

# In the KNOW



**WILLIAMS HR LAW**  
LEGAL EXPERTISE AT WORK™

Issue No. 8 – April 2013

## Welcome to the Spring 2013 issue of *In the Know.*

We love spring because it represents transformation! Melting snow, longer sunlit days, vegetation coming out of winter's hibernation – these signs of spring give us hope for new beginnings and a fresh start.

Williams HR Law's spring issue of *In the Know* focuses on useful ways employers can 'spring-clean' their workplace. The issue features articles about how employers can restore a workplace after a disruptive event, how employees can become leaders and help their organizations rise to a higher level of success, and how employers can optimize their workforce by attracting and retaining female employees. What's more, our *2<sup>nd</sup> Annual Proactive Workplace Law Workshop* to be held on May 30<sup>th</sup> will provide HR practitioners and business owners alike with additional ways to revitalize and energize their workplace. This interactive workshop walks participants through a scenario-based HR/employment law issue, and gives attendees practical strategies to effectively manage similar issues in their workplaces.

Whether it is through our newsletter, workshops, or client engagements, Williams HR Law aims to provide thoughtful, practical and strategic advice to our clients so they may renew and strengthen their workplaces and leave their competition in the dust.

Please feel free to [contact us](#) so we can help you with your workplace's human resources and employment law needs.

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## 2<sup>nd</sup> Annual Proactive Workplace Law Workshop

Williams HR Law will host its 2<sup>nd</sup> Annual Proactive Workplace Law Workshop on May 30, 2013 at the Richmond Hill Country Club. The inaugural workshop held in June 2012 was received tremendously by attendees and this year's event promises to be even better. Staying true to form and based on the feedback from workshop participants last year, attendees at the May event will once again participate in a walkthrough of a real-world scenario and have opportunity for input and questions with the entire Williams HR Law legal team. This year's case study captures the issues of the day for HR practitioners and business owners including:

### ***Accommodating Employees with Mental Health Issues***

Business owners and HR practitioners can expect to hear a lot more about mental health in the workplace in the coming months. The issue is coming to the forefront with significant organizational and governmental push including the newly implemented National Standard of Canada for Psychological Health and Safety in the Workplace championed by the Mental Health Commission of Canada. The attention is justified; mental health issues have a significant impact in Canadian workplaces and present a special challenge when it comes to accommodation. Complicating matters is that most business owners or managers are ill-equipped to understand, manage and mitigate mental illness in the workplace. At our workshop we will look at how to handle difficult issues of mental health, discuss why these issues require special attention from employers, and discuss what

*Join Us*

For our 2<sup>nd</sup> Annual Proactive Workplace Law Workshop

**When:** May 30, 2013 8:00 a.m. to 11:00 a.m. (7:45 a.m. registration)  
**Where:** Richmond Hill Country Club, Richmond Hill, ON  
**Cost:** \$50 per person (breakfast included)

**Space is limited**

To register, visit [williamshrlaw.eventbrite.ca](http://williamshrlaw.eventbrite.ca) for additional information call **905-205-0496** or email [info@williamshrlaw.com](mailto:info@williamshrlaw.com)

employers can expect in the years to come as the workplace mental health initiatives continue.

### ***Managing Workplace Harassment***

Since the introduction of Bill 168 in June of 2010, the problem of workplace harassment continues to be a common and often complex problem for employers. Identifying and dealing with harassment presents unique challenges and presents a number of risks ranging from costly legal exposures to stunted productivity and poor employee morale. Our workshop will go beyond legislative compliance and look at strengthening protections for workers from harassment, effectively addressing problems that arise and how to best avoid harassment issues in the first place.



### ***Avoiding Workplace Investigation Pitfalls***

Employers understand that in many cases a well conducted investigation is a critical and necessary step to effectively resolve workplace issues and minimize risk exposures. However, what is sometimes overlooked by employers is how a flawed or poorly executed investigation can exacerbate the very issue it was intended to resolve and create significant legal risks in itself. At our workshop we will provide strategies for avoiding the mistakes employers routinely make when carrying out an investigation and share some simple strategies for helping to ensure success.

### ***Restoring Damaged Workplace Culture***

Workplace culture is a game-changer. The effect of poor company culture on a business' bottom line is massively underestimated. Symptoms of poor workplace culture include increased turnover and absenteeism, harassment, disengagement, diminished productivity, lack of innovation and a fragile team dynamic. Taken together, these symptoms drain company resources, threaten operational goals and in some cases can even jeopardize the survival of a business. Our workshop will examine how to restore a damaged workplace after a workplace incident, and ways employers can make culture an asset to the business instead of an anchor.



