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WINTER 2015 VOLUME 13, No. 1



Nathaly Pinchuk, RPR, CMP  
Executive Director

# Making Meetings More Productive: It's Easier than You Think...

*A simple tool that everyone can use*

How many of us have sat through endless meetings that were going nowhere? It is comparable to being tortured. So much to do, so very little time to do it and then we waste our time in so-called "production meetings" that are the furthest thing from productive.

Nowadays we are still drowning in meetings but through different mediums. We have the in-person meetings, audio conference calls, videoconferencing and Skype options. With all this new technology available, have you noticed a great improvement in the outcome of your meetings? A number of us haven't and we're not alone.

I recently read an article by Joel Levitt about improving meetings with a very simple tool that anyone can use—a simple checklist. Levitt found that executives spend typically at least 20% of their time in meetings with five or more people. Levitt also said that surveys indicate that a majority of these executives are dissatisfied with the value and outcome of their meetings.

When asked what disrupted their meetings, the executives listed things such as previous meeting still running in "your" conference room, conference room was messy, not enough chairs or electrical outlets, insufficient supplies such as paper and markers for easels and audio visual equipment not working. Other disruptions included handouts not done properly, critical people were

no-shows, time and location not clear and no agendas. The worst was people who were not prepared and did not bring the required information. We have all experienced either one or more of these scenarios throughout our careers.

Levitt suggests developing a simple checklist to be distributed to everyone from the initial person who books the meeting to all participants and minute-takers along with the agenda for the meeting. You do not have to spend hours developing this checklist, but make it applicable to the specific event you are planning. The lead person for the meeting should plan to arrive early and ensure that all necessary equipment is there and in good working order.

Your agenda should not only include the items to be discussed but actually list the specific individuals involved who will be responsible for bringing progress reports, research and updates on each issue. For example, if you are working on a specific event such as an employee recognition event, don't just indicate recognition event on the agenda. Break it down into the related functions and indicate who will be presenting updates in each of the areas involved. That way, when you send the invitation or meeting notice, each participant will know what's expected of them and bring the appropriate reports. This elaborate agenda along with the checklist will enable participants to come prepared which will save time of running back to your office to retrieve reports, etc.

This isn't rocket science and should not be complicated. A normal checklist and agenda should take little time to prepare if you develop an easy template which your employees can adapt

to suit their needs. We're not expecting Robert's Rules of Order here. If we as leaders can develop simple checklists and agendas to disseminate among our teams, just think how much more productive and concise our meetings will be in the future. Give it a try and see what happens next!

*Nathaly Pinchuk, RPR, CMP  
Executive Director IPM  
Institute of Professional Management*

Perspective

So much to do,  
so very little time  
to do it...

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Brian W. Pascal  
President

President's Message

# Mistakes: I've Made a Few

*Acknowledge and move on*

Though I don't like to admit it and try not to whenever I can, I have made a few mistakes in my life and my working career. Okay, maybe more than a few. But I have always believed that mistakes are just part of the growing process. As much as I'd like to think I know how to do everything as a manager or supervisor, the truth is that I often fall short on the first, second or even third attempts at getting it right.

The other thing I believe is that there's no sin in getting knocked down- the crime is when we don't get up and try again. Getting knocked down only proves that we are human. As long as we get up and get right back into the ring, things will be alright. I can remember very early in my working life, I worked for a cantankerous old bugger who reamed me out for every minor error. But he also encouraged me to try again until I got it right.

I don't know if it was my will to succeed or just to prove him wrong, but I learned a lot from that master. It was George Bernard Shaw who once said "A life spent making mistakes is not only more honourable, but more useful than a life spent doing nothing." I guess that means I will probably be remembered as being more honourable than some others.

The other thing I learned earlier from my old buddy was to move on quickly from a mistake so you can concentrate on making the next one. Great hockey goalies don't allow one bad goal to ruin their confidence or ability to stop the next puck. They fish the puck out of the back of the net as quickly as possible and get back in the crease. You can't stay focused on mistakes at work either. If you are like me, you just don't have the time or energy.

The real challenge with mistakes is to try and learn from every single one. The quote from Henry Ford "Failure is simply the opportunity to begin again, this time more intelligently" is a motto that I try to live by. I've also tried to teach my employees over the years to feel the same. It's not easy at stressful times, but it certainly opens doors for personal growth and development for the future. We don't have to fret about spilled milk, but we do have to learn to be more careful carrying it from place to place. If we learn from our mistakes, we can continue to improve and grow, especially at work. After all, isn't that the whole point?



