TRAINING

Queen's School of Business, Queen's Executive Development Centre 6

EXECUTIVE RECRUITMENT

Lannick Group Inc..... 50

EXECUTIVE/MANAGEMENT SEARCH

Meloche Monnex Financial Services

Incorporated 32

University Of Toronto -

Executive Programs 46

HR SOFTWARE

D.L.G.L. Ltd. Outside Back Cover

The Ultimate Software Group..... Inside Front Cover

INSURANCE

The Personal Insurance 23

INSURANCE & FINANCIAL SERVICES

DAS Canada..... 53

LABOR & EMPLOYMENT LAW

Dorian N. Persaud 50

Filion Wakely Thorup & Angeletti 41

Sherrard Kuzz LLP 34

LEGAL SERVICES

Emond Harnden LLP 48

Kuretzky Vassos Henderson, LLP 42

Shields O'Donnell MacKillop LLP 3

NEWSPAPERS

The Globe and Mail 25

ONLINE RECRUITMENT

Canadian Institute of Chartered

Accountants 39

PAYROLL/HR SOLUTIONS

D.L.G.L. Ltd. Outside Back Cover

PRE-EMPLOYMENT SCREENING

Britton Management Profiles Inc..... 43

PUBLICATIONS

Carswell, a Thomson Reuters business 40

RECRUITMENT/TRAINING

Target 53

SAFETY RESOURCES

Board of Canadian Registered

Safety Professionals 50

SAFETY TRAINING COURSES

Workplace Safety & Prevention

Services (WSPS) 26

SOFTWARE

D.L.G.L. Ltd. Outside Back Cover

STAFFING & EMPLOYMENT SERVICES

jobWings Careers..... 49

THEATRE

DanCap Productions Inc..... 50

TRAINING & DEVELOPMENT

Adler International Learning..... 52

CPHS Consulting Inc. 42

TRAINING PROGRAMS - DESIGN & DELIVERY

Psychometrics Canada Ltd. 52

UNIVERSITY EDUCATION/TRAINING

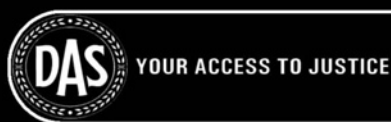
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HOW TO IDENTIFY A COMPETENT IT ARCHITECT

Architect has become a fashionable title for a variety of IT jobs. But because the role is new, it's also one of the least understood, even among those with the title.

That said, there is some consistency across large IT companies with long-standing architecture practices on what architects do, what specializations are common, what competencies must be developed and how organizations can recognize talent.

A common analogy compares IT architects with building architects, who are responsible for an overall design but not its detailed implementation. Still, buildings are different from IT systems and their stakeholders interact in very different ways.

Whether architecture is about behaviour, structure or both, there is general agreement it's the architect's responsibility to ensure all the pieces fit together, work compatibly and satisfy the stakeholders' requirements. In this respect, architecture bears resemblance to program management. In organizations that do not recognize both jobs, the one that is recognized frequently includes the other.

There remains variation in the details of responsibility. However, over the past decade, a fairly common picture has emerged of how IT architects see their domain.

Recognizing a Competent Architect

Competence is a combination of knowledge, skills and experience, with "skills" used as shorthand for all three combined.

Successful IT architects require a broad set of skills:

- General architectural skills, which includes those skills specific to architecture and skills borrowed from other disciplines (project/program management, consulting, business);
- Specialized architectural skills, e.g., enterprise, solution, infrastructure;
- "Vertical" market segment skills;
- "Horizontal" technology skills;
- Environmental skills - employer and client contexts; nation, region, enterprise, business unit.

One of the peculiarities of architectural competence is its requirement that an architect be comfortable with many nominal opposites and have the ability to recognize which ones apply in any given situation and how to balance them: analysis and synthesis; inference and implication; ambiguity and certainty; abstraction and realization;

complexity and simplicity; pragmatism and idealism; strategy and tactics; leadership and collaboration; ownership and disengagement. Architects often joke that they must walk with their heads in the clouds and their feet on the ground.

