December 2013
&
January 2014

TLOMA *Today*

A publication of The Law Office Management Association

TLOMA 1968 45th Anniversary 2013
The Law Office Management Association

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- **Facilities SIG**
  January 14, 2014
- **2014 TLOMA Conference**
  September 17 to 20, 2014

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PRESIDENT'S MESSAGE

By: Janice Rooney

As I reflect on how quickly the year has passed, I am filled with a variety of emotions ranging from sheer and unmitigated elation to profound sadness that this exciting year is coming to an end for me as your outgoing President. I also look forward to my third phase of Board activity as your incoming Past President for 2014.

Please know that my utmost joy was to have been blessed and distinctly honoured to serve as your President in this blockbuster year of celebrations! Together, we marked the 45th Anniversary of this strong and vibrant Association as well as elegantly marked the 25th Anniversary of our Conference. To say the least, the "fireworks" were not only vibrantly in my head over the past 12 months, but happily were also visible to all, as we toasted our 25th Conference in Niagara Falls in style.

I cannot thank the Board members, Committee Chairs and their members enough for your support and hard work this year. From increasing the relevancy of our education content for members who attended our SIGS, PD Meetings and the Conference, to renewing relationships with our colleagues at the BCLMA and the ALA at an Executive Summit, to developing a new Mentoring program pilot, to revisiting how we can continue to make TLOMA a viable presence on the street through an ongoing and in-depth marketing initiative, to the extensive revamp of the Compensation Survey, to increasing the accessibility of our education sessions through improvements in our webinar based technology, to continuing to ramp up our website, to renewing our Newsletter content and look, your Board and related Committees demonstrated their extreme commitment as a strong team of leaders in 2013.

I know for certain under Karen Schrempf's leadership as your incoming President, that there is an equally strong team of leaders going forward into 2014 and beyond! And please know that we always managed to have some fun along the way – so why not come and join us and volunteer!

I also want to express my sincerest thanks to my own mentor and Past President, Karen Gerhardt who was always available to provide her guidance and sage advice. It was and is invaluable.

As my colleague and current Vice President for 2013 Karen Schrempf expresses in her joint message to the Members, our Board of Directors is a strong leadership team and we continue to evolve with the changing tide of our industry to ensure our currency and longevity. Our related Committees and members, specifically, Compensation, Website and Conference, under the leadership this year of Cheryl Brass, Mary DaRosa and Mary Lavis respectively, continue to amaze us with their innovative ideas and outputs, all for the benefit of our Association. Well done!

My dearest colleague and steadfast "rock", Liz Barrington, our Director of Administration for TLOMA, is the key reason for all of our collective success. Liz, my very sincerest thanks!

TLOMA – we are your forum for professional development and networking – a vibrant Association supporting each other as we work in our complex and challenging environment. In closing out this magnificent year, thank you again for this privilege and please have a safe, happy and healthy holiday season and see you all in 2014!

Janice Rooney
TLOMA 2013 President

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INCOMING PRESIDENT'S MESSAGE

By: Karen Schrempf

Where did 2013 disappear to? Another year gone by in a blur! It's my pleasure to send a note to our membership along side our Madam Prez, Janice Rooney, who has worked tirelessly and done an outstanding job this past year in leading the 2013 Board with new initiatives and completing other projects.

We say goodbye with heartfelt thanks and immense appreciation to Karen Gerhardt having completed her three year term in the Vice/President/Past President role, Susan Carnevale, Marketing SIG leader, and Cynthia Perrone, Facilities SIG. Our outgoing Board members have contributed time, enthusiasm, humour, and expertise in the further development of TLOMA and we all as members are fortunate to have benefited from their input. Many thanks also to our many Committee Chairs, Co-Chairs and committee members who Janice has paid homage to, Louise McNeely our Volunteer Coordinator, and the many members who work on various projects or tasks throughout the year.

As your incoming President I am thrilled and honoured to:

Continue working along side our continuing Board members including:

Janet Baker, Secretary and Newsletter Editor
Cathy Byrnes, Treasurer and Finance SIG
Nancy Shaw, HR SIG
Edward Asmar, IT SIG
Janice Rooney, Past President
Liz Barrington, our Director of Administration and
Welcome our incoming members:

Paul Page, Vice President
Dina Brennan, Facilities SIG
Alison Janzen, Marketing SIG

And but of course Liz Barrington – deserving of her own paragraph! You've heard me say it before, and I will continue to do so -- I and others would never consider stepping up to volunteer if not for Liz's support, experience, excellent judgment and direction. TLOMA is blessed to have Liz's continued commitment and loyalty which benefits all of its members.

