

MANAGING EMPLOYMENT LAW ISSUES IN THE DIGITAL AGE

DATA OWNERSHIP, PRIVACY AND
SOCIAL MEDIA



Top experts will provide up-to-date insights and practical guidance on key issues, including:

- Employee privacy rights and interests: where is the line?
- Effective policies balancing employee's rights with the employer's ownership rights and business interests
- Who owns the content posted on professional social media sites such as LinkedIn?
- How to make non-solicitation covenants enforceable in an online/borderless world
- Quick-response crisis management in the age of social media
- Online harassment/misconduct: what warrants discipline or termination?
- Gathering and handling online evidence in the course of workplace investigations

Case Study: *An employee has posted, tweeted or emailed a disastrous comment - now what?*

Digital technology is forcing a rethink of HR expectations and processes – are you prepared?

A must-attend for HR directors/managers, privacy officers and in-house counsel involved in employment law issues



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Webcast Available

Chairs

Matthew Sammon, *Lenczner Slaght
Royce Smith Griffin LLP*

Lisa Stam, *Koldorf Stam LLP*

Location

Osgoode Professional Development
1 Dundas St. W., 26th Floor
Toronto, ON

Date and Time

April 20, 2015
9:00 a.m. – 4:30 p.m. EDT

MANAGING EMPLOYMENT LAW ISSUES IN THE DIGITAL AGE

DATA OWNERSHIP, PRIVACY AND SOCIAL MEDIA

The velocity at which social media and related technologies is developing has left the law lagging – but HR directors and managers, in-house counsel and privacy officers still need to make prudent decisions *now* about employees' online conduct.

How do you balance employees' legal rights to privacy and freedom from harassment with employer's rights of ownership in business information? What kinds of online activity can and should attract disciplinary action or raise the prospect of termination? And how are HR processes – from the drafting of policies, protocols and employment contracts to workplace investigations and offboarding – changing to reflect the new reality?

This *OsgoodePD* program brings together top employment lawyers and other experts to provide you with practical insights and advice and answer your most pressing questions about digital issues in the HR environment.

**REGISTER NOW BY VISITING WWW.OSGOODEPD.CA,
CALLING 416.597.9724 OR 1.888.923.3394,
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Chairs

Matthew Sammon, *Lenczner Slaght Royce Smith Griffin LLP*

Lisa Stam, *Koldorf Stam LLP*

Faculty

Timothy M. Banks
Dentons Canada LLP

Keri Bush
Privacy Director, Canada and International, Legal, Corporate & Compliance Group, BMO Financial Group

Ian M. Campbell
Fasken Martineau DuMoulin LLP

Allyson M. Fischer
Hicks Morley Hamilton Stewart Storie LLP

Inna Koldorf
Koldorf Stam LLP

Jaan Lilles
Lenczner Slaght Royce Smith Griffin LLP

Kevin Lo, *Managing Director Froese Forensic Partners Ltd.*

Stuart E. Rudner
Rudner MacDonald LLP

Joann Sochor
AVP, Corporate Compliance Sun Life Financial

Lisa K. Talbot
Torys LLP

Rachel Turnpenney
TurnpenneyMilne LLP

Dena N. Varah
Lenczner Slaght Royce Smith Griffin LLP

WHO SHOULD ATTEND

- HR directors/managers
- Privacy officers
- Employment lawyers and in-house counsel who deal with employment law issues

AGENDA - APRIL 20, 2015

8:30-9:00

Registration and Continental Breakfast

9:00-9:05

Chairs' Welcome and Introduction

9:05-10:30

Employee Privacy Rights and Interests: Where is the Line?

