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Nathaly Pinchuk  
RPR, CMP  
Executive Director

# It's Never Too Late to Go Back to School

*Take the lead and reap the benefits*

There are many good reasons to go back to school at 50, 60 or even later. It may be to upgrade your skills in a highly competitive world or just to learn something new. It may also be due to circumstances you faced in your early life when you didn't go to college or finish your university degree. If you are thinking about it, you are not alone.

Forbes magazine reports that in the US, and this is likely true in Canada as well, the majority of degree seekers are now mature students. They also note that 60% of American adults age 23 to 55 without a bachelor's degree considered returning to school to get the diploma they always wanted. Where do you fit in?

There are many good reasons to go back to school at any age. For older adults, there are some distinct benefits. First of all, it's good for your brain. Learning new things not only helps keep your brain young, but it may also slow the development of age-related cognitive diseases. Researchers at York University found significant links between learning a second language and delaying the onset of dementia. Harvard Medical School reports that lifelong learning can even slow cognitive aging.

Many colleges and universities provide special programming and support for mature students. These include universities that offer mature student associations and older learners clubs. Once you hit 65, the benefits keep coming and you may qualify for free tuition from

Halifax to Regina. Ontario residents over 60 may qualify for a bursary to cover their full university tuition.

The truth is that some of us find ourselves in careers that we've outgrown or were never quite right for us in the first place. We can certainly do the work, but it doesn't fuel our enthusiasm or passion. Perhaps we've done everything we can in one field but now want to try something new. Getting another degree may help make that happen. You may end up working long past 65 if your health is good, so why not make the last ten, twenty or more years the best of your working life?

Even if you're happy with where you are in your career, continuous learning is beneficial at any age. We can learn new things, find new challenges and have the opportunity for positive personal development. Sometimes things happen in our lives that make us question our career path - things like a major illness or the death of a loved one. That can motivate us to try something completely different

and we end up back at school to turn that dream into reality.

In other cases, our life circumstances might remain relatively unchanged, but we still have that idea that we want to learn more about subjects or hobbies that interest us. We start by taking classes at the community college and realize that we want more. We then sign up for university courses as a mature student and join the throng of other older adults, some of whom have never been in a university setting in the past. All of us are there now by choice, to learn something new or fulfil a lifetime goal.

We may never use that Master of Fine Arts degree in our day-to-day career or gain income from it. However, we will feel better about ourselves and feel that we are still growing regardless of our age. That could be the greatest benefit of all!

*Nathaly Pinchuk is Executive Director of IPM [Institute of Professional Management].*

Perspective



*"I appreciate your confidence, Peterson, but I'd ditch the Superman outfit and just go with a power tie."*



Brian W. Pascal  
RPR, CMP, RPT  
President

President's Message

# The Power of Being Positive

*Getting there is easier than you think*

It's hard to be positive in the morning, even with litres of coffee. It's even more difficult to keep that mojo going all day when you're working from home. I like to work alone, but I have to say that I miss the contact and energy that others bring to my working day. Zoom is certainly not the best source of motivation and enthusiasm.

Keeping myself alert and motivated involves not only lots of caffeine, but also trying to keep my head in a positive space especially during the business day. That's true even if my workplace is my kitchen table. Studies have shown that all positive workplaces are more productive and even solitary jobs like sales can be more effective when they're done with a smile. I came across one report that claimed positive salespeople can sell almost 40 percent more than their grumpy co-workers.

Being positive can help you bounce back more quickly from the stings of minor and major setbacks at work. This resiliency can even impact your co-workers when you connect with them on the phone or via video conference. It brings a synergy to your workplace, real or virtual, that lets everybody build on the positive vibes that lead to greater creativity and effectiveness. It's hard to be positively contagious online but it definitely helps.

Misery may love company, but that's more relevant sitting on a bar stool than at your workplace or in your home office. It's really not fun being miserable. I've tried it many times. Each time I get myself in a funk, I wonder how I got there and remind myself to stay out of Miseryville in the future. How do I do that?

