

June 16-17, 2008 • Four Seasons Hotel, Toronto

The Canadian Institute's
Advanced Forum on

Managing Legal Risks in

EMPLOYING EXECUTIVES

Minimizing costly mistakes in an era of increased accountability and scrutiny

Co-Chairs:

Hugh A. Christie
Partner
Gowling Lafleur Henderson LLP

Christine M. Thomlinson
Partner
Rubin Thomlinson LLP

Get the most current developments, trends and innovative solutions to today's challenges on **hot button issues** including:

- **DEFENDING** decisions to terminate executive employment
- **ATTRACTING** and **KEEPING** top talent with competitive executive compensation agreements
- **PROTECTING** proprietary information with well-drafted restrictive covenants
- **ENFORCING** fiduciary obligations of departing executives
- **PREVENTING** and **OVERCOMING** difficulties in stock options grants
- **LEARNING** the latest requirements for disclosure of executive compensation
- **MINIMIZING** potential harassment claims: Checking executives' behaviour in/outside of work



"The conference was well organized,... speakers were well prepared and gave me an opportunity to receive... advice."

Oxana Dorfman
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North America
11th Annual Protecting
Directors & Officers from
Liability -2007

Learn the essentials of negotiating and drafting executive employment agreements at our post-conference workshop:

THE ANNOTATED EXECUTIVE EMPLOYMENT AGREEMENT



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REDUCE YOUR RISK OF MAKING CRITICAL AND COSTLY ERRORS!

Executive employment arrangements are coming under **increasing scrutiny** from shareholders, regulators and the media. Talented executives are in short supply and are **taking legal action** to secure their interests.

Do you know how to protect your company, or your client, from the escalating risk of liability?

The Canadian Institute has developed a **timely and innovative** program, “Managing Legal Risks in Employing Executives,” to assist you in overcoming recent challenges. An **outstanding faculty** of legal practitioners, regulators and consultants will analyze **cutting-edge legal issues** to help you:

- Implement prudent termination practices to minimize wrongful dismissal claims
- Design executive compensation arrangements to attract and retain top talent
- Draft enforceable restrictive covenants to protect your proprietary interests

- Ensure **departing executives** meet their post-employment obligations
- Limit payouts on **stock options** during the termination notice period
- Comply with the latest requirements for **disclosure of executive compensation**

As an added benefit, participate in the essential **post-conference workshop**, “The Annotated Executive Employment Agreement” on **June 18, 2008**. This workshop will help you improve your skills in **negotiating and drafting** the most advantageous executive employment agreements.

Don't miss this opportunity to **get up-to-date** and to **network with your peers**. **Register now!** Call toll-free at **1-877-927-7936**, or register online at **www.CanadianInstitute.com**.

We look forward to seeing you at the conference!

OUTSTANDING FACULTY

Co-Chairs:

Hugh A. Christie
Partner
Gowling Lafleur Henderson LLP

Christine M. Thomlinson
Partner
Rubin Thomlinson LLP

Speakers:

Paul A. Boniferno
Partner
McCarthy Tétrault LLP

Elizabeth Boyd
Partner
Blake Cassels & Graydon LLP

Robert L. Colson
Partner
Teplitsky, Colson LLP

Mary Beth Currie
Partner
Bennett Jones LLP

Chris Foulon
Partner
Israel Foulon LLP

William R. Gale
Partner
The Law Office of Grosman, Grosman & Gale LLP

David L.P. Garson
Partner
Guberman, Garson, Bush

David Gore
Senior Consultant
Watson Wyatt Canada

Jason M. Hanson
Partner
Osler, Hoskin & Harcourt LLP

Rhonda Jansen
Partner
Gowling Lafleur Henderson LLP

Deepali Kapur
Accountant, Corporate Finance Branch
Ontario Securities Commission

Sergio R. Karas
Barrister & Solicitor
Karas & Associates

Barry A. Kuretzky
Senior Partner
Kuretzky Vassos Henderson LLP

Howard A. Levitt
Counsel
Lang Michener LLP

Bill Mackenzie
Director, Special Projects
Canadian Coalition for Good Governance

Catherine McCall
Principal
Hugessen Consulting Inc.