Keri Bush, *Privacy Director, Canada and International Legal, Corporate & Compliance Group, BMO Financial Group*

Ian M. Campbell, *Fasken Martineau DuMoulin LLP*

Lisa Stam, *Koldorf Stam LLP*

Lisa K. Talbot, *Torys LLP*

- Privacy rights in employer-owned devices and in employee-owned devices used for work
- Post-Cole: to what extent does the law protect employee expectations of privacy? And what are the implications for HR departments?
- The practical impact of millennial/younger employees' attitudes and expectations
- Effective, enforceable policies: how to balance employee privacy rights with the employer's ownership rights and business interests
- Employees' ability to sue for invasion of privacy

10:30-10:45

Refreshment Break

10:45-11:15

Ownership and Control Over Data on Employees' LinkedIn and Other Professional Social Media Sites

Jaan Lilles, *Lenczner Slaght Royce Smith Griffin LLP*

Joann Sochor, *AVP, Corporate Compliance
Sun Life Financial*

- Who owns the content posted on social media sites?
- Determining proprietary rights in an open-source world
- Distinguishing between the employee's personal network and the company's proprietary information
- Are LinkedIn connections just the new Rolodex?
- User agreements between employees and their social media platforms: can the employer "insert itself" without being a party to the agreement?
- Should the employer enter into social media participation agreements with sales staff and other employees? How enforceable are these?

11:15-12:00

Non-Solicitation Covenants in a "Borderless World"

Allyson M. Fischer, *Hicks Morley Hamilton Stewart
Storie LLP*

Dena N. Varah, *Lenczner Slaght Royce Smith Griffin LLP*

Traditionally, the scope of restrictive covenants is geographically limited; but the rise of an online world tends to make geography irrelevant. The increasing mobility of both companies and employees adds a further complication. This session addresses the challenges of drafting covenants that are both reasonable and enforceable.

12:00-1:00

Luncheon

1:00-2:00

Social Media and Workplace Misconduct: an Update

Stuart E. Rudner, *Rudner MacDonald LLP*

Matthew Sammon, *Lenczner Slaght Royce Smith
Griffin LLP*

The session explores the key issues in this area in light of the most current law:

- What online behaviour constitutes harassment or other misconduct?
- Deciding when it does or doesn't pay to consider disciplinary action
- Off-hours posting on Facebook, Twitter, etc: are the considerations different?
- Ensuring that your policies comply with human rights legislation
- The scope of employers' Bill 168's obligations to address workplace harassment
- Competing rights: free speech vs. freedom from workplace discrimination

2:00-2:45

Social Media Crisis Management in the Workplace

Timothy M. Banks, *Dentons Canada LLP*

Employees' use of social media can generate crises that require agile, quick-thinking responses from HR directors and in-house counsel. Get ahead of the risk by knowing what to react to and how to apply the relevant legal principles.

- The rights and powers of social media companies over data
- Understanding where employees are posting
- Dealing with employees' online recommendations/endorsements for friends
- Takedown protocols and knowing when it's worth the battle
 - when and how to interact with online service providers

2:45-3:00

Refreshment Break

AGENDA (cont'd)

3:00-4:30

Workplace Investigations: Dealing with Evidence from Social Media and Other Digital Sources

Inna Koldorf, *Koldorf Stam LLP*

Kevin Lo, *Managing Director, Froese Forensic Partners Ltd.*

Rachel Turnpenney, *TurnpenneyMilne LLP*

An employee has posted, tweeted or emailed a disastrous comment: now what? Using a case study approach, our closing session will explore how the principles discussed throughout the day are influencing the process of workplace investigation. Issues include: when electronic information not under the employers' control may be evidence; when to involve your IT people; and making the appropriate judgment calls to avoid the minefields accompanying investigations of online misconduct in the workplace.

4:30

Program Concludes



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSUC.



Eligible CPD/MCLE hours: LSUC (ON): 6.5 CPD Hours (6.0 Substantive, 0.5 Professionalism); NY CLE (on-site participants only): 7.0 credit hours in the Area of Professional Practice for Transitional and Non-transitional lawyers.

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This program has been approved for 6.5 continuing professional development (CPD) hours under Section A3 of the continuing professional development (CPD) log of the Human Resources Professionals Association (HRPA).

REGISTRATION

Please complete all registrant information.

Managing Employment Law Issues in the Digital Age

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\$695 plus 13% HST

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca for details. Please inquire about financial assistance.

Date & Time

April 20, 2015

9:00 a.m. – 4:30 p.m. EDT

Please arrive a half hour early for sign-in and material pick-up. Dress is business casual.

Location

Osgoode Professional Development
1 Dundas St. W., 26th Floor
Toronto, ON M5G 1Z3

Program Changes

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

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 5 days prior to the program date. No other refund is available.



4 Convenient Ways to Register

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