While it's been about 10 years since I sat on the Board of this amazing Association, I continue to be in awe and admiration at the excellence and caliber of the members of our Board and growing membership. I look forward to learning and growing with you as we undertake to serve our members in the coming year. Please approach any current or former Board member or Louise to talk about where you might find a volunteer opportunity. We have tasks and projects of all sizes so there is sure to be something the right fit for you!

Enjoy the upcoming holiday season, and remember to take time for yourself and with family and friends. Give yourself permission to enjoy - you deserve it! As you reflect on another year gone by, I wish you good health, happiness, and success in the upcoming year.

Karen Schrempf
2013 TLOMA Vice President

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The TLOMA Holiday Networking Event was held at One King West on December 6, 2013. The event was attended by over 120 members and Life Members. Recognition was given to our Life Members in attendance: Julie Bean, Charles Bennett, Susan Bennett, Christine Bogle, Alan Greaves, Robert Hardie, Debra Hillier, Karen Mackay, Ken Mackay, Dee Nevett, Margaret Parker and David Weston.

Special recognition was given to Susan Carnevale, 2012-2013 Marketing SIG Leader; Cynthia Perrone, 2011-2013 Facilities SIG Leader and Karen Gerhardt, outgoing Past President.

In addition, TLOMA welcomed two new Life Members, Theresia Skoberne and Lynda Stewart Dame.

Randy was our guest speaker at our Professional Development meeting on November 12th at the Toronto Board of Trade

By: Randy Taylor

THE WINNER WITHIN

INCREASING FOCUS

CURRENT MOMENT CONSCIOUSNESS

The most often stated intention for developing focus is to improve productivity. There is no question that it will and it does. When looking to improve focus what we are looking to do is to replace the distractive voice in our mind with productive, task-oriented thought. This is truly one of the most powerful skills anyone can learn. The true definition of developing the skill to focus goes far beyond the ability to increase productivity. Here is the definition:

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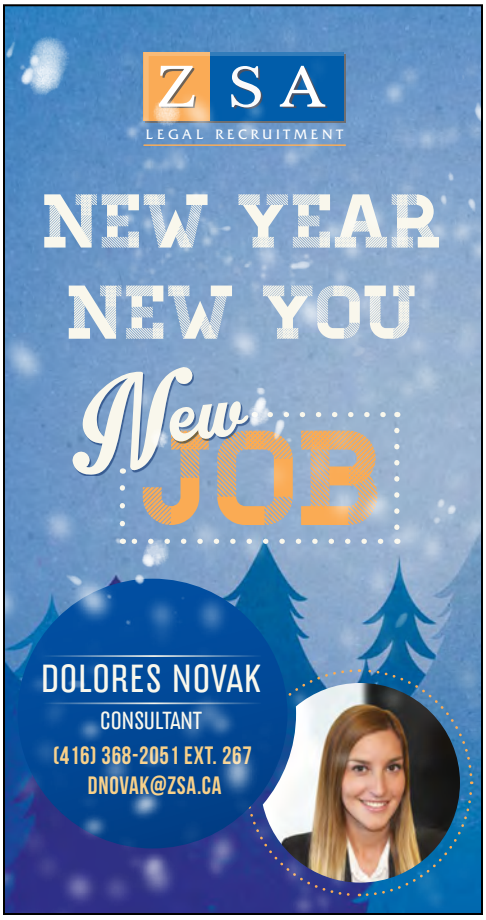

"To be free of the psychological need of the past for your identity and the future for your fulfillment"

The truth is that both the past and future are illusions. Not being able to stop thinking is a terrible affliction. We don't realize this because almost everyone is suffering from it.

One of the major reasons why the voice in our head is so powerful is because it is ego driven. To our ego, only the past and future are considered important. The voice keeps the past alive for our identity and it projects our thoughts constantly into the future to ensure its survival and to seek fulfillment. We have brief moments of current focus directed by our ego when we are receiving an immediate reward through such actions as winning an award, closing a sale or picking up a new car.

Otherwise our ego leads us to believe that "Everything will be great when I have this or achieve that or become something that I am not now. We are constantly faked into accepting that *"I'll be happy when"*.

We are misled into believing the answer always lies in tomorrow. Here is the definitive question. *"Was today not one of those tomorrows we were waiting for?"*

There are two very clear symptoms of not living in the moment. They are stress and fear.

Let's deal with stress first. Here is what causes stress. *"The fact that you are here and you want to be there."* Your mind convinces you that you want to be there so you can know if what you imagined will come true or if a problem you perceived was avoided. While stress most often comes from the unknown future, it can also come from thinking of the past. We focus on the problems we encountered or the belief that it was so much better then. We romantically recall the past and wonder why it is not as good as it was then.
The other insidious symptom of not living in the moment is Fear. The reason fear is the great occupier of the mind is because we feel there is no control over it. It's not real, it's imagined. The one thing that is real is the emotion. There is no question when we internalize a fear the emotion will be experienced even on a physical level. Fear makes our perceived problems seem bigger than life.