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Malcolm MacKillop,  
LL.B.

Senior Partner,  
Shields O'Donnell  
MacKillop LLP



Todd Weisberg,  
B.A., LL.B.

Associate,  
Shields O'Donnell  
MacKillop LLP

# Restructuring Brings Constructive Dismissal Charges

*A primer for employers*

In the current economic climate, many organizations are in the process of restructuring their workforces to boost efficiency. Restructuring is often associated with layoffs, but it can also include changes to the terms of the employment of remaining employees. When restructuring, employers should be aware that moving an employee to a different position, redefining an employee's job responsibilities or changing an employee's compensation and benefits without the employee's agreement can result in a claim of constructive dismissal.

The Supreme Court of Canada defined constructive dismissal in *Farber v. Royal Trust*, [1997] 1 S.C.R. 846. According to the Court, constructive dismissal occurs when an employer makes a unilateral change that substantially alters a fundamental term of an employee's employment contract, which allows the employee to treat the employment relationship as terminated and to claim damages.

It is hard to predict whether a change in the terms of employment will amount to a fundamental change as the determination of whether there has been constructive dismissal depends on the facts of each case. However, Courts will compare an employee's position both before and after the change was imposed and will consider, from an objective point of view, whether a reasonable person in the employee's position would have felt that the fundamental terms of the employment contract had substantially changed.

The following are examples of unilateral changes to employment contracts which may constitute constructive dismissal:

- **Change in salary:** A significant reduction in base remuneration may constitute constructive dismissal. Generally, a reduction in salary of less than 10% is unlikely to be held to be constructive dismissal, while a reduction of greater than 10% carries a significant risk of a finding of constructive dismissal.
- **Change in position or responsibilities:** Where a change in position or responsibilities constitutes a serious demotion rather than a lateral move, Courts are likely to find constructive dismissal. This is especially likely where a management function is removed or where the new role is considerably less important or prestigious than the previous role.
- **Change in working hours:** Where a Court finds that certain working hours were an express or implied term of an employment contract, a change in those hours (such as a substantial increase, decrease or a change in the time of day that an employee is expected to work) is likely to result in a finding of constructive dismissal.
- **Change in bonus or benefits:** Similar to reductions in salary, changes in bonus structure or benefits that result in a significant reduction in remuneration, such a reduction of more than 10%, are likely to be held to be constructive dismissal. However, Courts are less likely to find constructive dismissal where base salary is unchanged or where changes are brought about by economic pressures.
- **Imposing geographical transfers:** Courts have generally

not found constructive dismissal where it is an express or implied term of the employment contract that the employee can be transferred and there is a legitimate reason for the transfer. However, in the absence of such a term, or where the place of work is an essential term of the contract, Courts are likely to find constructive dismissal.

Until 2008, it was widely believed that a fundamental change to an employment contract could be unilaterally implemented by the employer so long as reasonable notice was provided. However, this belief was rejected by the Ontario Court of Appeal in the now-widely cited case, *Wronko v. Western Inventory Ltd.* (2008), 66 C.C.E.L. (3d) 135 (C.A.) ["Wronko"]. The Court in *Wronko* found that an employee faced with a unilateral change to a fundamental term of her employment contract has three options:

1. The employee may accept the change expressly or through apparent acquiescence;
2. The employee may reject the change and sue for damages; or
3. The employee may expressly reject the change and continue to perform her functions as before the change. In this case, the employer may terminate the employee with proper notice and offer re-employment on the new terms; or, if the employer permits the employee to continue to work as if under the original contract, the employer is considered to have

*continued next page...*

Feature

## Restructuring Brings Constructive Dismissal Charges

... concluded

acquiesced to the employee's position.

Following the direction from the Court in *Wronko*, employers attempting to make a fundamental change to an employee's contract of employment should do one of two things to avoid a possible finding of constructive dismissal:

1. Obtain the employee's express or implied agreement to the change, and offer some form of consideration, such as a signing bonus, in exchange for such agreement; or
2. If the employee does not agree to the change, terminate employment and provide reasonable working notice or pay in lieu thereof. Following termination, the employer may either offer the employee a new position under the proposed new terms or search for a replacement.