## What's on the Shelf

We review Robin Sharma's international bestselling book "*The Leader Who Had No Title: A Modern Fable on Real Success in Business and in Life.*"

Our firm often counsels employers who are dealing with poor employee performance, normally resulting from employee non-engagement. Engaged employees are the key to any organization's success. An 'engaged employee' is defined as one who is fully involved and enthusiastic about his or her work, and acts in a way that furthers the organization's interests.

People often work with the mindset that it is only the leaders within an organization that can change things for the better and that to be a leader, you must have climbed to the top echelons of the organization and have the resulting title. Robin Sharma teaches us in his book "*The Leader Who Had No Title: A Modern Fable on Real Success in Business and in Life*" that everyone is a leader and if people embraced this concept, it would result in positive personal, professional and global transformation.

*The Leader Who Had No Title* is a fictional business tale that addresses many real life organizational issues such as employee non-engagement and apathy. The book is narrated by Blake Davis, a self-described unfocused, less than average employee, with a poor work ethic. One day while working, Blake meets Tommy Flinn, a mentor who teaches him that leadership is for everyone and that leadership is created through the belief and performance of four key principles:

1. **You need no title to be a leader** – No matter your position within an organization, age, title or circumstance, you have the power to show leadership;
2. **Turbulent times build great leaders** – Embracing fear and going to the edge of your limits actually causes your limits to expand. Uncomfortable conditions are often the crucibles that forge great leaders;
3. **The deeper your relationships, the stronger your leadership** – The focus and purpose of any business is to connect with and add value to people. By leading by example, you can unleash greatness in other people, even when these people may not see greatness within themselves; and
4. **To be a great leader, first become a great person** – When you awaken your inner greatness and attempt to always give your absolute best, you will awaken your inner leader.

If you are feeling stuck and uninspired and you are seeking everyday ways to make a difference at work or at home, this book is a must read. Sharma teaches us that an excellent organization is simply a cluster of people showing excellence. Every person and every job matters, and all work can be meaningful if we embrace leadership and become walking, talking, living, and breathing examples of excellence.



## Leveraging Demographic Trends To Optimize Your Workforce:

This is the first in Williams HR Law's four-part series discussing the changing demographics of the Canadian workforce and highlighting ways in which employers can leverage these trends to win the war to acquire the very best talent their industry has to offer. In the first part of this series, we look at the legislative enactments and court decisions that seek to provide solutions for better work-life balance for female employees.

### Part 1 Employers - 'lean in' to attract and retain female employees

While much has changed for women in the workforce in recent decades, some obstacles to their success remain seemingly intact. Case in point: Statistics Canada data shows that women made up 47% of Canada's labour force in 2012, but held only 22.9% of all senior management positions.<sup>1</sup>

Why? Countless theories abound, but in her much-discussed book *"Lean In: Women, Work, and the Will to Lead"*, Facebook COO, Sheryl Sandberg makes the argument that women are held back in the workforce not only because of ingrained stereotypes about gender that make it difficult for them to rise to leadership roles, but also because women 'lean back' from leadership opportunities and other opportunities for advancement.

The reality, however, is that it is not up to women alone to pursue progress in the workplace: employers also need to 'lean in' to attract and retain top female employees if they wish to optimize their workforce.

Sandberg has been quoted as saying that the primary impediment to women succeeding in the workforce is linked to their responsibilities in the home. This

statement is supported by a 2011 Statistics Canada report,<sup>2</sup> which found that women bore more of the household responsibilities for child care, domestic duties, and care for seniors than men. The report also found that women were more likely than men to work part-time, probably in an effort to balance these competing obligations.

Recent legislative enactments and court decisions, relating to accommodation of family obligations will go a long way in enabling both women and men to manage household responsibilities—while also allowing women to participate more fully in the workforce. Ontario's Minister of Labour recently proposed legislation that would grant all Ontarians up to eight weeks of job-protected, unpaid leave to take care of a family member suffering from a serious medical condition. This proposed legislation expands upon existing leaves of absence legislated in the *Employment Standards Act*, such as Pregnancy Leave, Parental Leave and Family Medical Leave. The federal government's *Helping Families in Need Act*, which was passed in December 2012, gives federal employees the right to take job-protected leave when a child of the employee is critically ill, or dies. The *Helping Families in Need Act* amends the *Employment Insurance Act* to provide benefits to employees providing care for critically ill