Fear comes to us in the form of unease, anxiety, nervousness, tension, dread and phobias.

Coming to terms with fear lies in the definition. Fear: *"A negative emotion related to something that might happen, not something that is happening."* By making the commitment to stay in the moment, fear will have no place to live and grow.

Randy Taylor with
TLOMA Vice President, Karen Schrempf

What happens when we focus on stress or fear? We now know that giving attention to that thing that we are stressed about and fear the most is what we will manifest in our lives. It's the law of attraction. It doesn't matter if it's something that you really, really want or it's something that you really, really don't want. If it is the thing you focus on the most, that is what you will attract and what will manifest in your life.

In the late 1800's a medical student was attending Montreal General Hospital. He was worried about everything; his failing grades, how to start a practice, meet a woman, earn a living, everything. Then while reading a book in the school library he read 21 words that changed his life. The passage read:

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THE WINNER WITHIN INCREASING FOCUS CONTINUED....

"It is not our goal to see what lies dimly in the distance but to do what clearly lies at hand."

The words were written by the book's author, Thomas Carlisle. That passage provided the key to his worries and inability to function. From that day on he began focusing on the moment. He referred to the practice as living in Daytight compartments. He called the past the dead yesterdays and the future the unborn tomorrows. He said that the only time to produce anything was in the moment.

As a result of his change in philosophy he became one of the most prominent medical minds of his time.

He went on to become Regius Professor at Oxford University and was knighted by the King of England. When he died it took 2 volumes and 1481 pages to tell his life story. His name was Sir William Osler.

In an interview late in life, he said if you asked his friends or family they would tell you that he was of the most ordinary mind. He credited all of his success to living in Daytight compartments. That is what allowed him to create such an incredible body of work. The lesson from his life is that it's as achievable for anyone as it was to him.

Being aware of our lack of focus is the first step towards an improved quality of life and a great reduction in stress.

For each of us to begin the process I believe it is important to answer these two questions personally.

Question: "Is there a problem in this exact moment?"

Generally, our problems are linked only to our perceptions of what may happen. Whenever you feel stressed, simply ask this question to which the answer will invariably be no. "Is there a problem in this exact moment?"

Question: "Do you carry inside the burden of 100 things that need to be done?"

Almost everyone does. The key is to find a place to put them. The mental burden of juggling a constant list of things that need to be done will rob your mind of precious productive time in the moment. The best thing you can do is to commit a plan to paper of how you will carry out the task. It can be likened to bringing a list to the grocery store or simply trying to remember everything you needed to buy.

These two simple exercises will provide for a great clearing of the mind. Like all skills however we must do it again, over and over to create the change necessary and to live the life we are deserving of. Know this final point to be true. Live today, because there will never be another today.

Be well.

Randy Taylor, is a keynote speaker and coach who presents on a number of topics including leadership, productivity, relationship and team building, the power of why in life and in business, discovering personal passion and more. Having worked and studied in the field of personal and professional development for over 30 years, Randy Taylor has the knowledge, experience and drive to create lasting change in the lives of those he works with. He motivates his clients and audiences by helping them to achieve the most important element of personal and professional development and that is to believe in themselves more. It is the belief of the individual that is the root of all success. Doubt is the root of all failure. Randy Taylor, Mobile: 647 262-3853, www.taylormadeleadership.com.

"It is the voice in our head telling us the mountain is too high that prevents us from ever knowing the view from the top"

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LIFE MEMBER

LYNDA STEWART DAME

By: Marsha Hempel, Director Human Resources, Borden Ladner Gervais LLP

Lynda will be leaving our legal community and commencing her retirement as of December 31, 2013.

Lynda's involvement in TLOMA and our community will be greatly missed! She has spent several decades working as a Human Resources Professional, firstly with former Fraser, Milner, Casgrain LLP and for the past many years with Davies Ward Phillips & Vineberg LLP.

Lynda has committed a great deal of her time and expertise to TLOMA over the years, as the chart below clearly demonstrates. What an example she has set for the rest of us!

TLOMA POSITION	YEAR
Compensation Committee	2005
Compensation Committee	2004
Human Resources Special Interest Group Leader	2003
Compensation Committee Chair	2003
Human Resources Special Interest Group Leader	2002
Compensation Committee Chair	2002
Compensation Committee	2001
Compensation Committee	2000
Compensation Committee	1999
Past President	1998
President	1997
Vice-President	1996
Human Resources Special Interest Group Leader	1995
Human Resources Special Interest Group Leader	1994
Secretary	1986
Treasurer	1985

Not only has she been extremely generous to TLOMA, she has also been a wonderful mentor and friend to so many of us. I have witnessed in awe the never ending support and kindness Lynda has extended to new members of the community. She has made a significant contribution to the lives of many, and is truly a gift to everyone who knows her.