If an employer offers an employee a new position under the proposed new terms and the employee does not accept the new position, the employee may be owed less for pay in lieu of reasonable notice. Dismissed employees are required to mitigate their damages by accepting

reasonable alternative employment. If an employee does not mitigate her damages, the employer may be entitled to a deduction from any wrongful dismissal damages owed. Accordingly, if the employee does not accept the new position, the employee may not have mitigated her damages and the employer may therefore be entitled to a deduction for the employee's failure to mitigate. Employers should consider offering the employee the new position after both parties understand that the original contract of employment has been terminated, in accordance with the recent decision in *Farwell v. Citair Inc. (General Coach Canada)*, [2014] ONCA 177.

An employee who continues to work under a fundamentally changed term with little or no complaint may be considered by the Courts to have condoned the change, and therefore to have given up her right to sue for constructive dismissal. In order for Courts to find that an employee has condoned a change, the employee must have been provided with a reasonable amount of time to assess the new circumstances. In determining whether an amount of time is reasonable,

Courts will consider the employee's age, education, work experience and length of service with the employer.

It was held in *Russo v. Kerr Bros. Ltd.*, [2010] O.J. No. 4654 (S.C.J.) ["*Russo*"] that the employee who expressly told his employer that he rejected a change to his employment contract, then continued to work under the new contract terms, had not condoned the change, but was instead mitigating his damages. Courts will only make this finding where a finding of constructive dismissal is also made.

Employers seeking to change a term of an employee's contract should strongly consider following the Court's direction in *Wronko* by seeking the employee's consent and providing consideration for the change, or, in the absence of consent, terminating employment with reasonable notice.

*Malcolm MacKillop and  
Todd Weisberg practise  
employment law with the firm  
Shields O'Donnell MacKillop LLP  
of Toronto.*



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Sarah Manning,  
LL.B.  
Senior Associate,  
Taylor MacLellan  
Cochrane

# The Rising Tide of Remedial Awards: Human Rights in Nova Scotia

*Don't stay silent when you discover discriminatory behaviour*

**A**wards for lost income may be on the rise in Nova Scotia Human Rights cases. There is a recent case that deserves attention where an employee with 3 years and 7 months service received 18 months lost earnings, less income earned during that period.

On April 8, 2014, a Nova Scotia Human Rights Board of Inquiry released its decision on the *Garnetta Cromwell v. Leon's Furniture Limited* (2014 CanLII 16399 (NS HRC)) case. Ms. Cromwell had been a sales associate at Leon's Furniture store in Dartmouth for less than four years. During this time she was subjected to discrimination based on race; Ms. Cromwell is African Nova Scotian. The Board found ten incidents of racial harassment which included excessive discipline, limiting her ability for advancement as well as inappropriate racial comments. The workplace culture appeared to allow this racism, especially in one instance where a particularly offensive comment was made in front of other managers who remained silent.

Here are some examples of comments and actions Ms. Cromwell experienced in her workplace. Ms. Cromwell's manager would touch her hair saying "Somewhere a sheep is missing its wool." He did this in the office as well as on the sales floor. This same manager would refer to her as "Condoleezza Rice" when she was waiting on customers. When she arrived for her performance review, that same manager stated in front of three other managers, "Everybody out. It's

time for a lynching." Two of the managers left and the third stayed as part of the performance review. None of them said a word and Ms. Cromwell proceeded to her performance review.

The managers at Leon's may have stayed silent, but the Human Rights Board of Inquiry raised its voice. It validated Ms. Cromwell's claims and ordered Leon's Furniture to pay Ms. Cromwell \$8,000 in general damages and eighteen (18) months of lost income, less any income earned in the 18 months after she left Leon's. The Board of Inquiry did not find that Ms. Cromwell quitting constituted constructive dismissal, rather the Board was assessing damages for the breach of Ms. Cromwell's statutory right to be free from discrimination. The Board of Inquiry found at paragraph 292 of the decision that "There was a moment when the lack of reaction of members of management broke the employment relationship."

In the award, the Board did not award loss of income based on reasonable notice. The oft-quoted measure of one month per year of service could have resulted in an award of 3 to 4 months lost income. Instead, the Board applied the restitution model, looking to rectify the actual injury caused to Ms. Cromwell through an award of compensation.

In following this remedial approach, the Board used the following measure at paragraph 409 "In my assessment had these events not occurred, the

Complainant would have continued working for the Respondent for a further 18 months." In coming to that decision, the Board considered "various contingencies including the likelihood that the Complainant would have eventually sought positions elsewhere based on her overall employment history."