The antidote to almost any negative feeling, especially at work, is to find things to be grateful for. Someone once said that a grateful heart has no room for anger or hate or even misery. We need to remind ourselves often of all we have to feel grateful for. I believe that's true. Another way to change your attitude is to offer to help someone else. A colleague may be having problems managing three young children and their share of a big project. You can't help with childcare, but you could help them with the project at work. As soon as you get out of yourself, you will feel better and more positive. Try it and see how it goes. If it worked for me, it can work for anybody.

We don't have to be Pollyanna's. Let's just do our part to bring good energy to our work. You have nothing to lose but your misery.

*Brian Pascal is President of IPM [Institute of Professional Management].*

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# Infectious Disease Emergency Leave (IDEL) and Constructive Dismissal

*What can the employer do?*

In March 2020, the Ontario government enacted the IDEL Regulation under the Ontario *Employment Standards Act, 2000* (“ESA”). This Regulation deems employees whose hours/wages have been reduced or eliminated due to COVID-19 to be on Infectious Disease Emergency Leave. The Regulation explicitly states that a reduction of hours/wages due to COVID-19 does not constitute a constructive dismissal under the ESA.

The question remains, however, if placing an employee on IDEL could constitute constructive dismissal at common law, and therefore triggering an obligation to provide a termination package. In pre-COVID times, a temporary layoff was generally found to be a constructive dismissal at common law, unless the employer had an express or implied right to implement such layoffs.

The Ontario Superior Court of Justice recently addressed this issue in *Coutinho v. Ocular Health Centre Ltd., 2021 ONSC 3076*. The Court held that placing an employee on a temporary layoff/IDEL for reasons related to COVID-19 can constitute a constructive dismissal at common law. In other words, an employee placed on temporary layoff/IDEL may be able to sue for constructive dismissal under common law and claim a termination package.

In reaching this decision, the Court relied on section 8 of the ESA which provides that no civil remedy is affected by the ESA. The court also took into consideration the Ministry of Labour’s publication *Your Guide to the Employment Standards Act: temporary changes to ESA rules*.

While the Guide confirmed that a temporary layoff related to COVID-19 would not constitute a constructive dismissal, it went on to state “These rules affect only what constitutes a constructive dismissal under the ESA. These rules do not address what constitutes a constructive dismissal at common law.”

Given this recent development, we do anticipate an influx in constructive dismissal claims from employees that have been placed on IDEL/temporary layoff due to COVID-19. However, there may be several defences available to employers, including:

**1. Contractual Right to Layoff:** If an employer has an express right to lay off its employees in an employment contract or policy, it would be a strong defence to a constructive dismissal claim. We recommend that such clauses be included in all employment contracts and/or policies going forward.

**2. Implied Right to Layoff:** Where an employer has a past practice of laying off employees (i.e. in certain industries), it can argue that it has an implied right to such layoffs as a defence to a constructive dismissal claim. A further defence which has not yet been tested is that the unprecedented circumstances surrounding the pandemic have created an implied right to lay off an employee due to COVID-19.

**3. Condonation:** Where an employee is faced with a material change to their employment and they do not object to that change within a reasonable period, they are deemed to have condoned the change and cannot later claim constructive dismissal.

Accordingly, if an employee was placed on IDEL at the beginning of the pandemic and only raises constructive dismissal once they are recalled months later, the employer may be able to raise condonation as a defence.

**4. Frustration:** Where an employment contract has become impossible to perform through no fault of either party, the employment relationship may be deemed to be frustrated. If an employer was forced to close by government order and had to lay off its employees as a result, it may be able to claim a frustration of the employment contact, rather than a constructive dismissal of employment. In the case of frustration, no common law termination package would be owing.

As the laws surrounding the pandemic continue to develop, we will keep an eye out on the success of the above defences and any novel defences raised to a constructive dismissal claim. There will likely be several legal developments on this topic in the coming months and years.