Lynda is off to Florida for January, Africa in late February and then either Aruba or Puerto Vallarta for some of March. We congratulate Lynda on her well deserved retirement and wish her many years of wonderful travel, good health and tremendous happiness!

Lynda, you must promise to keep in touch with all of us who will miss you!

By: Keith Hill, Jr.

BOOKKEEPING MATTERS: AUDIT TALE

At best, a Spot Audit can merely be a minor inconvenience – a routine checkup that only ensures your financial records and reporting are managed and maintained as they should be. Once the auditor reviews your books with satisfaction, they leave and you continue business as usual in as little as a few hours.

On the other hand, the simple notice of a Spot Audit can send the auditee into a panic with reasonable fear that their livelihood is in jeopardy. In this case, the auditor usually finds "things of concern" and can end up extending the auditing process for months, turning a routine visit into an investigative and punitive process – and at worse, your trust account is frozen by the Law Society who will then assign a forensic auditor to your case.

The goal of the licensee should always be to seek pre-emptive ways to bring about the former scenario and in effect shun the latter. A major factor in achieving this goal rests on having experienced and professional legal bookkeeping specialists maintaining your books.

The Spot Audit Program

An exponential expansion of The Law Society Audit Department has occurred in the past several years. Their mandate is to conduct a Spot Audit on each firm every five years. All newly formed firms must be audited in the first twelve months of operation.

According to the Law Society, Spot Audits are "designed as a pro-active compliance measurement and problem detection tool, Spot Audits measure the integrity of law firm financial filing (By-Law 8), assess ongoing compliance with financial record-keeping requirements (By-Law 9) and the Rules of Professional Conduct, and identify serious misconduct related to financial matters. A primary goal, which reflects a remedial approach, is to provide on-site guidance aimed at helping your law firm correct minor deficiencies with your record-keeping practices before they lead to serious non-compliance or misconduct issues".

The Law Society further states that "Spot Audit supports and promotes high quality law firm record keeping by answering questions and providing guidance regarding private mortgages, trust and general record keeping requirements, and By-Law 9 and providing onsite support and ensuring compliance with LSUC requirements by conducting audits". In other words, Spot Audits have varying degrees of benefits for the licensee.

Spot Audit Day Tips

To assist with having a smooth audit experience here are a few tips:

1. Make sure your bookkeeper is notified immediately when you're first informed of the audit date and particulars.
2. Forward your bookkeeper all correspondence from the LSUC.
3. Be proactive– even if your general account is not part of the audit, do your best to also have it up to par for good measure.
4. The auditor will be at your office to "work", therefore provide a good work environment to assist them in being efficient – offer a comfortable work area with adequate desk space, privacy, and the like, where possible. Assisting with their productivity helps to expedite the auditing process.

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BOOKKEEPING MATTERS: AUDIT TALE CONTINUED....

Necessary Evil

Whatever form an audit takes place, albeit seemingly intrusive, the auditing procedure is a necessary evil. Therefore, it's best to be anticipatory and operate your business as though one is always imminent versus having a reactionary approach which can become lengthy and convoluted. A good bookkeeper is essential in this manner because they will be familiar with what an auditor is looking for and in several instances he/she will even be familiar with the auditor themselves.

There's a clear difference between audit day experiences where firms do not have consistent bookkeeping services as opposed to those where a bookkeeper maintains the integrity of the books on a regular basis. If you secure a bookkeeper reactively, he/she will be working at length putting together your paper trail and/or piecing one together when there is a lack thereof. And chances are you will be scrambling at the final hour before the arrival of the auditor. In the other scenario, by working closely with an experienced bookkeeper to keep your firm's financial records and reporting on track, you will help prevent your audit day experience from becoming an audit day nightmare.

Keith Hill, Jr. is an associate at Accounting for Law. For 13 years Accounting for Law has been satisfying bookkeeping needs for lawyers throughout the GTA – specializing and certified in the PCLaw practice management software. Keith can be contacted at: keith.hill@forlaw.ca / 647-459-4LAW / www.forLAW.ca

TLOMA

New Member's Breakfast

On Wednesday, October 13th, a New Member's Breakfast was held at the offices of Fogler, Rubinoff LLP. The New Member's Breakfast is held twice a year and is an opportunity for our "newbies" to attend a meet and greet with the Board of Directors and Chairs of our committees. If you happen to meet up with one of these new members, whether at a SIG event, or a networking event, please take a moment to welcome them to TLOMA.