children and facilitates access to sickness benefits for these employees. In addition, the recent ruling of the Federal Court in *Attorney General of Canada v. Johnstone* (2013 FC 113) further solidifies an employer's duty to offer workable solutions for employees with family care obligations. The Johnstone case involved an employee, Fiona Johnstone, who worked full-time, but on rotational shifts in her position as a Border Services Officer for Canada Border Services Agency (CBSA). When Ms. Johnstone asked for a fixed-schedule so she could better manage care for her children, the CBSA accommodated her request, but changed her schedule to part-time. Ms. Johnstone filed a human rights complaint alleging discrimination on the basis of family status because as a part-time worker, she was unable to maintain her full access to employee benefits and be considered for certain job promotion opportunities. The Federal Court upheld the Canadian Human Rights Tribunal finding that CBSA had discriminated against Ms. Johnstone on the basis of family status.

These legislative enactments and legal decisions provide the framework for employers aiming to help their

employees balance home and work responsibilities. Of course, employers should take a proactive step further to ensure they design flexible policies and programs enabling both male and female employees to take advantage of workplace solutions that support improved work-life balance.

The reason: as the war for top talent intensifies in the coming years, employers who 'lean in' to create better work-life balance for their employees will be the winners. Consider that in 1971, 68% of university graduates were male. Contrast this to 2008, wherein women accounted for 62% of university graduates.<sup>3</sup> These graduating women have entered the workforce anticipating equal opportunities for career advancement and work-life balance. If employers don't 'lean-in', these employees will walk-out, leaving a skills void in their wake—one that can provide an instant advantage to competitors who may have already had the strategic business foresight to implement these forward-thinking programs across their workplaces.

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<sup>1</sup><http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/labor05-eng.htm>

<sup>2</sup> Women in Canada: A Gender-based Statistical Report, December 14, 2011. Available at <http://www5.statcan.gc.ca/bsolc/olc-cel/olc-cel?lang=eng&catno=89-503-X>

<sup>3</sup> *Ibid*



## WHRL Business Bytes

### ***New Mandatory WSIB Coverage Takes Effect and Now Extends to Business Owners***

After years of exemptions, the Workplace Safety Insurance Board has taken steps in 2013 to extend mandatory WSIB coverage in the construction industry. As of January 1, 2013, a new mandatory coverage system for independent contractors, sole proprietors, certain business partners and executive officers working in construction was introduced. This change requires those affected to secure and pay for WSIB coverage. As well, principals and executives who hire contractors must require them to provide a WSIB clearance certificate before a person or organization retaining their services can allow them to work on a jobsite.

Employers should take note of this decision because the cost of non-compliance with the *Occupational Health and Safety Act* can be significant: individual violators can be fined up to \$25,000 and/or imprisoned for six months, while corporations can be fined up to \$100,000. It's the reason why construction firms need to be well advised to ensure their policies for obtaining WSIB coverage and retaining clearance certificates are in place. [Click here](#) to read the full blog article.

### ***Ontario Court of Appeal Overturns "Absurd" Interpretation of OHS Reporting Obligations***

The Ontario Court of Appeal has released its decision in *Blue Mountain v. Ontario (The Ministry of Labour)* overturning the rulings of the Ontario Divisional Court and the Ontario Labour Relations Board ("OLRB"). The decision of the lower court and OLRB was that Blue Mountain Resort had failed to report the drowning death of a guest pursuant to their obligations under section 51(1) of

the *Occupational Health and Safety Act* ("OHS"). Section 51(1) requires an employer to report any fatality or "critical injury" which occurs to a person at a workplace to the Ministry of Labour.



The decision by the Court of Appeal limits an employer's reporting and notification obligations under section 51(1) to the following situations:

- A worker or non-worker ("any person") is killed or critically injured;
- The death or critical injury occurs at a place where (i) a worker is carrying out his or her employment duties at the time the incident occurs, or, (ii) a place where a worker might reasonably be expected to be carrying out such duties in the ordinary course of his or her work ("workplace"); and
- There is some reasonable nexus between the hazard giving rise to the death or critical injury and a



realistic risk to worker safety at that workplace (“from any cause”).

This is a welcome decision for employers as it provides reasonable limitations on the reporting obligations under section 51(1) of the OHSA. One new challenge that flows from this decision for employers will be determining whether a fatality or critical injury can be said to have a reasonable nexus to worker safety at the workplace, as the Court of Appeal provided no guidance in making this determination. In any case of a critical injury or fatality at the workplace it is imperative that employers consult with their legal counsel. [Click here](#) to read the full blog article.