John McGowan
Partner
Cassels Brock & Blackwell LLP

Mary Porjes
Partner
Porjes Walsh

Connie Reeve
Partner
Blake Cassels & Graydon LLP

Gary Solway
Partner
Bennett Jones LLP

Jana Steele
Partner
Goodmans LLP

Michael Tang
Legal Counsel, Corporate Finance Branch
Ontario Securities Commission

George Vassos
Senior Partner
Kuretzky Vassos Henderson LLP

David Whitten
Rubin Thomlinson LLP

7:45 Registration Opens – Coffee Served ☕

8:45 **Opening Remarks from the Co-Chairs**

Hugh A. Christie

Partner

Gowling Lafleur Henderson LLP

Christine M. Thomlinson

Partner

Rubin Thomlinson LLP

9:00 **Terminating the Employment of an Executive:
Avoiding Wrongful Dismissal Claims**

William R. Gale

Partner

The Law Office of Grosman, Grosman & Gale LLP

Howard A. Levitt

Counsel

Lang Michener LLP

• **CASE STUDY!** Learning best practices for terminations of executive employment from real life scenarios

- Deciding whether to terminate: Weighing the risks
- When can you terminate an executive for cause?
 - reviewing the latest cases from across Canada
 - what types of misconduct will justify dismissal for “just cause”
 - defining “just cause” in the executive employment agreement
- What happens to the executive’s incentives during the notice period?
- Getting up-to-speed on recent wrongful dismissal cases of executives
- Protecting against the growing unpredictability of wrongful dismissal litigation
- Communicating the departure of an executive
 - avoiding defamation claims
 - minimizing potential negative publicity associated with the departure of executives
- Reviewing differences in provincial legislation for termination and severance

Q & A

10:00 **Networking Refreshment Break** 

10:15 **Departing Executive Employees: What are Their Non-Contractual Obligations?**

Barry A. Kuretzky

Senior Partner

Kuretzky Vassos Henderson LLP

John McGowan

Partner

Cassels Brock & Blackwell LLP

- What statutory and common law obligations do executives have to their employer when they leave?
 - confidentiality
 - protecting valuable intellectual property
 - fiduciary duties
- Does it matter where they are going and what they are going to do next?
- Analyzing post employment fiduciary duties of executives:
 - what are an executive’s fiduciary duties on cessation of employment? what is the extent of these duties?
 - are there fiduciary duties of executive employees not to compete or solicit? if so, how can these duties be enforced?
 - what is the potential payout for breaches of fiduciary duties?
- Assessing non-contractual grounds for an injunction
 - conversion
 - breach of confidentiality
 - breach of fiduciary obligation

Q & A

11:15 **Drafting and Enforcing Restrictive Covenants in a Global Marketplace: How Broad is Too Broad?**

George Vassos

Senior Partner

Kuretzky Vassos Henderson LLP

Connie Reeve

Partner

Blake Cassels & Graydon LLP

• **CASE STUDY!** Learning lessons from actual restrictive covenants

- What are the employer’s and executive’s legitimate interests that need protection?
- Evaluating the reasonableness of non-competition clause for highly mobile executives: Assessing enforceability
- Balancing the employer’s interests with the executive’s right to work
- Getting up-to-date on the latest cases on restrictive covenants
 - assessing *Merrill Lynch v. RBC*: what is the Supreme Court likely to say?
 - what are the proper geographic boundaries employers can include in a non-competition agreement?
- Enforcing restrictions on post-employment solicitation in Ontario
- Should non-solicitation clauses be used instead of non-competition clauses?
- Can you prevent the executive from soliciting former employees?
- Obtaining an injunction to enforce restrictive covenants: What terms will the court impose?

