

## **37<sup>th</sup> ANNUAL EMPLOYERS' CONFERENCE AGENDA** *November 27, 2023*

9:00 - 9:05 **INTRODUCTORY REMARKS**

9:05 – 9:35 **JACK OF ALL TRADES: SCC SUDBURY DECISION**



***Ryan Conlin***

A rare tie in the SCC has the effect of upholding an Ontario Court of Appeal decision which makes owners liable as an “employer” for safety violations on a construction project. This is a dramatic departure from the well-established practice of owners being able to contract with contractors to be responsible for workplace safety on projects. It appears the liability floodgates have been opened and owners are now responsible for virtually any safety violation on a project. The session (led by the lawyer who argued the case at the SCC) will include:

**Learn:**

- A review of the majority and dissenting decisions in *Sudbury*
- The position of the SCC majority on “due diligence” for owners on projects
- A review of the significant due diligence challenges ahead
- Answers to some of the key questions about the post-*Sudbury* compliance regime
- Is this the final word on this issue in Ontario and elsewhere?

9:35 - 10:05 **WORKPLACE HARASSMENT INVESTIGATIONS UNDER THE MICROSCOPE**



***Jeremy Schwartz***

Workplace harassment complaints are on the rise. As HR professionals, it is often difficult to reconcile your goal of helping the organization comply with various legal requirements to investigate and respond, with the need to protect the organization from related claims that may result.

**Learn:**

- How the legal duty to investigate works in practice
- Steps to ensuring a fair, efficient and compliant procedure and outcome
- Best practices for implementing discipline, structural responses and remediation

10:05 – 10:45

**POST-PANDEMIC UPDATE ON MANDATORY VACCINATIONS**



***Jeff Murray***

The pandemic may be over, but the caselaw on mandatory vaccinations continues to roll in from the Courts and labour arbitrators. The legal developments in this area will also have potential spillover effects on management rights in other areas.

**Learn:**

- What factors are being considered in deciding whether a mandatory vaccination policy is enforceable;
- Lessons learned from the pandemic caselaw and how it could apply in other contexts; and
- If there is any value in maintaining a vaccination policy.

10:45 – 11:00

**BREAK**

11:00 – 11:30

**THE DUTY TO MITIGATE WHEN THE RELATIONSHIP IS OVER**



***Haadi Malik***

The “duty to mitigate” is a creature of contract law that applies when a contract has been breached. In the employment context, it requires a wrongfully dismissed employee to make reasonable efforts to find a new job. Recent cases have added new wrinkles to this duty with some surprising consequences.

**Learn:**

- How the duty to mitigate applies to early termination of fixed term contracts;
- What hurdles employers must overcome in Court to reduce a former employee’s claim for damages for failing to mitigate; and
- Offers of re-employment and the duty to mitigate in the context of constructive dismissal claims.

11:30 – 12 noon      **Q & A**

12:00 - 1:15      **LUNCH BREAK**

1:15 – 2:00      **TERMINATION OF EMPLOYMENT UPDATE**



**Allison Taylor**

Terminations of employment continue to be a hot area of litigation. This session will provide an update of notable cases from the past year as well as provide practical guidance on how to avoid litigation.

**Learn:**

- The latest on just cause for dismissal;
- What the Courts are doing on damages awards including for pay in lieu of notice, loss of stocks options, bonuses and bad faith damages; and
- Where the law sits currently on termination clauses.

2:00 – 2:40      **THE LATEST ON HUMAN RIGHTS**



**Landon Young**

Human rights complaints against employers have become increasingly common with increased awareness of employees of their rights and expansion of the law.

**Learn:**

- How proof of citizenship or residency requirements can be discriminatory;
- When unionized employees can bring human rights complaints;
- The latest on family status discrimination; and
- How the Human Rights Tribunal is dealing with weak or frivolous applications.

2:40 – 3:00      **BREAK**

3:00 – 3:30    **LIGHTNING LEGAL ROUNDUP**

In this session, we provide concise summaries of some of the most significant legal developments affecting employers from the past year.

**Topics:**

- Review of amendments to the Canada Labour Code;
- Survey of recent fines and sentences against employers for health and safety infractions;
- New changes under the Ontario *Employment Standards Act, 2000*; and
- Review of significant labour arbitration decisions.

3:30 – 4:00    **Q&A**

4:00            **CONFERENCE ENDS**