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Feature



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Facilitated Coaching

ASK the EXPERT

# How do we get people to be accountable?

*Eight key steps to demystifying accountability*

It is commonly cited as one of the most frustrating aspects of managing people. Accountability within an organization is more complex than just asking for it. At the individual level, it is holding people accountable to do what is expected in alignment with their role. At the team/department/committee and organizational levels, it's ensuring everyone is rowing in the same direction to ensure collective success.

Accountability needs to be more than just a concept. If you expect people to demonstrate accountability, then you have to take the mystery out of what is required.

### **Start with creating a culture of accountability.**

Accountability starts at the top. Define and communicate it. Establish accountability as a part of the culture with systems and processes that enable measurement and feedback. Also, provide significant positive feedback when deliverables are met.

**Begin with the end in mind.** In addition to having a really clear sense of your own accountability, ensure employees understand exactly what is expected of them. Don't assume they get it because you have said it once or twice. Be clear about the deliverables – the what, by when and how it will impact others. Provide an opportunity for employees to ask questions or negotiate timelines depending on their other priorities. Renegotiate priorities if necessary.

**Ensure employees have the knowledge, skills and ability to do the job.** If they don't, then work with them to determine how to close the gap. Set them up for success by ensuring they can actually deliver what is required.

**Discuss the how if necessary.** It's not helpful to micromanage or tell employees how to do their job. You don't want to create learned helplessness by always 'telling' them the answer. If it is something new, be open for a conversation on the 'how.' Ask for and listen to employee suggestions. Be their coach and mentor and ask how you can support their success.

### **Determine the reporting methods and metrics.**

Establish the milestones and check-in parameters. Don't assume the employee will come to you if there are problems. Make it easy for people to admit they don't know how or to ask for help.

### **Show interest and periodically ask how it's going.**

When managers check in and genuinely express an interest in the way the work is going, employees get the feeling that their work matters. Do this in such a way to communicate trust in them and respect for their work.

**Acknowledge progress.** It's not necessary to wait until the job is finished to comment on its progress and interim success. Make sure to note progress and celebrate the small wins along the way.

### **Redirect missteps with care and compassion.**

Everyone makes mistakes. Often it is due to a misunderstanding and can be cleared up

with a simple conversation. Revisit the end goal and be open to alternatives in case there is a better way.

And finally, something else to consider.

### **Do away with the year-end performance review as a means to establish accountability.**

The annual review is required in many organizations as a formal way to check in, review accomplishments, set new targets, identify learning goals and determine merit increases or salary adjustments. It should not be the tool to enable accountability. The majority of employees care about their work and want to do a great job. Having a conversation with them at annual review time is not enough to build their commitment, keep them engaged or ensure that they know what is expected as things change throughout the year.

Accountability is fostered when what is expected is clear, real and kept alive. This means regular conversations about what's working and what needs to be shifted slightly so as to ensure individual, team and organizational success.

*Gail Boone is an Executive Coach and Owner of Next Stage Equine Facilitated Coaching and can be reached via email at gailboone@ns.sympatico.ca.*



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# Ontario Court of Appeal Clarifies Common Employer Doctrine

*Courts now consider objective intention of the parties involved*

The Ontario Court of Appeal has recently provided useful clarifications regarding the common employer doctrine. Notably, in *O'Reilly v ClearMRI Solutions Ltd.*, 2021 ONCA 385 ("O'Reilly"), the Court confirmed that it will stringently apply the test to ensure that the doctrine is only applied where the evidence demonstrates an intention to create an employment relationship.

## **What is the common employer doctrine?**

Simply put, the common employer doctrine stipulates that an individual can, in fact, be employed by more than one company at the same time. Practically speaking, when the individual makes an employment-related claim, they can look to related companies, in addition to their primary employer, for indemnification.