### **What does this mean to you?**

Do not stay silent when you witness or are informed of discriminatory behaviour at your workplace. Lack of reaction is an action. It is to allow the status quo to continue.

When it comes to the restitution model, be very cautious when ending employment where a human right may be involved, believing the extent of your liability could rest in a reasonable notice period. Ensure that you are able to substantiate fully that the action taken is not related in any way to a potential human right. Consider the impact if an employee was four (4) years away from retirement, and but for the discriminatory action would have remained an employee until retirement. Applying the measure used in this case could result in a very high award for lost income.

Note there are also great lessons in this case regarding policies and procedures and what falls short of a reasonable investigation.

*Sarah Manning is a Senior Associate Lawyer with Taylor MacLellan Cochrane and can be reached via email at [manning@tmclaw.com](mailto:manning@tmclaw.com).*

Feature

**Sarah Manning will be presenting on**  
*Today's Critical Issues in Employment Law*  
**at IPM's Halifax April 15, 2015 Conference.**  
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Luc Beaudry  
Principal, Cygnus  
Training & Consulting

# Prerequisite for Strong Leadership: Noticing Without Judging

*How to better lead, problem-solve and influence others*

**W**e assume. We judge. We jump to conclusions. And we do it constantly. Our brain is designed to do this automatically to help us make sense of the world. The problem is that this is done through our unique, personal filters and biases and can therefore be subject to being wrong, biased or incomplete on a consistent basis. As a result, we risk frustration, misunderstanding, wasted time and more.

We don't need to stop making these judgements and assumptions which is good news since we can't stop it! We just need to recognize when we're doing it, what impact it's having and manage it more deliberately. It's not as hard as it might first appear. The many benefits include clarity, collaboration, influence, empathy and solutions that produce the results you want. Try these four behaviours to perfect your skills.

### **Focus your attention**

Your ability to notice things came factory installed. Your brain notices infinitely more than it lets you know about. That's why it's so important to direct your mind to focus on things that are useful and productive. For instance, if you're worried about resistance to your process improvement idea, your unconscious mind will focus on making you aware of signs of resistance and disagreement. It will undoubtedly find them. It will also notice neutral and supportive reactions, but won't relay them to you because

you've inadvertently told it that this is not important.

Try this approach. Before presenting your idea, remind yourself to look for signs of support and common ground on which you can build. Here's a secret—you'll still notice the resistance because that is your initial concern. You'll simply have a more balanced and complete view of the situation.

### **Remind yourself that "you don't know!"**

People will always be doing and saying things that cause you to feel a strong reaction. In those moments of "how dare he be so condescending!", the best thing to do is to remind yourself that you may not really know the other person's intentions. You know how you feel at this moment, but you probably don't know precisely what the others mean or what they want. You'll think you know because your brain has already built a story about it. For example, "Sammy's jealous that I'm getting this promotion, so he's trying to talk down my ideas". You must keep in mind that this story is based on biased judgements and assumptions. So, remind yourself that all you know is your interpretation and proceed to...

### **State your observation**

Removing judgement means sticking to observable facts. That's not always easy. One way to do this is to simply say what you noticed in factual terms,

while taking full ownership that this is your observation.

If what's causing your reaction is in the content of what the person said, play it back to them: "I heard you mention you don't think this approach will really cost less." "You said it looks like I haven't really thought this through".

If it's more the emotional reaction that's got you reeling, simply name what you observed: "You seem frustrated." "I sense some hesitation." "You sound particularly excited."

In both cases, your objective is to confirm that what you heard or sensed was accurate and to get them to expand on it in order to get a clearer picture of their meaning and intent. For this to be effective, you need to do two things:

- 1) your tone needs to be neutrally curious and, after stating your observation
- 2) you must stop talking. Just pause and listen. Then...

### **Probe to explore**

Now that you have checked your assumptions, distinguished between what you know and don't know and played back your observations, it's time to dig. Whether your goal is to manage, influence, coach, correct or motivate, you will waste a lot of time and energy if you take action without a proper understanding of the situation or problem. This *must* include the other person's perspective. This is where the ability to notice

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Feature

Luc Beaudry will be presenting on

*The Culture of Accountability*

at IPM's Ottawa Conference on April 16, 2015  
and Toronto Conference on May 6, 2015.

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Tom Ross,  
B.A, LL.B.