(L to R) Cathy Byrnes, Cheryl Brass, Karen Gerhardt, Anita Mak, Leah Halpenny, Kaitlin Sandor-Kerr, Brandon Chatwell, Kelly Crewson, Janet Baker, Janice Rooney, Edward Asmar, Cynthia Perrone

Firmex was our guest speaker at the IT SIG held on October 15th at Minden Gross LLP

By: Marie-Michele Guay

DOCUMENT SECURITY FOR LAW FIRMS

On Tuesday October 15, 2013, Firmex spoke to the TLOMA community on the issue of document security within law firms. The presentation, usually delivered to practicing lawyers, was met with great enthusiasm from TLOMA's legal admin and IT professionals as well. The issue of document security is indeed one that impacts the entire law firm.

There's no doubt that new technologies are providing greater efficiencies for lawyers and their clients. However, with security a paramount concern, not all of these technologies may be suitable for use within a law firm. Failure on the part of a lawyer to use adequate measures to protect client information can have serious implications for both the individual and law firm at large. Both Legal Practice and Legal IT play an important role in ensuring that the technologies being used can adequately protect sensitive information.

Common file sharing tools, like email, USBs, CDs and consumer-grade applications (e.g. Dropbox), all leave confidential data vulnerable to security risks. Prior to our presentation, Firmex polled TLOMA attendees on what tools they were currently using to share information. Alarmingly, the majority of respondents indicated that they were using risky methods, such as email (27%), CDs (27%), USB sticks (23%) and Dropbox (20%). Nearly half admitted they were struggling to find a cost effective and scalable solution, and had systems in place that didn't fit their business needs. On a promising note, 80% indicated document sharing and collaboration was on their Roadmap for 2014. Our presentation on document security was therefore quite timely, and some key points from the event are highlighted below.

The Risk of Email

The most obvious risk when using email to send confidential documents is the lack of control over what happens to these files once they leave your inbox. In May 2012, a partner from one of the world's largest law firms accidentally emailed unredacted documents during a high-profile litigation for Goldman Sachs. Goldman and its attorneys had spent years trying to keep

DOCUMENT SECURITY FOR LAW FIRMS CONTINUED....

these files sealed, but with just one email, and one incorrect attachment, all these efforts were undone.

Human error is a common risk when using email, however another issue not widely considered is how vulnerable an email account is to outside threats. Law firms are prime targets for professional hackers because of the privileged information they have access to. "Confidential information is the new currency crooks are after," explains Daniel Tobok, President of security consulting firm Digital Wyzdom Inc. "We have seen a 40 percent rise in the theft of intellectual property since the 2008 recession."

Infiltrating an email account, or sneaking into an email chain, is not difficult for a professional hacker, and is made even easier if the names and contact details of lawyers are published on the firm's website. Using a tactic known as spear phishing, a hacker can craft a convincing email that appears to be from a trusted source (e.g. partner or client). The email includes a corrupt attachment or link, which when opened infects the user's computer, giving the hacker unauthorized access. Roughly 156 million phishing emails are sent globally each day. While spam filters catch most, around 8 million emails still get delivered, and 80,000 people fall victim.

Spear phishing emails have improved significantly in just a few short years and are virtually impossible to detect to the untrained eye. Even the most security conscious law firms are falling victim. In April 2011, lawyers at a major Canadian law firm working on a proposed deal involving the acquisition of a Chinese company received emails that appeared to be from a partner working on the deal. The emails were fake and included attachments that contained malware, which when opened successfully infected dozens of computers. It's unknown if any sensitive data actually went missing, but it was enough to expose the vulnerabilities of the firm's security system.

The Risk of Dropbox

The availability of free, downloadable applications is a growing challenge for legal IT administrators, especially when it comes to controlling what software is used within the firm. Consumer-grade apps, like Dropbox and Google Drive, are designed to improve document accessibility. However, the convenience they offer simply isn't worth it if the service provider doesn't share your firm's approach to document security. Their use may even violate existing security policies and regulatory compliance requirements.

A report published this year by Nasuni revealed that 1 in 5 employees save work files to a personal Dropbox account. Fifty percent of those do it even though they know it's against company policy. The implications for people using Dropbox without permission can be catastrophic. The vulnerability of the platform was demonstrated in 2011, when a Dropbox error left all user accounts unsecure and accessible with any password for 4 hours. In 2012, Dropbox then fell victim to a security breach, which leaked several user emails. In response, White & Case LLP have restricted attorneys from using vulnerable file-sharing programs like Dropbox, and is one of a handful of firms to receive an accreditation for information protection, which they are now using as a selling point to clients.