Whether or not an employee can invoke the common employer doctrine at common law will depend on a number of facts, namely the nature of the relationship between the related companies, whether there is common control between the entities and to what degree.

## **The Facts**

The plaintiff, William O'Reilly, was the Chief Executive Officer and a director of ClearMRI Solutions Ltd. ("ClearMRI Canada") and its wholly owned subsidiary, ClearMRI Solutions Inc. ("ClearMRI US"). Tornado Medical Systems, Inc. is the majority shareholder of ClearMRI Canada.

Mr. O'Reilly had a written employment agreement with ClearMRI US. That said, he reported to ClearMRI Canada's

board of directors and served as CEO of both companies.

Upon the termination of his employment, Mr. O'Reilly claimed he was owed unpaid wages, vacation pay and a loan repayment from ClearMRI Canada, amounts which totalled approximately US\$400,000. Mr. O'Reilly commenced an action against ClearMRI Canada, ClearMRI US and Tornado, claiming that they were all his common employers. He also sued the directors of Tornado and ClearMRI Canada for the unpaid wages and vacation pay, pursuant to section 131 of the Ontario Business Corporations Act (OBCA).

Mr. O'Reilly sought and obtained default judgement against ClearMRI Canada and ClearMRI US. Subsequently, Mr. O'Reilly brought a summary judgement motion against Tornado and the individual directors, despite having held no position at Tornado. He was successful in the motion, the judge finding that (i) Tornado was a common employer; and, (ii) that the OBCA made the directors of Tornado and ClearMRI jointly and severally liable.

The motion was appealed by Tornado and one of ClearMRI Canada's directors.

## **The Appeal**

The Court of Appeal unanimously found that while the amounts Mr. O'Reilly claimed could all fall under the common employer doctrine, it could not be applied in this case as between Tornado and the two ClearMRI companies. Specifically, the Court held that Tornado could not be held liable under the doctrine as there was no objective intent between

Tornado and Mr. O'Reilly to enter into an employment relationship. Consequently, it could not be said that there was an intent for Tornado to provide for the terms upon which Mr. O'Reilly sought damages, namely salary, vacation pay and the loan. Additionally, the Court held that Tornado did not exercise sufficient control over Mr. O'Reilly such that he would be an employee.

On the issue of director's liability, it was argued that neither precondition under section 131 of the OBCA was met such that there could be no liability on the part of the director. The Court of Appeal rejected the argument, and substituted the motion judge's decision on the issue. While neither precondition under section 131 had been met at the time the Court rendered its judgement, the Court found that the OBCA places no time limit on when such preconditions must be fulfilled. As such, judgement against an individual director need not be rendered at the same time as judgement against the corporation. If or when one of the preconditions under section 131 of the OBCA was fulfilled, Mr. O'Reilly could look to the director for recovery.

## **Takeaway for Employers**

In setting out its analysis, the Court of Appeal also provided the following helpful guidelines on the common employer doctrine:

- i. The mere existence of corporate interrelationship does not, on its own, evidence that justifies the application of the doctrine. This is because such a

*continued next page...*

Feature

## Ontario Court of Appeal Clarifies Common Employer Doctrine

... concluded from page 6

relationship is not itself evidence of intention that the related corporations are party to an employment agreement;

- ii. Key to the analysis of whether there was sufficient intention are (i) whether the proposed employer exercises effective control over the employee, and (ii) whether the employment agreement explicitly states that the corporation in question is the employer. Where there is no written agreement, the factual context will inform an objective assessment to determine whether this factor is met; and
- iii. There is no time limit on recovery pursuant to

section 131 of the OBCA. As such, even if a judgement against the corporation has already been rendered, an employee may have recourse against a director if/when one of the preconditions at section 131 is fulfilled.