Assessing a candidate's skills profile is clearly challenging. The best way to gauge the competence of architects is by the architectures they've created. Architectures are, however, complex artifacts, and judging them requires a fair degree of competence itself.

One obvious solution is to have your best architects interview candidates and, to the extent possible, review their work. Such an interview will confirm whether the candidate can contribute effectively in a different organizational culture. But an architect's time is a precious commodity, and you will need effective filtering to winnow the wheat from the chaff. Past job titles and project summaries on a resumé are not reliable discriminators, as there remains a high degree of variability in mapping roles to actual job descriptions and responsibilities.

Is there some mechanism that gets at the essential characteristics of an architect independent of the details of a particular employer's context? The best way to determine an architect's true skill set is skills- and experience-based certification. Knowledge-based certifications are common but tend to focus only on technical considerations, and knowing something is not the same as using the knowledge in practical situations.

One example of a skills- and experience-based certification is The Open Group's IT Architect Certification (ITAC) program. Candidates submit evidence of mastery of a set of core architectural skills and are required to describe three architectural projects in detail. They are then interviewed by a board of three certified architects, who judge whether the candidate has adequately demonstrated the standard criteria for certification. The program was initiated in summer 2005 and to date has certified more than 3,000 architects from 120 companies in 60 countries.

Good architects can make a major difference in the ability of an IT function to successfully and efficiently address the needs of its business. Thus, learning how to identify qualified and experienced architects is that much more important for businesses.

Leonard Fehskens is vice-president of skills and capabilities, The Open Group.

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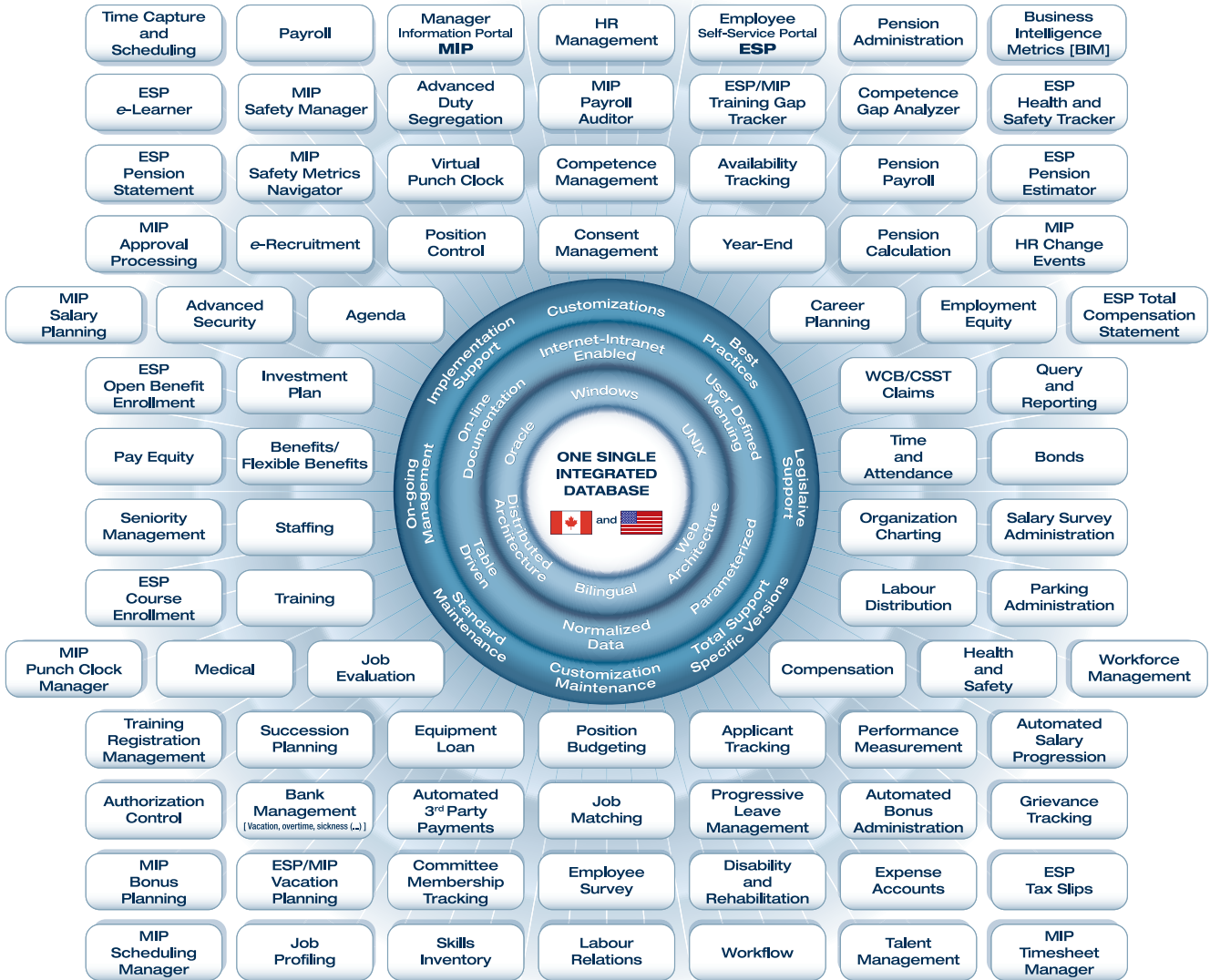
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What is Alternative Dispute Resolution (ADR)?