### ***Allowing staff to work from home can work—if you take the right steps***

Yahoo CEO Marissa Mayer made a bold statement recently with her decision to ban telecommuting across the company. Telecommuting refers to the work arrangement whereby a company’s employees work from a remote location, usually a home office,

by electronically linking to the company’s data network. Mayer banned the popular program in an effort to improve workplace collaboration, and better build company culture and morale. Many viewed Mayer’s decision favorably, with companies such as Best Buy following suit. But supporters of telecommuting widely derided the decision as indicative of the kind of old-school corporate thinking that’s long since fallen out of favour with more progressive, engagement-focused organizations.

Whether to implement, eliminate or maintain a telecommuting work arrangement in a workplace is not a clear-cut decision. Employers need to carefully consider whether a telecommuting work arrangement makes sense for their workplace and how it can best be managed. This includes considering the workplace and industry, creating a comprehensive telecommuting policy, ensuring fairness in the application of the policy and being flexible about whether or not to implement a telecommuting policy in the first place. [Click here](#) to read Laura’s article in PROFIT magazine about telecommunicating.



## WHRL in the News and Upcoming Events

### **Williams HR Law Wins Business Achievement Award**



Williams HR Law is proud to announce it has been honoured with the Richmond Hill Chamber of Commerce's prestigious

Business Achievement Award for 2013, in the category for businesses with six to ten employees. The Chamber of Commerce business awards honour organizations that have not only achieved business success and demonstrated significant bottom-line growth, but also contributed to the local community in a meaningful way. Firm principal Laura Williams accepted the award before an audience of local business leaders at The Richmond Hill Centre for Performing Arts on March 27th, 2013.

### **HR Professional Magazine Publishes Article by Hermie Abraham on Workplace Drug and Alcohol Testing Policies**



Williams HR Law's Hermie Abraham was a contributor to HR Professional Magazine's March/April 2013 edition. Hermie wrote an article for

the Legal Words section of the publication entitled "[A Fine Balance – Privacy Rights vs. Drug & Alcohol Testing Policies.](#)" The article examines the dichotomy between employee privacy and workplace safety as it relates to drug and alcohol testing.



### **Williams HR Law's 2nd Annual Proactive Workplace Law Workshop**

Join the Williams HR Law team to learn effective strategies to overcome some of the most challenging workplace issues including: how to manage workplace harassment; avoid workplace investigation pitfalls; accommodate employee mental health issues; and restore damaged workplace culture. Leave with practical tactics to help minimize cost, risk and workplace disruption and help create and maintain an engaged workplace.

**Date:** May 30, 2013

**Time:** 8:00 a.m. to 11:00 a.m. (7:45 a.m. registration)

**Location:** Richmond Hill Country Club, Richmond Hill, ON

**Cost:** \$50 per person (breakfast included)

### **Space is limited**

To register, please visit: [williamshrlaw.eventbrite.ca](http://williamshrlaw.eventbrite.ca) or for additional information call **905-205-0496** or email [info@williamshrlaw.com](mailto:info@williamshrlaw.com)



## **Boost Your Bottom-Line by Getting the Best from your Employees**

Join Williams HR Law for a lunch and learn seminar and arm yourself with effective strategies to manage common workplace challenges. Learn how to attract and retain top talent and leverage your employees to boost bottom-line results.

**Date:** April 18, 2013

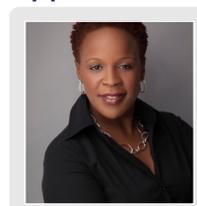
**Time:** 9:00 a.m. to 12:00 p.m.

**Location:** The Whitby Library, 405 Dundas Street W., Whitby, ON

**Cost:** \$15 per person

To register call Carol at **905-668-4506 ext. 223**

## **Laura Williams to Present at Law Society of Upper Canada**



Williams HR Law's Laura Williams will be sharing her expertise with fellow legal practitioners at the Law Society of Upper Canada's annual Six-Minute Employment Lawyer session on June

13, 2013. Laura will be speaking about the unique challenges associated with accommodating mental health illness in the workplace. Lawyers who would like to attend can [register](#) on the Law Society's website.