Employers can generally find comfort in O'Reilly, knowing that the courts will not apply the common employer doctrine too broadly. Rather, the courts must look beyond the corporate relationship of the entities in question, and take into account the objective intention of the parties. That said, "objective intention" can be demonstrated by the conduct of the parties. As such, corporations should still be mindful of overlap that might

suggest an employee is providing services for, or being controlled by, entities other than its primary employer.

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# COVID-19 Impacts Respectful Workplace Dynamics

*Time to revisit workplace policies and procedures*



**Michelle Phaneuf**  
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The COVID-19 pandemic has had an impact on every workplace regardless of whether employees are front line essential workers or working remotely. We all recognize the effect on productivity, efficiency and mental health, but are organizations ignoring the impact on respectful workplace interactions? These may have been overlooked when employees were working from home or as essential workers focussed on the task at hand. Post-COVID is an ideal time for organizations to revisit expectations regarding respectful workplace expectations.

Employees working under stressful conditions often display a change in usual behaviours. Incivilities erupt and the focus on reaching goals overtakes the focus on building or maintaining strong working relationships. Our exchanges start to move on a continuum from respectful (green) to incivil (yellow) or disrespectful (orange). Let's take a look at what behaviours we may notice in each of those categories.

Respectful behaviours in the green zone of the continuum include being kind and helpful, seeking input from others, listening, being attentive and open. People endeavor to recognize the efforts of others, share knowledge and information, frequently and clearly communicate and provide constructive feedback and positive reinforcement. Respectful behaviours recognize and value others' differences and our language and nonverbal gestures reflect dignity and regard.

Incivil behaviours in the yellow zone can be seen through actions such as interrupting, put downs, insults or sarcasm. Careless humour or practical jokes that embarrass others are seen as crossing the

line. Inappropriate remarks in front of others, profanity, insults or gossip are conducts that also fall within this area. Often gossip can be viewed as discussing concerns with others rather than the individual involved, unless you are seeking mentoring or support in how to approach that individual. Not doing what you say you will, not permitting input or delaying or refusing to answer based on interpersonal relationship issues are all activities that fall in the yellow zone.

Disrespectful behaviours show up in the orange zone of the continuum. Angry outbursts, sexual innuendo, bullying, harassment or discrimination are indicators that behaviours have passed into this zone. Making unreasonable demands, using others' ideas as your own, starting or perpetuating malicious rumours, or isolating or excluding others is not tolerable. Retaliation against others or workplace mobbing also fall within the disrespectful workplace domain.

The red zone includes the most egregious behaviours where outside enforcement support is likely required to respond. These behaviours include assault, sexual assault, systemic discrimination, stalking, hate crimes, etc.

Problematic interactions at the incivil stage of the continuum can trigger conflict. If not managed effectively, these can create an entirely new spinoff of difficult issues such as deteriorating trust and broken working relationships, perhaps shifting behaviours into the orange or red zone.

Healthy conflict should be welcome and is needed to ensure we produce the best outcomes. Discussing differing ideas allows us to share information and collaborate with others. Engaging in a respectful dialogue to reach a creative solution is the hopeful outcome of resolving conflict. If a disagreement is not resolved

productively, conflict can escalate creating negative aftereffects.

If you notice changing behaviours in your workplace, it's time to revisit respectful workplace policies and procedures. Along with this, create an opportunity for employees to come together and have a dialogue about the impacts of COVID-19 on their own work. Remember to set a safe space for the dialogue by agreeing to confidentiality and creating protocols for productive engagement. Questions like the following can be developed to guide the conversation:

- What was your working experience during COVID-19 and what are you experiencing now that we are entering the Post-COVID period?
- How has COVID-19 and the stress of this time impacted your working behaviours?
- What have you noticed with regards to your own behaviours?
- What can we do to ensure that our workplace interactions remain respectful?
- How can we resolve conflict effectively?
- What is needed now to ensure we can all work together successfully?

COVID-19 may have impacted respectful workplace dynamics in your organization, so watch for warning signs such as changing behaviours. Creating an opportunity for open and safe dialogue will enable your employees to build understanding and find solutions that reiterate existing protocols and where needed, generate new norms for successful workplace interactions.