ADR processes provide practical ways to resolve workplace disputes. Two of the processes we focus on are principled negotiation and interest-based mediation. Principled Negotiation, developed at Harvard, is an approach to negotiating that allows you to look behind the positions and focus on the underlying interests in order to find a solution that makes sense and maintains relationships. In an interest-based mediation, a mediator assists disputing parties to negotiate. Mediation can help re-establish trust and prevent damage to relationships. Mediation can save time and reduce financial and emotional costs.

At this workshop you will learn how to mediate disputes while preserving relationships and how to negotiate your way through tough situations.

Day 1

- What causes conflict?
- What are your negotiation tendencies?
- How do you avoid negotiation pitfalls?
- Which style is better, a competitive or cooperative one?
- How can you avoid making dangerous assumptions?

Day 3

- How do you prepare for a negotiation?
- How do you deal with strong emotions?
- How can you be more persuasive?
- How can you get people to listen to you?
- How do you handle a number of people at the table?

Day 2

- 7 Elements of Principled Negotiation?
- How do you deal with difficult people?
- How can you be creative to get better results?
- What should you disclose in negotiation?
- When should you say yes and when should you walk away?

Day 4

- How do you find people's underlying interests?
- How do you mediate to resolve disputes?
- How can you resolve workplace conflict?
- How can you prevent mediations from getting out of control?

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Day 1

- What makes a conversation difficult?
- How do you start a difficult conversation?
- How do you confront bad behaviour?
- How do you deal with difficult people?
- How do you identify personality types?
- How do different personality types contribute to problems in the workplace?

Day 3

- How do you deal with difficult conversations in the workplace?
- How do you deal with difficult conversations at home?
- How might you manage your own responses better to make the conversation less difficult for you?
- How do you know when to end a difficult conversation?
- What is the best way to end a difficult conversation?
- How do you conquer fears around a difficult conversation?

Day 2

- What triggers you and others?
- How do you avoid common mistakes?
- How do you manage emotions?
- How do you get to the root of a problem?
- How can you disagree without escalating the conflict?
- How do you prepare for a tough conversation?



