

## WHAT'S NEW at RUBIN THOMLINSON LLP

**Sharaf Sultan** participated in a live call-in show for Radio Canada International on April 30. Sharaf answered questions in Arabic about Canadian employment law issues for listeners across the Middle East.

**James Heeney** spoke to the Ontario Association of Architects in Windsor on May 7 and 8.

We held another successful session of Conducting Internal Workplace Investigations on May 12 & 13 and of our Report Writing Workshop on May 14. We are offering these programs again September 22 to 24. If you are interested in attending either session please contact us at (416) 847-1814 or seminars@rt-law.ca.

**Janice Rubin** participated in the teleseminar "Internal Investigations in the Real World: Attorney-Client Privilege, Work-Product Doctrine, and Beyond" presented by the American Law Institute and American Bar Association (ALI-ABA) on May 19.

**Janice** was quoted in the Globe and Mail article, "Leaving your employer? Now you can spread the word", on May 26.

We held our second teleseminar, Workplace Violence and Harassment Essentials on May 27. If you are interested in arranging a customized teleseminar for your workplace or on-site training to prepare for Bill 168, please email teleseminar@rt-law.ca

**James'** article, Are you ready for new harassment and violence legislation?, appeared on cbc.ca on May 28. View the article here: <http://www.cbc.ca/money/story/2010/05/28/f-james-heeney-workplace-harassment.html>

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered, and without seeking the advice of legal counsel. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.

This coming June, leaders and delegates from the G20 group of nations will be converging in downtown Toronto. While the actual meetings will be taking place on June 26 and 27, preparation, including a comprehensive security infrastructure, will likely be in place days before the event. As a result, there will likely be significant security disruptions for a period of time both before and following the event. What does this mean for employers trying to manage a workplace?

## G20 and Employer Duties

Given the logistics associated with the G20 meeting, businesses are understandably concerned about the potentially disruptive effect that the event will have on their operations. This is particularly true for those employers with offices located in and around the Metro Toronto Convention Centre where the meetings are scheduled to take place. Although details remain somewhat vague, it appears that a "security perimeter" will be created which will include not only the Convention Centre, but a significant portion of the surrounding downtown core.

One question we are being asked by our clients is how to respond to an employee who chooses not to attend work given the various restrictions in the security area in downtown Toronto. Is this justified and should an employee be paid under these circumstances? The Ontario *Employment Standards Act*, 2000 (the "ESA") does not require an employer to compensate employees for work that is not actually carried out. In other words, pay is contingent on the carrying out of work. Employers also have the right to expect that employees will attend work in accordance with their employment contract. Unless it is absolutely impossible to get to work, which is distinguished from more difficult to get to work, employers can rightly expect employees to both attend and carry out work in a manner which is consistent with the terms of their employment.

Another question we have been asked is

whether employees can refuse work during the lead up to and execution of the G20 summit on the basis of safety concerns. Some employees may claim, for example, that factors such as the security measures and/or the threat of a terrorist attack during the summit present a potentially serious risk to their health and/or safety. To clarify, employees do not, in general, have a right to refuse work. There are, however, some particular narrow circumstances in which work refusals are valid, and those pertain to conditions which affect an employee's safety within the workplace. The specific circumstances under which an individual can refuse to carry out work are described in the *Occupational Health and Safety Act*, 1990 (the "OHSA"). The OHSA refers to situations involving the actual place of work, such as the physical condition of the workplace. It does not refer to conditions outside of the workplace over which the employer has no control. As a result, we do not anticipate employees being able to use work refusals under OHSA to justify their absence from work during this time.

Quite apart from the legal analysis, we would suggest employers use common sense and flexibility when managing their workplace during the period affected by the G20 summit. If what we are hearing in the media is true, the summit will lead to significant logistical issues in terms of

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## G20 and Employer Duties

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moving around in downtown Toronto, not the least of which will be a slowdown of the public transit system. Employers should prepare for the scenario in which many employees will find their commute to work lengthier than normal.

Keeping in mind that getting to work will be harder to do, what steps can employers take to manage? We can suggest a number of options here. The first option is to allow employees to work from home. This is reminiscent of what many employers did during the height of the flu season to minimize the possibility of illness transmittal. The same can be done in these circumstances, particularly if this is done over a short period of time, when the disruptions to Toronto's downtown core will be at their worst.

The second option is to encourage employees to take vacation or flex time during the time period in question. In this way, employers can temporarily minimize their workplace population and the attendant problems of having those people travel downtown.

Another possibility is to consider temporarily moving employees to another location to do their work – assuming you operate in more than one location. This move would be on a temporary basis, and you could assist affected employees by facilitating carpooling or other forms of transportation, if it is necessary.

Finally, if you believe that you must shut down a portion of your operations, consider offering employees the day off, in exchange for an agreement to work additional hours in the future. As with all agreements of this kind, it should be in writing.

### What does this mean for employers?

#### Advanced preparation

Employers should ensure that they address all potential issues regarding the G20 summit as far as possible in advance of the event. This can help to reduce the unpredictability of outcomes associated with the event and the effect it will have on the workplace. The City of Toronto has information on their website that addresses some of these issues: <http://www.toronto.ca/G20/index.htm>

#### Use common sense and flexibility

We can only hope that the inconveniences associated with the G20 summit will only last a few days. Assuming that to be the case, we would encourage employers to use their common sense and flexibility in response to employees' requests for some form of alteration of their normal working arrangements. In our view, taking a hard line approach will not serve employers particularly well in the long run, and may very well be disproportionate to the actual inconvenience ultimately caused.

#### Consistency in application

Although dealing with the inconvenience of the G20 summit may require an approach tailored to each workplace, employers should nevertheless ensure that any resulting modifications are carried out in as clear and consistent a manner as possible. Otherwise, there may be a significant amount of discontent in the workplace as individuals feel that they are being treated in an inconsistent manner vis-a-vis other employees. ●

## UPCOMING EVENTS

### June 15

**Christine Thomlinson** will be co-chairing the popular Law Society of Upper Canada program, the Six-Minute Employment Lawyer.

**Janice Rubin** will also be taking part in the Six-Minute Employment Lawyer on June 15. Her topic is “Risk Assessments and Other Key Legislative Changes”.

### July 13

**Janice** is leading a webinar with the Certified General Accountants. Her topic is Employment Law Essentials: Avoiding HR Disasters”. <http://www.cga-pdnet.org/en-CA/PDResources/Pages/EmploymentLawEssentials.aspx>

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We work with employer clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at [contact@rt-law.ca](mailto:contact@rt-law.ca).