Partner,  
McLennan Ross LLP

# Designing Your Bonus Programs

*Be careful of legal ramifications*

**E**mployers often implement bonus programs (short term, long term and other) as part of their compensation plans. Such programs allow you to incent different behaviours and are necessary to provide compensation that is market competitive. A recent decision highlights the importance of crafting these bonus programs carefully in order to avoid unnecessary liabilities.

In *Symcor Inc. vs Russell*, the employer, a financial processing services company, had short-term and long-term incentive plans. These plans were viewed as being integral parts of an employee's total compensation. It was a term of the plan that "To receive an award, you must be employed with Symcor on the actual date of payout."

The employee in this case resigned after the fiscal year end and before the anticipated short-term incentive plan payout a couple months later. The employee was notionally entitled to a bonus payment of \$66,000 which the employer was able to calculate based on the terms of its plan. The employer denied payment on the basis that termination occurred before payment had been made, though long-term incentive payments were made to the employee.

## Does a bonus constitute wages?

Rather than file a lawsuit, the employee filed a claim under the *Canada Labour Code* (equivalent to the *Alberta Employment Standards Code*). Regardless of

the terms of the plan, an Inspector and Referee under the *Canada Labour Code* held that the bonus monies had been earned and were payable as "wages" under the *Canada Labour Code*. The appeal decision took a broad interpretation of "wages" and included the following points:

"Wages" under the *Canada Labour Code* includes "every form of remuneration for work performed", but does not include "tips and other gratuities." [In Alberta, "wages" excludes "a payment made as a gift or bonus that is dependent on the discretion of an employer and that is not related to hours of work, production or efficiency."]

The bonus pay was an important part of the total compensation package and a large part of the employee's remuneration. There was no distinction between salary and bonus in whether they constitute "wages."

Tips and gratuities are an unexpected extra. In this case, the bonus was not unexpected because it was based on individual and company performance.

Once a bonus is held to be "wages," there is still a second step required to assess whether the employee is entitled to the bonus under the terms of the plan.

Paying a bonus that has been earned will not be avoided just because there are general statements in a bonus plan that its purpose is to help retain employees.

If an employer wishes to enforce a condition that a bonus is only payable if the person remains an employee at the time of payment, the employer must make the condition known to the employee as a specific term of employment.

Discretion must be exercised consistently with objective measures set by the company. A discretion cannot be applied solely on the basis that we will pay your entitlements "only if we feel like it."

The employer was not allowed to exercise its discretion so as to undermine the intent of the total compensation package. Otherwise, the employer would be able to abuse its discretion and obtain a windfall.

## Tips for employers

It is important to remember the following when implementing bonus programs:

Formulaic or objective bonus programs are harder to deny an employee once the fiscal period in question has concluded. If the bonus has been earned under its terms, payment will be required.

A contractual requirement of continued employment to earn a bonus may protect your interests under a lawsuit, but does not necessarily prevent a negative employment standards outcome because parties cannot contract out of employment standards obligations. The Alberta definition of "wages" gives more latitude for the exclusion of incentive programs

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Feature

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*Today's Critical Issues in Employment Law*

at IPM's Calgary April 28, 2015 Conference.

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Helen Robert  
Managing Partner,  
BenchMarket

# Virtual Resources: Leveraging Your Compensation Investment

*Put flexibility into planning*

**Q:** A number of organizations I know are moving towards virtual resources and are experiencing great success with it. Can you share your insights about how to determine if this is a suitable compensation alternative for us?

**A:** We don't often see the words "flexibility" and "compensation" in the same sentence, but flexibility is in fact the key to leveraging your compensation investment in the most effective manner. There are a number of ways to introduce flexibility into your compensation planning, but let's focus on a growing and innovative solution called "virtual resourcing".

Traditionally, smaller organizations were at a clear disadvantage because there just wasn't enough money or work to justify compensating a full-time resource with specialized skills. Specialized expertise therefore became a luxury only afforded large scale operations. Smaller organizations resigned themselves to the fact that they "just couldn't afford it".

Organizations will always need a core team of fully engaged staff to define and realize the vision and that's the way it should be. Staff in smaller organizations naturally fill broad, hybrid roles and develop a versatile skill set. Today's well

educated workforce is more transient than ever before - always on the lookout for new and interesting opportunities. Information is more easily available to employees about their value than ever before.

As an employer, you always want to be thinking about what interesting opportunities your organization can offer and what you are willing and able to pay. Offering competitive salaries and benefits will position you well to attract, retain and engage a strong core team. But to really leverage your limited compensation investment as a smaller organization, you need to consider how the work gets done and how you can deploy people more flexibly.