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Toronto, Ontario

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www.eplyevents.com/join2011
For more information visit
www.joininfo.ca



PRESENTS



THE 8th ANNUAL EMPLOYER CONFERENCE

LEADING WITH ACTION

BE PART OF ONE OF CANADA'S PREMIER DIVERSITY EVENTS

Learn about best practices for disability inclusion; get the tools to be a leader in this field. This is one event you can't afford to miss!

Date and Time

Day One: Monday, Nov. 21, 2011 8:00 a.m. - 4:00 p.m.
Official Reception 4:00 p.m. - 6:00 p.m.
Day Two: Tuesday, Nov. 22, 2011 8:00 a.m. - 4:30 p.m.

Location

On The Park Events and Conference Centre
1095 Leslie Street Toronto, ON M3C 2J7
www.eventsonthepark.ca

Description

- Leading with Action highlights include:
- Global Business Leadership Network Summit for senior business leaders
 - Networking opportunities
 - Interactive workshops facilitated by industry leaders, subject experts and diversity-related practitioners
 - Accessibility for Ontarians with Disabilities Act (AODA): *impacts on business in 2012 and onwards*
 - 2011 Employer and Entrepreneur Awards
 - Keynote presenters, entertainers and special guests

Hotel and Lodging

The Westin Prince Toronto - 1.800.937.8461
900 York Mills Road Toronto, ON M3B 3H2
To book a room, please call before Oct. 21, 2011 and quote JOIN. Standard rate is \$125.00 per room/night plus applicable taxes, based on single/double occupancy.

Who should Attend?

- Ontario JOIN, US, and International Business Leadership Network members
- HR professionals and hiring managers
- Diversity professionals
- Senior business leaders
- Government officials
- Small business owners and entrepreneurs with disabilities
- Employers interested in tapping into the vast economic potential of people with disabilities

Registration

Online registration is now open. Please register at:
www.epl events.com/join2011

ATTENDANCE OPTIONS:

| | Early Bird Rate (Before Sept. 15, 2011) | Regular Registration (After Sept. 15, 2011) |
|----------------|--|--|
| Day One Only* | \$275 | \$355 |
| Day Two Only | \$250 | \$295 |
| Both Days* | \$495 | \$550 |
| Reception Only | \$75 | \$75 |

* Includes the reception.
BLN members will get a reduction of 10% on rates based on options chosen.

CANCELLATION POLICY

Cancellations or refunds are not permitted; however, substitutions are welcome. For more information and updates, visit www.joininfo.ca

SPONSORED BY:





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| Day One Activities | | |
|--------------------------------|--|---|
| Time | Details | |
| 8:00 a.m. | Networking, Continental Breakfast | Registration and Networking |
| 8:45 a.m. | Official Welcome | Scotiabank, Title Sponsor – Opening Remarks and Welcome |
| 9:00 a.m. | Stream One Working Group | The Digital Divide – Facilitator Pending |
| | Stream Two Working Group | Perceptions and Attitudes, Shifting the Mindsets – Nadine Vogel, Facilitator |
| | Stream Three Working Group | Understanding the Spectrum of Invisible Disabilities – Mundy McLaughlin, Facilitator |
| | Stream Four Working Group | Communication and Accommodation, Inclusive Communication in Your Organization Edward “Ed” Crenshaw, Facilitator |
| | Stream Five Working Group | Measuring Retention and Career Growth for Persons with Disabilities, Leveraging the LAMP* Model as a Framework for Strategic HR Measurement – William G. Wolfson, Facilitator |
| Lunch | | |
| 12 Noon | Arrival of Global Business Leadership Summit Attendees | Plated Luncheon, Opening Remarks and Introductions, Sponsor of Summit |
| 1:00 p.m. | Global Business Leadership Summit Keynote Address – The Honourable David C Onley, O. Ont., Lieutenant Governor of Ontario | |
| 1:00 p.m. | Continuation of Stream Working Groups | |
| 4:00 p.m. | Reception – Networking, Cocktails and Hors’ d’oeuvres, Entertainment | |
| Day Two Activities | | |
| Time | Details | |
| 8:00 a.m. | Networking, Continental Breakfast | Registration |
| 8:50 a.m. | Opening Speech | <ul style="list-style-type: none"> Minister Madeleine Meilleur Chair, Ontario JOIN Board of Directors, Introduction of Minister, Thank-you on behalf of JOIN – Deepak Soni |
| 9:00 a.m. | Opening Remarks, MC and Host | Suhana Meharchand, CBC Newsworld News Anchor and Host of the CBC News: Today |
| 9:15 a.m. | Welcome Delegates | Title Sponsor, Scotiabank – Deanna Matzanke, Director, Global Employment Strategies |
| 9:25 a.m. | Report on Global Summit Panel of Global Leaders | Several selected Global Business Leadership Summit Attendees |
| 10:00 a.m. | Unveiling of the Statement of Commitment to Action | Summit Attendees, The Honourable David C. Onley, O. Ont, Lieutenant Governor of Ontario, JOIN Board and Staff, Invitation for all Delegates to Sign |
| 10:15 a.m. | Break | Make Way to Workshops |
| 10:30 a.m. to 12 noon | Workshops Track A | |
| Concurrent Workshops | JOIN Mentoring Connection | Deloitte and Scotiabank and JOIN – Panel – Coffee Shop Chat (Stephen Ng, Deloitte and Hossam Rady, <i>mentee</i> and Scott McAthey, Scotiabank and Tim Ho, <i>mentee</i>) Anthony McNamee and Sujay Vardhmane |
| | AODA (Access to Ontarians with Disabilities Act) Updates | Compliance Where We are At, What’s Worked and What Hasn’t, Roadblocks to Compliance Speaker – James (Jim) Sanders, Chair, Accessibility Standards Advisory Council |
| | Small Business Panel | Panel Moderator Pending – Melissa McNeil, Executive Director from Good Foot Delivery, Job Carving Success Stories, Alternate Formats, Aroma Express |
| 12:30 p.m. to 1:20 p.m. | Lunch | |
| 1:20 p.m. to 1:50 p.m. | Keynote Speaker - Ball Room | Alex Valdez |
| 1:50 p.m. to 2:15 p.m. | Annual Employer Awards (Large, Medium, Small, Entrepreneur of the Year) | Announcement of Award Winners – Sharon M. Myatt, Ontario JOIN |
| 2:15 p.m. to 2:30 p.m. | Break | |
| 2:30 p.m. to 4:00 p.m. | Workshops: Track B | |
| | | Culture and Disability – The Impact of Culture on Disclosure Yves Veulliet, Diversity Leader, IBM Canada |
| | Demonstrations | Assistive Technology – Brad Boyd, Information Technology Specialist, Assistive Technology Team and Susan Buckle, IT Specialist, Assistive Technologies, TD Bank Group |
| | Launching of a New Network | Association of PWD Diversity Network Groups – David Best, IBM, Moderator |
| | Recruiting and Hiring Persons with Developmental Disabilities | Nadine Vogel, Founder and President of Springboard Consulting LLC |
| 4:00 p.m. | Closing Speaker | |
| 4:30 p.m. | Conference Closed | |



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OVERVIEW

During Day One, seasoned facilitators with extensive expertise on the various topics will guide all registered delegates throughout the first day. The goal of Day One is to connect with business leaders with the intent to develop a common understanding of employment issues for people with disabilities, and agree to work together to identify the workplace equality gaps. These sessions will result in all delegates leaving with a strategy to lead for action with implementation tips and approaches to be able to actualize future success within their organizations.

Session One – The Digital Divide

We live in an information-driven society, and the gap in the digital divide results in a barrier for persons with disabilities in achieving career success. We need to recognize, evaluate, and measure the communication gaps in our business operation processes in order to ensure workplace equality and digital access. What are the barriers and measurable gaps in a company’s communication vehicles?