Document Security Best Practice

To improve document security within law firms, Firmex recommends the following:

Control access

- Restrict access to confidential documents on a "need to know" basis.
- Identify digital assets most at risk of intrusion and segregate them. Store them somewhere that is physically removed from the network. Virtual data rooms are a great option (see below).
- Restrict the ability for lawyers to download software applications without permission from IT.

Educate employees

- All employees should know what constitutes a sensitive document, how to handle it, and what to do in the event of a security breach.
- Implement quarterly training or retraining sessions so the privacy policy is easily understood and followed.

Encrypt data

- Make data encryption mandatory on all devices, including laptops, tablets and smartphones.

DOCUMENT SECURITY FOR LAW FIRMS CONTINUED....

Virtual Data Rooms

Many law firms are using virtual data rooms (VDRs) as a secure alternative for exchanging confidential documents beyond the corporate firewall. VDRs are used to support numerous legal processes, including M&A, litigation and bankruptcy.

Virtual data rooms offer:

- Convenient online access to documents
- Controlled access to confidential client information
- Role-based permissions
- Restricted access by project, folder or document
- Online and offline document protection
- Bank-grade data encryption
- A full audit trail of document activity

A reputable virtual data room provider should comply with the latest industry standards for data security (e.g. SSAE 16 Type II), provide data encryption for documents in transit and at rest, and Digital Rights Management for both Microsoft Office and PDF documents. When speaking to a vendor, ask for a complete rundown of their security features.

For further reading about document security for law firms download our latest whitepaper, *"Security Breaches on the Rise: What Law Firms Need to Know."*

Marie-Michele Guay is a professional in the legal technology space and works with a diverse group of law firms to implement solutions to create cost efficiencies, increase client satisfaction and most importantly mitigate risk associated with document sharing. She is a Sales Executive at Firmex, Canada's leading Virtual Data Room and Client Extranet provider. To learn more visit www.firmex.com or contact our Legal Sales Executive, Marie-Michele Guay, on 416-840-4241 (ex 444).

Andrea Marsland was our guest speaker at the HR SIG held on October 22nd at Fogler, Rubinoff LLP

By: Andrea M. Marsland

HOT TOPICS IN EMPLOYMENT LAW

THE IMPORTANCE OF TERMINATION CLAUSES

Regardless of whether you are a small organization or a large multi-national, your hiring documentation should contain a termination clause that sets out exactly what your employees will receive upon termination of employment. A properly drafted termination clause can significantly limit your organization's liability upon termination of employment.

If your hiring paperwork does not contain a termination clause, you will be left with providing common law notice, which can significantly increase your liability upon termination. While there is no official rule of thumb, you can expect to pay anywhere from 2 to 6 weeks notice per year of service, or more. For example, in the Court decision of Love v. Acuity Investment Management Inc., 2011 ONCA 130, a 3-year employee was awarded a 9-month notice period, and, in Dimmer v. MMV Financial Inc., 2012 ONSC 7257, a 4-year employee was awarded a 12-month notice period.

If your hiring paperwork already contains a termination clause, make sure it is enforceable. In that regard, it must:

1. Comply with, or provide a greater right or benefit, than the *Employment Standards Act* ***("ESA")***;

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The Law Office Management Association
IGNITE THE ENERGY WITHIN
2014 TLOMA CONFERENCE September 17 - 20, 2014 • White Oaks Resort and Spa

THE IMPORTANCE OF TERMINATION CLAUSES CONTINUED....

2. Expressly provide for benefit continuation during (at least) the statutory notice period;
3. Provide enough notice to ensure enforceability in all circumstances, including future enforceability; and
4. Expressly limit your liability to the entitlements set out in the clause.

If your clause does not meet the above-noted requirements, it will likely not be enforceable. For example, in *Wright v.* The Young and Rubicam Group of Companies, 2011 ONSC 4720, Mr. Wright had signed an employment agreement which provided for a staggered notice period. Mr. Wright's employment was terminated after 5 years of employment and he was provided with 13 weeks notice, which included his base pay, RRSP matching contributions, car allowance payments, parking allowance payments and continued group benefit coverage with the exception of disability and life insurance. It was undisputed that the employer had complied with its obligations under the ESA. Nevertheless, Mr. Wright sued and claimed that the termination clause in his employment agreement was unenforceable because (i) it did not expressly provide for benefit continuation as required by the ESA and (ii) the amount of pay in lieu of notice provided for in the agreement was less than the aggregate statutory minimums in certain circumstances (notably, if he had been terminated in year 8.5 of his employment, the clause would not have met the requirements of the ESA). The Court agreed with Mr. Wright on both points and concluded that the language used in the agreement was contrary to the ESA and accordingly, the clause would not be enforced.