You must challenge the current situation. This can be difficult but embracing flexibility is necessary to flourish and move forward.

First, identify what really needs to sit with your core team and what could be done by others on more of a flexible, as needed basis. This first step is a difficult one and requires very careful analysis. You may have to decide whether to supplement your current staff or reduce the number of actual employees and reinvest some of your budget to enlist some select support that will improve the success of your initiatives. Using flexible, "virtual" resources can be an effective way to provide top products and services within a tight budget.

Virtual resources are as flexible as the name suggests, but they will generally have the following attributes in common:

- They are not fancy, expensive consultants, but rather highly skilled, self-employed "doers", integrating with your core team as/when appropriate.
- They bring to the table a vast array of experiences which they can now apply to drive your business forward.
- They are essentially freelancers and their services are flexible. They may be available to participate in or lead strategic planning, technical projects or provide on-going tactical services.
- They have their own office space and are open to working either remotely or on site with their client.
- They are open to working on a flexible basis which ebbs and flows with the business needs and/or budget.

There is an ongoing increase in the availability of virtual resources. Some examples of more common specialized services include human resources, finance, marketing, social media, web development and maintenance and project management.

Virtual resourcing is an excellent way to leverage your compensation investment. Most organizations including the smaller ones are using it in one

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ASK the Expert

**Helen Robert will be presenting on**

*New Trends in Compensation*

**at IPM's Ottawa Conference on April 16, 2015.**

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David Ray,  
BA, JD  
Principal, Corporate  
Security Consulting Inc.

# Organizations Charged Heavy Fines for Bribery and Corruption

*Time to revisit your Ethics Program*

Recent events indicated that it is time for companies to revisit or, in some cases, implement an ethics and compliance program. Calgary's Niko Resources Ltd. (Niko) was fined \$9.5 million dollars under Canada's Corruption of Foreign Public Officials Act (CFPOA). Niko was also placed under a Probation Order with strict provisions to report any criminal investigation against it or its employees to the RCMP, report every 12 months on implementation of compliance programs and provide two independent follow up reviews. It is also required to implement a number of compliance initiatives including assigning responsibility to one or more senior executives. The sentencing came at a time when Niko shares dropped 3.7 per cent. So what was Niko's offence? It turns out that six years ago, two of its Bangladesh employees bought a Land Rover for a government minister and paid for his trip to an oil and gas show in Calgary.

The CFPOA was passed in 1998 but there were no resources provided for enforcement until ten years later when the Federal Government came under pressure from other countries that were members of the Convention for the Organisation for Economic Co-operation and Development (OECD) protocol. Fifteen RCMP officers were hand-picked and an annual budget of \$3.1 million was established for investigation and prosecution of bribery. Since Niko's conviction, the

names of other Canadian companies that are on the RCMP investigation list are trickling out. The UK recently passed their Bribery Act and it will affect Canadian companies registered in or doing business in the UK. Their Act provides for strict (automatic) criminal liability and includes offences of failing to prevent bribes and has penalties of up to 10 years imprisonment. The Act does, however, provide for a defence where a company has "adequate procedures" to prevent bribery.

One of the complicating factors in bribery cases is that, even though it may offend our Canadian ethical standards, the Comprador system practiced in many countries in the Middle East for hundreds of years said that if I hire you to do buying on my behalf, I can pay you a lower wage on the understanding that you will make it up from suppliers. Ethics is more like Jell-O than concrete. In a poll of any representative group on issues such as abortion, right to die or capital punishment, people would come down on both sides of the argument and both sides would say they have the ethical high ground. Another complicating factor in these cases is that senior management may not have condoned or even been aware of the bribery.

Another case that recently hit the news was the allegations that Sino-Forest Corporation misrepresented the size of its forest assets. The allegations

resulted in a cease trade order by the Ontario Securities Commission, the resignation of its CEO and a loss of \$4.1 billion in market capitalization.

So what are the expectations on a corporation to have an appropriate program in place? The UK Act gives some excellent insight into six steps that a company can take to avoid a violation and the resulting consequences. The first is to ensure that procedures are in place that are proportionate to the level of risk. The company must avoid an "It can't happen here" attitude and be realistic about what could go wrong. The procedures must also include a business strategy for implementation and enforcement. The second step is top-level commitment from the board and senior management level. This should include a code of conduct and regular sign off by all employees together with an audit process to show that they are completed. It should also include an investigation and enforcement provision and consequences for breaches. The third step is a risk assessment to identify the company's exposure. These assessments should be ongoing, built into change management plans, realistic and proportionate to the nature and extent of the company's business including the consequences of third party involvement in the business processes.