## **Laura Williams and Hermie Abraham to Teach at the University of Toronto School of Continuing Studies**

Laura Williams and Hermie Abraham have been confirmed to teach a course entitled *Industrial and Labour Relations*, for the University of Toronto's School

of Continuing Studies. This 13-week course is part of the certificate in Human Resource Management program. For more information about the course or University of Toronto's Human Resources Management program, please visit: <http://learn.utoronto.ca/courses-programs/business-professionals/courses/human-%20resources-2>

## **Williams HR Law to Participate in Sporting Life 10K in Support of Camp Oochigeas.**



On May 12, 2013, the Williams HR Law team will be lacing up their sneakers and participating in the Sporting Life 10k, an annual

running and fundraising event with proceeds going to Camp Oochigeas. Camp Oochigeas is a camp that offers year-round programs for children affected by childhood cancer. Through these programs Camp Oochigeas provides fun and meaningful experiences to approximately 800 children affected by cancer each year at no cost to their families. Our team goal is to raise, \$5,250 - the cost of sending three children to camp for one week. You can help make a difference by making a donation via our team page at <http://www.ooch.org/williamshrlaw>



## Williams HR Law

# Workplace Culture Restoration Services

### A proactive approach designed to protect your organization's culture

When business owners, managers and HR professionals think of a worst-case HR law scenario in their workplace, they often worry about financial or legal challenges arising from issues such as an ineffective investigation or a poorly-managed termination.

While their worries are justified, what they should really be concerned about is the impact that disruptive workplace events such as these can have on their organization's employee culture.

A strong workplace culture not only helps attract and retain top talent, but builds an environment of creativity, innovation, productivity and engagement where employees are invested in their organization's success and promote their employer's brand at every turn. Great workplaces with happy, engaged workers tend to be safer, provide better customer service, experience far less employee turnover and absenteeism, and boast stronger bottom-line performance.

But when a disruptive workplace event threatens to upset that fragile culture, employers need the right employment law and strategic HR consulting advice to maintain employee engagement and remain focused on achieving key operational goals.

It's the reason why we designed the Williams HR Law Workplace Culture Restoration Service, a unique offering built to address the pre- and post-incident culture maintenance and restoration needs of organizations ranging from small-to-medium-sized businesses to enterprise.

### Our system focuses on several critical elements:

- Proactive employment law policy design and risk assessment
- Proactive management training to ensure the effective handling of disruptive workplace events
- Communications management before, during and after a disruptive workplace event
- Post-incident assessment to understand an incident's impact on employee engagement and organization-wide culture
- A streamlined resolution process to enhance the process of workplace culture restoration
- Meeting facilitation to bridge post-incident gaps between key stakeholders

Don't let a disruptive workplace incident derail your organization's employee culture. Contact Williams HR Law today to learn how our Workplace Culture Restoration Service can transform even the most challenging crisis into an opportunity to re-engage employees and refocus on key business goals— namely, driving organization-wide growth and bottom-line success.

To find out more about our Workplace Restoration service and other services, please contact us:

Tel: (905) 205-0496 | Fax: (905) 418-0147 | Email: [info@williamshrlaw.com](mailto:info@williamshrlaw.com)

# An innovative and proactive approach to labour and employment law.

*At Williams HR Law, we're focused on helping you build a better workplace by delivering practical, customized and sustainable legal solutions designed to meet your everyday HR needs.*

## Our Proactive Approach Sets Us Apart:

**Client-service is paramount.** We're always available to provide timely advice to our clients. Rely on us to deliver service that not only resolves the legal issues you face today, but anticipates and advises on the HR policy improvements your organization can make to avoid legal trouble tomorrow.

## With Williams HR Law, You're In The Know:

**Knowledge is power.** As a Williams HR Law client, we'll keep you up to date on the recent developments in labour and employment law, while providing the insights your organization needs to implement proactive policies and make informed business decisions.

## We Listen Before We Speak:

**No two clients are the same.** Effective legal advice means understanding and addressing the unique needs of your organization. We take the time to listen to your challenges and business priorities, then provide a tailored legal solution that helps support organization-wide success.

## We Offer Practical Solutions:

**An ounce of prevention is worth a ton of litigation.** We offer cutting-edge legal services and HR consulting designed to defuse workplace issues before they escalate. We highlight relevant options and work with you to achieve resolutions that make sense for your organization.

## We See The Big Picture:

**Going beyond the law.** We're dedicated to delivering effective human resources strategy and tactics that give you the tools to design and implement smart policies, train personnel and improve workforce engagement and morale.

## We Love What We Do:

**Passion breeds success.** Practicing HR law isn't just our job, it's our passion. We enjoy providing industry-leading service and delivering the results employers need to build highly-engaged workplaces and boost their bottom line.



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## General Areas of Practice:

- employment contracts
- workplace policies
- performance management advice
- employment standards compliance
- workplace investigations
- human rights
- workplace safety and insurance
- health and safety
- privacy compliance
- legal compliance audits
- labour relations
- grievance arbitration
- pre-termination advice and strategy
- wrongful dismissal actions
- management/supervisor training