The Duty to Accommodate Based On "Family Status"

A recent decision from the Federal Court has many employers feeling uneasy about

THE IMPORTANCE OF TERMINATION CLAUSES CONTINUED....

the duty to accommodate based on "family status". In AG and Johnstone et al, 2013 FC 113, the Federal Court upheld a decision by the Canadian Human Rights Tribunal ("Tribunal") whereby it held that the Canadian Border Services Agency had discriminated against Ms. Johnstone when the agency failed to accommodate her request for a shift change to meet her childcare needs. In Johnstone, the employee and her husband both worked for the Border Agency on rotating shifts. Despite their best efforts, they found it impossible to arrange for childcare because of their unpredictable work schedules. Ms. Johnstone approached her employer and requested full-time day shifts to permit her to arrange for childcare. Her request was ultimately denied.

Ms. Johnstone alleged she had been discriminated against on the basis of family status with respect to her parental childcare obligations and was successful in her claim. In its review of the Tribunal's decision, the Federal Court concluded that the Tribunal had reasonably found that parental childcare obligations fall within the scope and meaning of "family status" in the Act and upheld that aspect of the decision.

The *Johnstone* case does not stand for the proposition that employees with childcare needs can insist upon working certain shifts. Rather, it clarifies the employer's obligation to treat requests for accommodation on the basis of childcare needs in the same manner it would any other request for accommodation (e.g., for medical or religious reasons).

In *Devaney v. ZRV Holdings*, 2012 HRTO 1590, the Human Rights Tribunal of Ontario considered a case where Mr. Devaney

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THE IMPORTANCE OF TERMINATION CLAUSES CONTINUED....

required a flexible work schedule to care for his ailing mother. ZRV imposed an 8:30 a.m. to 5:00 p.m. schedule on Mr. Devaney and eventually terminated his employment because of his absenteeism.

Mr. Devaney alleged that he had been discriminated against on the basis of family status as his employer had refused to accommodate his need to care for his ailing mother. The Tribunal agreed and found that the employer had failed to meet its procedural and substantive duties to accommodate when it imposed a rigid schedule upon Mr. Devaney instead of seeking information about his needs. Mr. Devaney was awarded $15,000.00 in compensation.

This case does not stand for the proposition that employees can work from home in all circumstance to care for ailing relatives. Rather, it serves as a reminder of the following principles:

1. The Human Rights Code will be interpreted in a liberal and purposive manner;
2. "Family status" is to be treated in the same manner as other requests for accommodation (e.g., disability or religious);
3. Each case depends on its own facts; and
4. The Code requires accommodation for Code-related needs, not preferences (e.g., must care for mom versus prefer to care for mom).

The key to accommodation based on family status is to treat requests for accommodation in the same manner you would treat any other such request. All accommodation requests should be taken seriously and dealt with in a timely manner. To make this task easier, your organization should implement an Accommodation Policy and follow it in each and every case.

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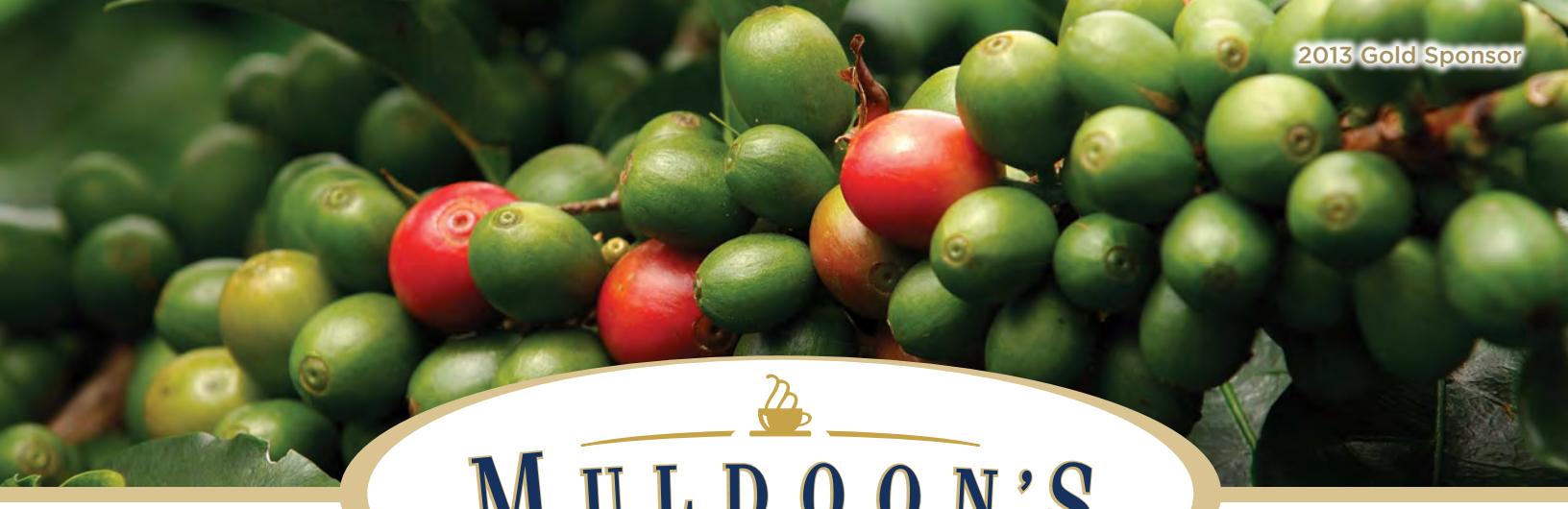
Andrea Marsland is a Partner at Fogler, Rubinoff LLP. Andrea's practice focuses primarily on employment-related issues, including hiring employees, terminating employees, drafting contracts and employment policies, providing practical day-to-day human resource advice and litigating employment-related matters. If you need assistance with any of your employment-related needs, feel free to call Andrea directly at 416-365-3703 or email her at amarsland@foglers.com.