Session Two – Perceptions and Attitudes, Shifting the Mindsets – Nadine Vogel, Facilitator

The most challenging barrier for persons with disabilities are the false perceptions of who a person with a disability is, misinformation about the talent that they bring to the worldwide marketplace, and, finally, the attitude of inaction and complacency—let someone else do it! The measure of a leader is in the ability to identify a challenge and then take decisive action.

Session Three – Understanding the Spectrum of Invisible Disabilities – Mundy McLaughlin, Facilitator

Through role-playing, lecture, group-work and case studies, participants will become familiar with a broad range of invisible disabilities. Examples include environmental, developmental, forms of autism, epilepsy, brain injury, dyslexia, speech impairments, musculoskeletal disorders, genetic disorders and psychiatric disabilities. They will learn the social mores impacting communication with people who have invisible disabilities and why certain disabilities are not considered a disability by many people who live with them.

Session Four – Communication and Accommodation, Inclusive Communication in Your Organization – Edward “Ed” Crenshaw

At the onset of the session Ed will outline his experiences with returning veterans with disabilities and how the war and disability have impacted their ability to work and communicate. Ed will then focus the day on lively debate and discussion. With increasing awareness of accessibility for employees and customers with disabilities through the AODA, focus is usually on building design and access. The gap for communication and accommodation for persons with disabilities needs to be addressed as this is a barrier to employment for persons with disabilities and retention of customers with disabilities in a business environment.

Session Five – Measuring Retention and Career Growth for Persons with Disabilities – William G. Wolfson, Facilitator

Leveraging the LAMP* Model as a Framework for Strategic HR Measurement - Tackling the corporate growth of persons with disabilities – metrics of success of people that do hire people with disabilities, genuine progress index, how to measure, how can we measure? The session will provide participants with a detailed look at a framework for objective, evidence-based, business-focused measurement of HR-related questions like the retention and/or career growth of employees with disabilities. This would be done through a combination of conceptual learning and practical examples on the application of the model. The overall objective is to offer participants with a fresh perspective on how to develop the right measurements and to make those measurements matter in their organization.

Day Two of the JOIN Employer Conference will include four concurrent workshops and panel discussions based on this year’s theme, “Leading With Action,” focusing on engaging the employer delegates in meaningful dialogue on strategies for full inclusion, as well as the opportunity for delegates to leave with tangible resources to support accessibility and inclusion in their workplace and tools to assist them in compliance with the AODA standards. Join us for a coffee shop chat with Deloitte and Scotiabank on the JOIN Mentoring Connections. Yves Veillet from IBM leads Culture and Disability, AODA updates from Jim Sanders, Compliance Where We are At - What’s Worked and What Hasn’t - Roadblocks to Compliance. Team members from TD Bank’s Assistive Technology Group will demonstrate to delegates the latest in technology to assist employees with disabilities. Nadine Vogel presents Recruiting and Hiring Persons with Developmental Disabilities - David Best will moderate a panel who will launch a new association of Canadian diversity networks for PWD.

Our Keynote Address will be delivered by Alex Valdez. Alex’s programs: “A Funny Thing Happened on the Way to Diversity” and “Disabilities are from

within,” allow him to entertain as well as educate. His goal is “not only to help audiences accept his own and others’ disabilities, but to recognize that while we may all appear very different on the outside, on the inside we are all very much the same’. His messages combine his life experiences and years of diversity and disability training. Corporations, associations, government agencies and college campuses have all invited Alex to be part of their diversity, disabilities awareness, and human resource programs.

The Honourable David C Onley, O. Ont., Lieutenant Governor of Ontario will assist Summit attendees and other dignitaries in unveiling the “Commitment to Action,” as signed by global industry leaders from day one of the conference.

The JOIN conference plays a pivotal role in shifting the attitudes of many employers.

A key component for the annual conference has become the recognition at the event of JOIN’s Employers of the Year - Small, Medium and Large, as well as for the Entrepreneur of the Year.