

Take your grasp of current law and best practices to the next level - with insights from a faculty of experts

The Intensive Short Course Employment Contracts and Employee Terminations

In this highly-focused, beyond-basics examination of two critical areas in HR practice, you'll hear about (and receive valuable materials on):

- Maximizing the value of the employment contract as a tool for managing risk
- Improving on standard precedents in such critical areas as confidential information, conflicts of interest and obligations of the parties in the event of termination
- Managing organizational change and amending work terms without triggering allegations of constructive dismissal
- The smartest current thinking on the conduct of workplace investigations (including employee privacy issues, documentation and reporting, and follow-up)
- Dispute resolution mechanisms and forums; making the right choices at the beginning and throughout the process
- The amended Summary Judgment Rule 20 - a new mode of case management in employee terminations

Chairs

Barry Kuretzky, Kuretzky Vassos Henderson LLP

Connie Reeve, Blake Cassels & Graydon LLP

Melany V. Franklin, Borden Ladner Gervais LLP



DATES & TIMES

September 14 - 15, 2010

9:00 a.m. - 4:00 p.m. EDT/EST

9:00 a.m. - 12:45 p.m. EDT/EST

LOCATION

Osgoode Professional
Development Centre

1 Dundas St. W., 26th Floor
Toronto, ON

Webcast
Available



The Intensive Short Course Employment Contracts and Employee Terminations

Are you confident that your knowledge and practices around employment agreements and terminations minimize your risk?

The law regarding terms of employment and liabilities associated with the termination of the employment contract continues to evolve, as does the art and science of risk management in the workplace. Counsel – both management-side (including in-house counsel) and employee-side – as well as senior HR staff, continue to wrestle on a day-to-day basis with the challenges of making and amending agreements, managing change, and where termination is inevitable, conducting the process in a way that respects the law's and society's expectations of fairness and due process.

To prevail as an HR professional or lawyer in such an environment requires the most up-to-date knowledge, communicated clearly and at a level that goes well beyond the basics of well-settled law and practice.

That's the awareness that has guided the experts who have contributed their skills and experience to *Osgoode Professional Development's* new **Intensive Short Course on Employee Contracts and Employee Terminations**, and to its accompanying binder of practical and useful reference materials.

In addition to the topics noted on the first page of this brochure, the faculty will address such timely and significant issues as:

- Establishing an effective nexus between the employment contract and organizational policies
- Using the contract to detail remuneration, incentive structures and notice obligations
- Termination for just cause – how the case is built or unbuilt, including the range of conduct (both in and outside the workplace) that can be considered and effectively documented
- Best practices in identifying and dealing with high-risk/high-stress termination scenarios and other “tough calls”
- Establishing or contesting good faith in termination situations

You'll come away from this program secure in the knowledge that you have an enhanced grasp of the best current thinking on the questions that really matter.

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Chairs

Barry Kuretzky, Kuretzky Vassos Henderson LLP
Connie Reeve, Blake Cassels & Graydon LLP
Melany V. Franklin, Borden Ladner Gervais LLP

Faculty

Alison A.M. Burton, Counsel, RBC Law Group
Matthew L.O. Certosimo, Borden Ladner Gervais LLP
Robert L. Colson, Teplitsky, Colson LLP
Lorna A. Cuthbert, Stikeman Elliott LLP
Elizabeth L.W. Fanjoy, Assistant General Counsel
Head of Labour and Employment Law, CIBC
Jennifer M. Fantini, Borden Ladner Gervais LLP
John C. Field, Hicks Morley Hamilton Stewart
Storie LLP
Barry B. Fisher, Fisher Law Chambers
M. Norman Grosman, Grosman, Grosman & Gale LLP
Peter Israel, Israel Foulon LLP

Lorenzo Lisi, Sherrard Kuzz LLP
Jennifer E. Maurer, Senior Counsel
Scotiabank
Richard J. Nixon, Davis LLP
Carita Pereira, Israel Foulon LLP
John W. Saunders, Hicks Morley Hamilton
Stewart Storie LLP
Christine M. Thomlinson, Rubin Thomlinson LLP
George J.A. Vassos, Kuretzky Vassos Henderson LLP
David A. Whitten, Whitten & Lublin LLP
Loreta Zubas, Zubas & Associates

Agenda

Day One: Tuesday, September 14, 2010

8:30 Registration and Continental Breakfast

9:00 Introductory Remarks from the Chairs

Barry Kuretzky, Kuretzky Vassos
Henderson LLP

Connie Reeve, Blake Cassels & Graydon LLP

Melany V. Franklin, Borden Ladner Gervais LLP

NEGOTIATING AND DRAFTING KEY CONTRACT TERMS

9:05 Part I: From the Term Sheet Onwards

Lorna A. Cuthbert, Stikeman Elliott LLP

Robert L. Colson, Teplitzky, Colson LLP

The first of three panels providing expert insights into how employment contracts can be used to head off future problems, clarifying expectations on both sides and limiting risks and potential liabilities.