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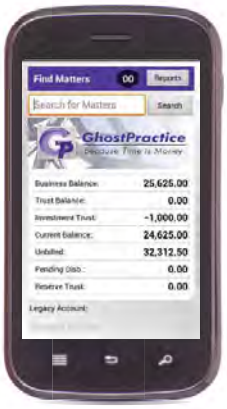

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First Name	Last Name	Firm Name	Title
Michelle	Billboe	Rosen Sunshine LLP	Office Manager
Leandra	Delgado	McMillan LLP	Manager, Conflicts and Risk Management
Jane	Southren	Lerners LLP	Director of Professional Business Development
Diane	Scott	Hodgson Russ LLP	Director of Human Resources
Wendy	Williams	Goodmans LLP	Supervisor, Office Services

Life Member

First Name	Last Name	Firm Name	Title
Theresia	Skoberne		
Lynda	Stewart Dame	Davies Ward Phillips & Vineberg LLP	Director of Professional Business Development

Welcome Back!

First Name	Last Name	Firm Name	Title
Joyce	Mah	Davies Ward Phillips & Vineberg LLP	Director, Human Resources

RETIREMENT FROM LAW FIRM MANAGEMENT!

What does it really mean? Does it really exist? Yes there is life after Law Firm Management so I am told by TLOMA life members.

By: Mary Lavis-Todd, Chief Operating Officer, Hughes Amys LLP

LIFE MEMBER

THERESIA SKOBERNE

(formerly of Mathews Dinsdale)

I am thrilled to provide a tribute to one of TLOMA's life members Theresia Skoberne who retired from Legal Management in 2012.

Theresia started her Legal Management career in 1975. She tells me she was a teenager at the time. My response was "what has changed?" She joined TLOMA (Toronto Law Office Management Association) in 1978 and at that time application for membership had to be sponsored by 2 active TLOMA members. Those members were Dorothy Holman of Shibley Righton and Marg Parker of Campbell Godfrey who sponsored Theresia's application. At that time the Association consisted of 40 members and monthly meetings were held at The Military Institute. Women were not frequent visitors to the Institute and way back then the ladies washrooms could not be found easily. Not sure if this is the case today. Membership has its rewards!

Theresia has been a member of TLOMA for 35 years and during this time she gave back to the Association by volunteering her time in various roles, 1983 - Vice President; 1984 – President; 1997 - Facilities Section Head; 1999 - Conference (Social) Committee; 2000 - Conference (Social) Committee. During Theresia's Presidency in 1984 TLOMA became a Chapter of the ALA (Association of Legal Administrators) and I am told there was a big celebratory (fancy) dinner at the Sutton Place Hotel, which is now a Condo! Theresia has always said giving back to an organization that helps manage your career is truly rewarding.

On a personal note, I have known Theresia since 1989 and we have enjoyed many conversations both on a professional and personal level. Her wealth of experience, sense of humour and her pragmatic approach to managing lawyers has always been of great encouragement to me and many other members of TLOMA. Although Theresia has retired from Law Firm Management she is still providing support in the legal community and I am truly lucky to be the recipient of her help.

Thank you my friend for all the little things, the "done-and-then-forgotten" things, and the "oh-it's-simply nothing" things that make our days much brighter. With unobtrusive, friendly things, and "never-mind-the-trouble" things, and "won't-you-let-me-help-you" things, you've made our hearts much lighter.

Here's to many years of celebrating life.

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APRIL 2014	APRIL 9, 2014
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