*continued page 15...*

Feature

David Ray will be presenting on  
*Workplace Investigations*

at IPM's Edmonton Conference on April 30, 2015.

For details, go to [www.workplace.ca](http://www.workplace.ca) (CLICK ON EVENTS).





Philip H. Gennis,  
LL.B., CIRP  
Senior Principal  
msi Spergel Inc

# HR in the C-Suite in Downsizing

*Managing the many challenges*

**D**ownsizing poses a number of particularly difficult challenges for Human Resource professionals through every phase of this type of restructuring. This includes activities before the decision is even made to downsize, through the process and after the initial downsizing has taken place. At each stage, HR will be called on to provide expert advice and guidance to everyone from the senior management team to the employees who will remain after the exercise has been completed. According to Philip Gennis, Senior Principal with msi Spergel Inc., "HR plays an invaluable and irreplaceable role in any downsizing or restructuring initiative."

That's because HR's primary value to the organization is in managing the people side of the business. That's important in any restructuring, but even more so in downsizing. As downsizing is the elimination of positions from the payroll, the reasons for the downsizing are all about saving money and rationalizing the use of the organization's resources moving forward. "A successful downsizing exercise is not just crucial for people management, but ultimately for the future of the business," says Gennis.

That's pretty important. So too is the attention to detail and active participation that HR must play in all stages of the downsizing, starting from the very beginning. This should start when the major players in the organization realize that they have to have make changes in

order to right-size the company for the business that they want to be today and into the future. HR should definitely have a seat at the executive table when these discussions take place.

In this early phase, it is likely that all possible alternatives are still on the table. HR should be able to provide valuable and expert advice on the state of the current workforce, as well as any barriers or impediments to downsizing such as employee contracts and collective agreements. They should also be teamed up with the financial experts, according to Philip Gennis. "As the organization grapples with the size and scope of any proposed downsizing, they need to have both the money and people information readily available."

Once the decision is made to embark on a downsizing plan, HR should swing into action to develop a people plan that analyzes units, departments and functions to determine where best the organization should target its cuts. This should include a set of pre-approved criteria that helps managers identify their core needs and the areas that will have the least impact on their operations. Gennis notes that "Downsizing must be done in a systematic manner so that you can achieve maximum results with as little loss of time, money and productivity as possible."

As the downsizing process unfolds, it is crucial that HR also be involved in creating and delivering any communications to the

staff inside the organization. Corporate communications can look after customers, clients and other stakeholders, but HR should take the lead in internal communications. That's because employees and supervisors will already be going to them to talk about the possible impact on their pensions and other benefits. Employees who are going to be terminated will also be visiting HR to tie up any loose ends. "The bad news should always be delivered by the employee's immediate supervisor," according to Gennis. "But HR should be close by in case they are needed."

After the initial downsizing exercise has been completed, the work of HR is not nearly over. Many downsizing processes become failures in the long term because no one manages the process after the lay-off notices have been handed out. HR still has a crucial role to play in helping the remaining employees. Philip Gennis says that many employees who do not get the axe suffer from 'survivor's guilt.' This can lead to poor morale, high levels of internal stress and friction and a resulting loss of overall productivity within the organization. "HR cannot fix this problem, but they can provide additional support to managers and supervisors to help them get their employees through this difficult period."

Downsizing is never fun for anyone. Sometimes it is necessary to prune a little here and there so that the tree can survive. HR can and should play an important and high-profile role in any downsizing exercise to ensure that the cutting is done in the right way and that the organizational tree has its best possible chance of long term growth and success.

*MQ Staff Writer*

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Once the decision is made to embark on a downsizing plan, HR should swing into action to develop a people plan [...] to determine where best the organization should target its cuts.

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Feature

## Prerequisite for Strong Leadership:

... concluded from page 7

without judgment becomes most important and difficult. The person may describe things in a way that makes no sense to you and/or that you disagree with, yet you need to park your agenda and ask yourself the following questions. What seems really important to them? Why? How is their demeanour changing through this conversation? What do they really want? Your focus of attention for the moment needs to be all about them because that's the only way to get to the root cause, desire or issue.