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Feature





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ASK the Expert

# The Great Resignation Era Begins

*How do you deal with employees who refuse to return to their workplace?*

**H**R pundits as well as economists refer to the summer and fall of 2021 as “The Great Resignation” with employees refusing to return to their offices and previous workplaces. With the advent of widespread remote work, a broader variety of potential employment is available with employers no longer restricted to aspiring applicants by geographic restraints.

As well, many employees who were working from home are loathe to return full-time to the office and are looking for jobs which permit continued remote work. In fact, virtually every study has shown that employees, provided the opportunity of remote work, wish to continue doing it, at least part of the time.

The outcome of the Great Resignation is the difficulty employers have retaining employees. So why should they make it more difficult for themselves by requiring reluctant employees to return to the offices?

In general, employees are more productive at their offices. Previous experiences with working from home have almost always ended in failure. When Patrick Pichette (former CFO at Google) was asked “How many people telecommute at Google?”, he said he liked to answer “As few as possible” after its mid-decade unsuccessful experience with working from home.

The Aternity Productivity Study of the Canadian workforce found that employees working from home, although working 10% longer hours, were 22% less productive for each hour worked, which adds up to a considerable productivity drag even over a month. It is

uncontestable that training, mentoring, teambuilding and exchanges of ideas cannot easily be accomplished as well through a screen. There is also the aspect that employees who are not in the office get passed over when something suddenly arises as well as losing promotional opportunities. Like the old “satellite office”, working from home once businesses return to near normal might seem like a banishment for those who are ambitious.

This is the conundrum employers will face- the risk of losing employees or, at least their spirits, if forced back to the office as opposed to the productivity loss from their continuing to work remotely. The Aternity study showed another danger. The longer an employee works remotely, the greater the productivity gap grows. That only makes sense. When there are no consequences from taking a 20-minute walk, watching a podcast or playing with their children during the workday, it becomes deceptively simple for those 20 minutes to become 30, 40 or simply more frequent.

The real question is whether employers have the right to require employees to return to the offices. The answer is simple - they do. Refusal to return is cause for discharge without severance.

However, this will change. If an employer permits employees to work remotely for very much longer, past the time that they are restricted by public health guidelines from having employees return to work, then remote working will become a term of their employment. If employees are allowed to remote work for another six months, an employee could then credibly argue that working from home has

become a term of their employment and it is simply too late to order them back to the office. In this case, forcing them back is a constructive dismissal just like (in pre-COVID times) ordering someone whose job consisted of remote work to work from the office instead, was then viewed as a constructive dismissal.

What can employers do to require employees to work from the office?

1. Order them back now, as waiting much longer may make remote work a term of their employment;
2. Provide them advance written notice now of the date that they are required to return;
3. Have them sign contracts now permitting you to order them back to the office on, say, one month’s notice. If they refuse to sign, order them back to the office now.

If you do not do any of these three things, you are seriously risking having remote work become a term of employment for those employees. At that point, you will be unable to force them to return and doing so would be a constructive dismissal. The only way to order them back then, without risking liability, is to provide them with full reasonable notice at common law of their return date. That can be as much, depending upon the employee, as 24 months. This is the problem with adopting any new material practice. It has the tendency of ossifying into a “legal right”.

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# Release of Liability: Go Beyond the Regular Entitlements

*How to avoid the pitfalls*

If you are an employer or manager, you will likely need to utilize a Release of Liability (“Release”) at some point in time in connection with the conclusion of an employee’s employment or when resolving some other employment-related dispute. A Release is an important tool for an employer as it is a legal, contractual document intended to, well, “release” an employer from potential (or actual) liabilities by legally barring legal action associated with an employee’s employment and conclusion of employment.