12:15 **Networking Luncheon** 

1:30 **Granting Stock Options: Limiting Liability During the Termination Notice Period**

Paul A. Boniferno

Partner, McCarthy Tétrault LLP

Gary Solway

Partner, Bennett Jones LLP

- Drafting the stock option plan: Important pre-employment considerations
- What happens if an executive's employment is terminated?
- What are the company's obligations to the executive during the notice period?
- Designing stock option plans to avoid liability in dismissal situations
- Getting up-to-date on recent case law: How long do the vesting and exercise periods continue after termination?
- Getting up-to-speed on stock option back-dating
 - are regulators planning more investigations on options backdating?
 - what are the potential consequences of stock option backdating?
 - learning lessons from U.S. regulations on stock options
 - evaluating your stock option grant practices: what do you need to change now?
 - best practices for record keeping

Q & A

2:30 **Monitoring Executives' Behaviour Inside and Outside the Workplace: Preventing Harassment Claims**

Chris Foulon

Partner, Israel Foulon LLP

Mary Porjes

Partner, Porjes Walsh

- Learning lessons from harassment cases involving executives: Tips and traps
- What is "improper behaviour" and when can individual executives be held liable?
- When are companies accountable for an executive's improper behaviour?
- What are an executive's responsibilities upon learning about improper behaviour by others?
- Can an executive be held accountable for knowing about improper behaviour by another and failing to take action?
- Ensuring your executives recognize their responsibilities for preventing bullying and harassment
 - drafting appropriate policies
 - checking executive's backgrounds
 - implementing proper training programs
- Assessing behavior outside the workplace
 - are executives held to a different/higher standard of behavior outside of the workplace?

- **CASE STUDY!** the *Linamar case*: when might courts find termination is justified based on an executive employee's conduct outside of the workplace?

- Testing for drugs and alcohol
 - can you test an executive? when and on what basis?
- Managing investigations of improper behaviour of executives: Best practices
 - what incidents should trigger an investigation?
 - documenting your case and building your file
 - when you need to use an external investigator
 - who should or should not see the investigation report?

Q & A

3:30 **Networking Refreshment Break**



3:45 **Accommodating and Retaining Aging Senior Executives: Creative Strategies for Preventing Age Discrimination Claims**

Christine M. Thomlinson

Partner

Rubin Thomlinson LLP

Hugh A. Christie

Partner

Gowling Lafleur Henderson LLP

With the end of mandatory retirement, retaining experienced executives has become more common. While holding on to experienced executive employees is advantageous on many levels, doing so may give rise to new legal challenges. This session will help you design pro-active strategies to properly accommodate more senior executive employees.

- To what extent is an employer obligated to accommodate elderly executives on age-related issues?
- What are an employee's rights after age 65?
- Managing an aging executive who is losing effectiveness
 - what is your requirement to accommodate?
 - is age a disability?
 - can you terminate? under what circumstances?
 - what are the damages?
 - do notice periods need to be longer?
- What are the employer's rights and obligations to executives on long-term disability insurance?
 - when does the disability constitute a frustration of contract?
 - when can you consider termination? under what circumstances?
 - can the executive obtain LTD insurance and damages for wrongful termination?
- Developing creative and pro-active solutions to accommodate aging executives
- Can you encourage executives to:
 - take early retirement?
 - reduce work hours?
 - mentor junior employees?

Q & A

4:45 **Closing Remarks from the Co-Chairs Conference Adjourns**

8:15 Coffee Served ☕

8:45 Opening Remarks from the Co-Chairs

Hugh A. Christie

Partner

Gowling Lafleur Henderson LLP

Christine M. Thomlinson

Partner

Rubin Thomlinson LLP

9:00 Negotiating and Structuring Executive Compensation Agreements: Attracting and Retaining Top Talent