You are probably a pro at active listening by now, so this

is just a reminder to use those skills when exploring. We tend to notice *to confirm* instead of noticing *to understand*. If your questions are closed, you are in confirming mode. Use open questions to allow the other person to share their point of view, provide context and to explore their goals and intentions. Probe, listen, clarify and paraphrase. You don't need to agree, just make sure that you understand.

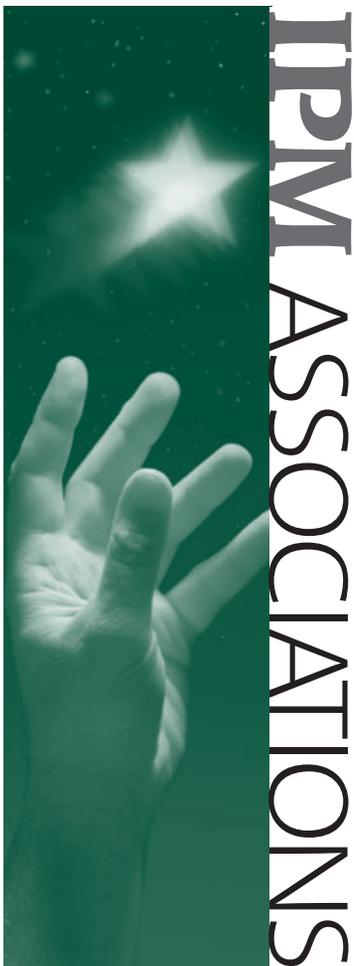
### **What's next?**

While our instincts can be pretty good, we usually don't have an accurate picture of

what others really think, feel or want. Your ability to manage your judgement while becoming an astute observer enables you to probe, build understanding and take collaborative and effective action because you can incorporate a full understanding of both parties' needs.

For the next week, focus on noticing how judgement creeps into the conversations around you and practice these skills to influence the situation. Happy exploring!

*Luc Beaudry is  
Principal of Cygnus Training &  
Consulting and can be reached via  
email at [luc@cygnustraining.com](mailto:luc@cygnustraining.com).*



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## Designing Your Bonus Programs

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provided they are structured to be dependent on the discretion of an employer and not related to hours of work, production, or efficiency.

If you want to delay bonus payments and ensure a retention element to the program, it is important to clearly document the retention requirement and ensure that the retention element is an explicit criterion to "earn" the bonus.

Where suitable, the retention-related conditions of a bonus

should be set out as a specific term of employment. Careful wording is required. Unclear language will be interpreted against employers.

It is worthwhile to clearly identify bonus plans as discretionary, but that discretion will still have to be exercised reasonably. Pure discretion is often inconsistent with formulaic bonus programs and employers have to make policy choices about what kind of bonus program they want.

Some employers fail to recognize that if bonuses constitute "wages," vacation pay accrues on bonus payments. It is important to account for or take steps to prevent this added cost to your program. In addition, wages must be paid within a stipulated time of being earned (subject to different employment standards obligations).

*Tom Ross is a partner with McLennan Ross LLP in Calgary and can be reached via email at [tross@mross.com](mailto:tross@mross.com).*

## Virtual Resources

... concluded from page 9

form or another. You can use your internal team to determine what positions and work can be done in this manner or consult a specialized service provider in virtual resources to assist you in the assessment, implementation and hiring stages.

*Helen Robert is Managing Partner for BenchMarket and can be reached via email at [helen@tech-edge.ca](mailto:helen@tech-edge.ca).*



**"I'm a little concerned, Byron. I gave you \$100,000 on Monday to develop our website, and on Tuesday you show up for work in a Porsche 911 Carrera."**

**Philip H. Gennis, J.D., CIRP**  
Senior Principal



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## Organizations Charged

... concluded from page 10

The fourth step is due diligence procedures to identify and mitigate the risk of bribery or other criminal acts. The fifth is communication and training both internally and externally to ensure that employees, contractors and other parties are aware of the requirements and provide for a method of reporting potential breaches. This

should include a whistle blower line to facilitate reporting. The last step is to provide for a process to monitor and review the effectiveness of the program.

No organization wishes to come under public or law enforcement scrutiny for allegations of bribes or other criminal activity, but the

implementation of an effective and "living" ethics and compliance program can deter these events and can assist with a response if allegations are made.

*David Ray, BA, JD, is a consultant specializing in security and investigations based in Calgary and can be reached by email at dave-ray@shaw.ca.*

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