

# LEGAL BRIEFS

## Terminating the right way is better for all

BY JAN DEAN

A report released by CIBC World Markets this past spring noted that despite manufacturing woes, business bankruptcies were down as companies opted to cut costs by downsizing.

It might sound benign, but downsizing translates into cutting the size of the workforce. In other words, Canadian companies are choosing to lay off or terminate employees in order to stay in business.

That's where Roslyn Baichoo comes in. An associate with Lawrences Litigation Group, Baichoo specializes in law relating to employment, labour and human rights.

"Losing your job is the most life-altering experience," Baichoo says. "Work is the most important role for most individuals. It's how we define ourselves. The first question you ask when you meet someone is 'What do you do?' Companies are trying to do their best right now in a very difficult economic situation, and sometimes that means cutting staff."

Baichoo says employees need to understand that when a company downsizes it's not personal.

"A lot of companies are struggling to make financial adjustments right now," says Baichoo.

Conversely, she says that businesses have to go about terminating an employee correctly. "It's important to treat people well and not humiliate them," she says. The key is always communication.



Roslyn Baichoo, Lawrences LLP

HR research shows that Friday is the worst day to fire or terminate employment because employees have no access to advice over the weekend. "Come Monday that employee is in a rage and more likely to make a bad decision because of that," says Baichoo.

She says the right time to deliver the bad news is earlier in the day on a Tuesday or Wednesday.

Companies need to develop policies about how it's done, perhaps offering employees the choice of cleaning out their desks after hours to avoid humiliation.

While Baichoo says employees during this recession are less litigious, a wrongly handled termination could still land a company in court which could prove expensive to the company and the employee.

Something we should all be careful about is email on the company computer because if you are shown the door, your email stays on the machine and is the property of your employer. If you've been terminated for cause, the last thing you need is a forensic audit of your computer turning up material that will be termed 'after acquired cause' that further justifies your termination.

Times have definitely changed in employment law. Back when Henry Ford started his business, there were no laws to stop him from firing employees who smoked, drank, gambled, or took in boarders. An employer who tried to emulate the early Ford these days would quickly discover he was breaking the law.

Employment law is a compendium of

statutes and Judgement or Common Law. Where workplaces are unionized, the collective agreement also sets the terms of employment.

When an employee is terminated for cause, the employer is not required to offer any severance.

Baichoo notes that employment law is never static and never will be. "Employment law is evolving," she says.

Where once alcohol or drug abuse on the job was cause for instant dismissal, now that is deemed a disability.

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### Mikkola honoured by Last Post



LCol Jim Breithaupt, KStJ, CD, OM (Pol), QC (left), was the Master of Ceremonies when LCol Raymond Mikkola, CD, a partner at Pallett Valo LLP, Mississauga's largest law firm, (centre) was presented with his Last Post Fund Long Service Medal by The Honourable David C. Onley, Lieutenant Governor of Ontario (right). The Last Post Fund, celebrating its 100th anniversary in 2009, is a non-profit organization that to date has assisted thousands of families of Canadian war veterans with funeral expenses. LCol. Mikkola is vice-president of the Ontario Branch of the Last Post Fund.

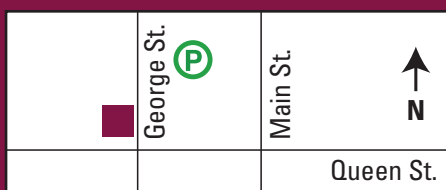
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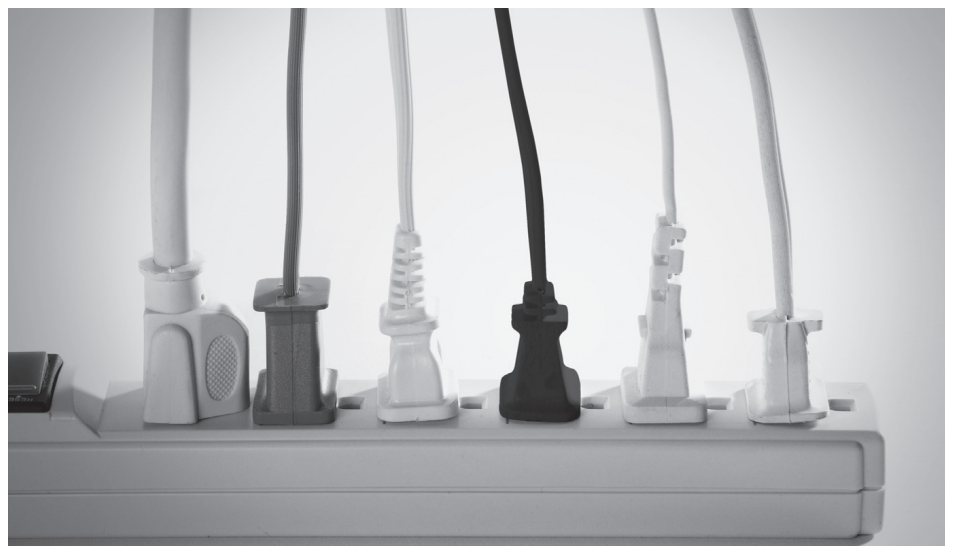
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Lawrence, Lawrence, Stevenson LLP  
43 Queen Street West  
Brampton, ON L6Y 1L9  
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