- Defined terms (“confidential information”, “material change in duties” etc.)
- Employment clause: fixed term or open-ended (“evergreen”)?
- Job description
- Reporting structure
- If the employee is a CEO, what degree of autonomy will he/she have from the chairman of the board?
- Remuneration: basic salary, commissions, bonus, benefits, vacation
- Short-term and long-term incentives (and how these intersect with the termination clause)
- Provisions involving shares; phantom vs. real shares
- Right to relocate
- “No conflicting obligations” including prior obligations?
- Fiduciary duties
- Assignment of works/copyrights
- Rules and employment policies
- Privacy and personal information
- Probationary period

10:30 Refreshment Break

10:45 Part II: Controlling for Liability and Managing Risks

Matthew L.O. Certosimo, Borden Ladner Gervais LLP

George J.A. Vassos, Kuretzky Vassos Henderson LLP

- Provisions governing in the event of disability
- “Good reason” clauses
- Immigration and tax issues in cross-border hirings
- Attempts to contract out of possible liability for constructive dismissal
- The termination clause and severance provisions
 - rights of employee on termination of employment
- Using employment contracts to detail notice obligations
- How employers should assess notice periods
- Severance: lump sum, salary continuance; base salary vs. full compensation
- Just cause: advantages and disadvantages of tailoring clauses specific to the position or industry

12:00 Luncheon

1:00 Part III: Post-Employment Entitlements and Restrictions and General Drafting Considerations

Richard J. Nixon, Davis LLP

David A. Whitten, Whitten & Lublin LLP

- Working notice
- Which contractual obligations of employees will survive termination?
- Scope of post-employment fiduciary and other obligations, including confidentiality and intellectual property issues
- Restrictive covenants (non-solicitation and non-competition) – how enforceable are they in today’s climate?
- Form of release
- Selecting from among precedent clauses– and improving on them

Agenda

Day Two: Wednesday, September 15, 2010

8:30 Continental Breakfast

9:00 Introductory Remarks from the Chairs

Barry Kuretzky, Kuretzky Vassos Henderson LLP

Connie Reeve, Blake Cassels & Graydon LLP

Melany V. Franklin, Borden Ladner Gervais LLP

9:05 Best Practices in Workplace Investigations of Alleged Employee Misconduct

Christine M. Thomlinson, Rubin Thomlinson LLP

Alison A.M. Burton, Counsel, RBC Law Group

The co-author of a standard text in this area, and an experienced in-house HR director, will discuss key issues, including:

- The decision to investigate the allegations
- The parameters and methodology of the investigation (including the role, if any, of an outside investigator)
- Smart approaches that will preserve workplace morale and minimize legal risk (including the risk of liability for violation of employee-privacy rights and tort liability for negligent investigation)
- How to most effectively report on and follow up on the results of the investigation

9:40 Just Cause: Building and Documenting the Case

Jennifer M. Fantini, Borden Ladner Gervais LLP

Jennifer E. Maurer, Senior Counsel
Scotiabank

- Strategies for a successful just cause termination
- Mistakes employers should avoid
- Can an employee's off-duty conduct or pre-hiring representations amount to just cause?
- Recent trends/developments - where the courts have been taking the law
- Multiple/cumulative incidents of misconduct as a basis for just cause
- Documented warnings and proving the sufficiency of the misconduct
- Condonation of misconduct

- LSUC's precedent employment contract
 - strengths and weaknesses?
- Dealing with problems arising from the other side's precedent

2:20 Refreshment Break

2:30 Amending Agreements and Managing Change

John C. Field, Hicks Morley Hamilton Stewart Storie LLP

M. Norman Grosman, Grosman, Grosman & Gale LLP

Two counsel will explore the smartest ways of amending work terms, employee responsibilities and duties, and conditions of employment without triggering claims or impacting the enforceability of the contract.