David Gore

Senior Consultant

Watson Wyatt Canada

Jason M. Hanson

Partner, Osler, Hoskin & Harcourt LLP

- What are the latest regulatory issues in designing executive compensation plans?
- What are the current trends in executive compensation?
- What are executives asking for in terms of structuring agreements?
- Aligning the interests of shareholders and management
- Rewarding for outstanding (vs. average) performance in your compensation program
- Negotiating incentive plans for executives:
 - signing bonus
 - stock options and alternatives
 - incentive compensation
 - deferred compensation plans
 - special pension plans
 - additional life and health insurance
 - alternative incentives
- Linking compensation and post-employment obligations
- Minimizing tax liabilities on incentives
- Ensuring your agreements achieve recruitment and retention goals

Q & A

10:00 Networking Refreshment Break 

10:15 Disclosing Executive Compensation: What are Your Current Obligations? What's To Come? ROUNDTABLE DISCUSSION

Deepali Kapur

Accountant, Corporate Finance Branch

Ontario Securities Commission

Bill Mackenzie

Director of Special Projects

Canadian Coalition for Good Governance

Catherine McCall

Principal

Hugessen Consulting Inc.

Michael Tang

Legal Counsel, Corporate Finance Branch

Ontario Securities Commission

- Are Canadian regulators likely to adopt U.S. Securities Exchange Commission (SEC)-style disclosure rules?
- What you need to know about the SEC rules on disclosure
- How might increased disclosure requirements in proposed regulations impact companies and executives?
- Getting up-to-date on the latest proposed Canadian Securities Administrators' Statement of Executive Compensation
- Disclosing executive pay packages
 - finding out the latest and best practices
 - meeting your obligations
 - are regulations the answer?
- Running the Compensation Committee: Best practices to reduce liability
- Should you use "say-on-pay" resolutions? Will they keep compensation in line with performance?

Q & A

11:30 Managing Executives' Entitlements upon the Sale of a Business: Drafting Effective Change of Control Provisions

Mary Beth Currie

Partner, Bennett Jones LLP

- Preparing change of control agreements
 - defining "change of control"
 - should these agreements have a single or double trigger
 - what is the appropriate level of payout?
 - what amount of notice is appropriate?
 - are these agreements a deterrent to the sale of a company?
- What are the rights and obligations of the purchaser and seller with respect to executives?
 - at common law
 - under employment standards legislation
 - conducting due diligence to uncover potential liabilities
- Addressing relevant executive employee issues:
 - payouts
 - bonuses
 - severance
- What issues must be addressed when a former owner is kept on as an employee?
 - when could a change of control constitute constructive dismissal?
 - getting up-to-date on current litigation

Q & A

12:15 Networking Luncheon 

1:30 **Negotiating and Funding Pension Plans for Executives: Designing SERPs and Pension Top-Ups**

Elizabeth Boyd
Partner
Blake Cassels & Graydon LLP

Jana Steele
Partner
Goodmans LLP

- Ensuring adequate retirement income for executives
- Using SERPs to attract and retain executives
- Setting up Supplemental Employee Retirement Plans (SERPs) for executives
 - what are your options?
 - should the SERP be fully or partially funded?
 - analyzing and minimizing tax implications
- When do you have to register a SERP?
- Analyzing options for funding the SERP
- Overcoming critical compliance issues
- Are you a pension plan under the *Pension Benefits Act*?
 - ensuring you don't fall under it
 - fitting within the top-up exemption
- Meeting your obligations under the *Income Tax Act*
- Learning the latest on the new Canada Revenue Agency view on SERPs and salary deferral arrangements
 - must you deal with CRA?
- Examining the *Taggart* decision regarding pension entitlement: What is an employee entitled to on termination of employment?