3:15 Beyond the Corners of the Contract: the Interface Between Employment Agreements and Organizational Policies

Carita Pereira, Israel Foulon LLP

Elizabeth L.W. Fanjoy, Assistant General Counsel, Head of Labour & Employment Law, CIBC

Consistency as between the employment agreement and organizational policies and practices is key, but can't be assumed. This discussion will explore the ways in which the relationship between the two can be powerfully and effectively managed, including:

- Building effective policies that the courts will enforce: *Dowling v. Ontario Workplace Safety and Insurance Board*
- Coordination of the contract with compensation and benefit plans/variable compensation structures: *Springer (C.A.)*

4:30 Day One Adjourns

10:15 Refreshment Break

10:25 Termination Without Cause: Dealing With the Tougher Issues

Lorenzo Lisi, Sherrard Kuzz LLP

Loreta Zubas, Zubas & Associates

- Best practices for dealing with terminations during uncertain economic times
- Protecting yourself in difficult termination scenarios (e.g. where the employer is a family business/small business or the employee is emotionally disturbed)
- Identifying and dealing with high-risk terminations
- Issues involving references or requests for references
- Issues involving releases and waivers
- How presumptions regarding position as a factor can be rebutted
- Dealing with bonuses, commissions, pensions and other employment-related benefits
- Terminating an employee on leave
- Avoiding aggravated damage claims (bad faith, punitive damages, etc.)
- A review of the most significant recent caselaw

11:10 When the File is Headed for Litigation: Choosing Among Dispute Resolution Options and Strategies

Barry B. Fisher, Fisher Law Chambers

Peter Israel, Israel Foulon LLP

- What happens if a human rights complaint is included in a lawsuit?
- Assessing the prospects for mediation, arbitration, or mediation/arbitration in the particular case
- Protocols, ground rules, preparation of agreements and releases
- Managing the file, with emphasis on the respective roles of the board of directors, CEO, HR department, communications department, in-house counsel, and external counsel

- Litigation privilege
- Impact of current changes to Simplified Procedure (r. 30, 31, 76)

12:05 Summary Judgment - How to Get it Under the Newly-Amended Rule 20

John W. Saunders, Hicks Morley Hamilton Stewart Storie LLP

The far-reaching amendments to Rule 20 confers power on judges to hold a “trial within a trial”, hearing evidence on a summary judgment motion. As the Canadian Forum on Civil Justice has noted, “the substantially revised rule on ‘where trial is necessary’ gives the court much greater powers and effectively permits such cases to enter a form of case management”. The practical implications of the amendments, and the strategic considerations to which they give rise, will be explored in this session. The discussion will include an examination and critique of a factum, underscoring just what a judge will need to see to grant the motion.

12:45 Program Concludes

Who Should Attend

- Employment lawyers
- In-house counsel
- HR directors
- Arbitrators and Mediators
- Civil litigators

Registration

The quick way to reliable knowledge and useful reference materials!

Register me for: **Employment Contracts and Employee Terminations**

I will attend: On site Via webcast - single viewer

I am unable to attend. Please send me information about ordering program materials.

Name: _____ Position: _____

Firm/Company: _____ Practice Area: _____

Address: _____

City: _____ Province: _____ Postal Code: _____

Email: _____

Telephone: _____ Fax: _____ Priority Service Code

1	0	0	9	0	L
---	---	---	---	---	---

(from mailing label below)

Please complete all registrant information.

- Add me to your mailing list
- Delete me from your mailing list
- If you do not wish to be contacted by e-mail, indicate here

Fee Per Delegate

\$995 plus 13% HST for a total of \$1,124.35

Fees include attendance, program materials, continental breakfast, lunch (Day One only) and break refreshments.

Group discounts are available for both on site and webcast participants.

Visit www.osgoodepd.ca for details. Please inquire about financial assistance and CLE credits.

OPD Searchable e-Binder now available! Contact us for more information.

CLE Credits

Approved in accordance with the requirements of the LSUC Certified Specialist program, BC CPD, Barreaux du Québec and the NY CLE Board (for transitional and non-transitional lawyers). Note: NY CLE Credits are not available for webcast participants. BC CPD webcast participants must contact us for further information.

Payment Options

- Cheque enclosed (payable to York University – GST# R119306736)
- Bill my credit card: VISA Mastercard

Card# _____ Expiry: _____

Signature: _____

Payment amount: _____

Program Changes

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

Dates & Times

September 14 - 15, 2010

Day One: 9:00 a.m. - 4:00 p.m. EDT/EST

Day Two: 9:00 a.m. - 12:45 p.m. EDT/EST

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

Dress is business casual.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

Location

Osgoode Professional Development
Downtown Toronto Conference Centre
1 Dundas Street W., 26th Floor
Toronto, ON, M5G 1Z3

Public CLE Seminars

Customized CLE Programs

Skills Training & Certification

ITAW

Part-time LLM



OSGOODE HALL LAW SCHOOL
YORK UNIVERSITY

Professional Development
CLE

4 Convenient Ways to Register

-  1. **MAIL** your registration form to:
Osgoode Professional Development
Downtown Toronto Conference Centre
1 Dundas St. W., 26th Floor
Toronto, ON M5G 1Z3
-  2. **ONLINE** at
www.osgoodepd.ca
-  3. **FAX** your registration to
416.597.9736
-  4. **CALL US** at 416.597.9724 or
1.888.923.3394