2:30 **Reducing and Preventing Constructive Dismissal Claims by Executives**

Robert L. Colson
Partner
Teplitzky, Colson LLP

Rhonda Jansen
Partner
Gowling Lafleur Henderson LLP

- What constitutes a constructive dismissal of an executive?
- Defining the parameters of acceptable employer changes to an executive's employment
- Quantifying the executive's entitlement to damages upon a constructive dismissal
- What happens to the executive's deferred compensation upon constructive dismissal?
- Minimizing constructive dismissal claims by executives: Best practices

Q & A

3:30 **Networking Refreshment Break**



3:45 **Moving Key Executives to Canada: Gaining Status via Executive Transfer, Business Visitor or Intra-Company Transferee**

David L.P. Garson
Partner
Guberman, Garson, Bush

Sergio R. Karas
Barrister & Solicitor
Karas & Associates

- How can you relocate senior executives to Canada?
- Choosing the proper vehicle
 - temporary business visitor
 - professionals under NAFTA and GATS
 - intra-company transferees
- Using Labour Market Opinions effectively
- Who is eligible to enter under each category?
- What paperwork is required for each category?
- Evaluating restrictions on the executive's business activities
- Who is permitted to pay the executive?
- Obtaining status as an intra-company transferee
 - what is the benefit of being an intra-company transferee
 - do your executives need to have "specialized knowledge"? If so, what kind?
 - how long must an executive have been employed to be an intra-company transferee?
 - can spouses of intra-company transferees obtain work permits? what is required?
- Gaining entry when the executive is not from a country that is a signatory to NAFTA or GATS
- Overcoming barriers to admissibility: Prior minor criminal records
- Maintaining permanent resident status: Tips and traps
- What documentation should business visitors have in Canada?
 - getting a visitor record: what is required?
 - when can an executive enter and work without work permit?
- Facilitating cross-border travel: NEXUS & F.A.S.T.

Q & A

4:45 **Co-Chairs' Closing Remarks
Conference Concludes**

*Very helpful conference. ... very informative.
The conference addressed a number of
interesting practical situations in the workplace.*

Jamie Martin
Roebothan, McKay, Marshall
7th Annual Advanced Forum on Employment Law - 2007

POST-CONFERENCE WORKSHOP

9:00 a.m. – 12:00 p.m. (Registration opens at 8:30 a.m.)

The Annotated Executive Employment Agreement: The Nuts & Bolts of Drafting: Clause by Clause

David Whitten
Rubin Thomlinson LLP

Build on the subjects addressed in the main conference with this in-depth guide to the best practices for negotiating and drafting advantageous executive employment agreements. Topics will include:

- Analyzing an Executive Employment Agreement paragraph by paragraph
- Balancing business needs with legal safeguards
- What is appropriate compensation for an executive?
- Should the term of the agreement be fixed or indefinite?
- Drafting confidentiality agreements appropriate for executives
- Assessing choice of law provisions
 - where do you want to enforce the agreement
 - which jurisdiction's law will apply?
 - critical considerations for companies operating outside of Canada
- Should you include change of control provisions?
- Should you include regulations on behavior outside of business hours?

- Drafting effective termination provisions for executive agreements
 - including fiduciary duties for departing executives in the contract
 - adding in other obligations of departing executives
- Drafting enforceable restrictive covenants
 - non-competition clauses
 - non-solicitation clauses
 - sample clauses
- Defining the terms of the executive's incentive package and limiting the company's liability on termination
 - bonus clauses
 - stock options
 - pension plans
- Ensuring enforceability of the executive employment agreement
- Executive Employment Agreement Checklist

Don't miss this unique opportunity to **perfect your drafting techniques**. Register now! Call toll-free at 1-877-927-7936, or register online at www.CanadianInstitute.com.

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This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification

	Conference:	Workshop:
Civil Litigation/Labour Law	11.0 hrs	3.0 hrs

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The Canadian Institute's
Advanced Forum on

Managing Legal Risks in
**EMPLOYING
EXECUTIVES**

Minimizing costly mistakes in an era of increased accountability and scrutiny

Top Reasons to Attend

- ✓ Minimize your risk for wrongful dismissal lawsuits
- ✓ Ensure your executive compensation agreements are competitive
- ✓ Bullet-proof your non-competition clauses
- ✓ Find out the latest developments on disclosure of executive compensation
- ✓ Get up-to-date on stock option cases

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I am attending, please add the conference materials CD-ROM to my order \$195 + \$15.95 (S & H) (+ applicable taxes)

STEP 2

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