Needless to say, when using a Release, an employer’s end goal is for the Release to be a valid and binding legal instrument. However, various pitfalls exist that could upset this employer-intent and leave the Release vulnerable to successful legal challenge. To proactively avoid an employee successfully challenging the enforceability of a Release, and in turn, an employer’s unanticipated ongoing possible liability for damages, we have developed the following “Release Checklist”:

1. Make sure the Release is drafted in a clear, unambiguous manner. Any ambiguities will be interpreted by a Court in favour of the employee, often to the employer’s detriment.
2. Make sure the scope of the Release (i.e. what it covers off) is sufficient. If the Release is intended to be all-encompassing, it must generally address all potential legal actions that could be pursued in the circumstances. But further, it should also specifically address any legal action(s) already commenced by the employee. Failure to address

the latter could result in the employee being permitted to continue the existing legal action(s) until they are resolved. Important elements we often see missed in a Release include:

1. Claims arising from loss of benefits;
  2. Claims arising from the entire employment- not just the conclusion of employment;
  3. Claims under applicable statutes such as the Employment Standards and Human Rights Legislation (Seek legal advice on this as there are contextual concerns and exceptions); and
  4. Express confirmation that the employee has been advised of their right to independent legal advice prior to signing.
3. Make sure the employee is provided with a genuine opportunity to review, seek legal advice and consider the Release prior to agreeing to its contents. This will require an employer to afford a fair, reasonable amount of time to an employee to decide whether they will ultimately agree to and execute the Release. Failure to do so could result in the Release being unenforceable, particularly if the employee in question is less sophisticated, vulnerable etc. When presented with a Release, some employees will want to sign and agree to it “on the spot”. While this may seem like great news for you as the employer, we recommend expressing thanks to the employee for their cooperative approach, but still asking that they at least take the Release home
  4. Make sure the employee is provided with “fresh consideration” in exchange for agreeing to the Release. For a Release to be enforceable, the employee must be provided with some form of payment that they are not already legally entitled to (for example, pursuant to a statute or the terms and conditions of their employment contract). If, in exchange for agreeing to and executing a Release, the employee is only receiving a payment that they were already legally entitled to receive, the employer has failed to provide the employee with “fresh consideration” and the employer will not be able to legally rely on the Release. Some common examples of this pitfall include providing an employee with their final pay, accrued but unused entitlements (such as vacation pay or banked overtime), and/or statutory termination pay but nothing more in exchange for the employee’s agreement to the Release. Also be careful to never require that a Release be signed as a condition of receiving these statutory entitlements.

and sleep on it. If they remain comfortable with the proposal the next day, you would be pleased to receive the signed Release at that time.

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Feature



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# Brains Are Not Wired to Multi-task: Don't Compromise Performance

*How leaders can overcome distraction and regain focus*

**D**istractions are a reality for leaders. Whether it's a wandering mind that prevents you from being present or external distractions that limit your ability to be productive, distractions are real – and growing.

Without care and attention to the source of your internal and external distractions and concrete steps to keep them in check, distractions can overwhelm you, compromising your performance. Your focus takes a hit. So does your brain's ability to function at its best, especially your executive functioning skills such as problem solving and decision making.

The good news? Through research, we better understand what distracts and overloads our brains. Science also helps us appreciate how our brains perform at their best. Here are four concrete shifts you can make to overcome distraction and regain your focus.

## ***Is your wandering mind helping or hindering you?***

Our minds naturally wander. In fact, research suggests we do it for about 50 percent of our waking moments. Though some of it can be creative and useful, most of it is not. For example, it is useful if you're inspired to consider fresh perspectives in your work after taking a break and you allow your mind to wander freely. When your mental distraction becomes a default pattern of second-guessing decisions or mentally rehearsing how you're going to jump into a conversation instead of being fully engaged in it, a wandering mind can be downright unproductive.

Focussing on something concrete is a great way to tame your wandering mind.

## ***Tip # 1 Focus on what's right in front of you***

The next time you're in the middle of something and find your mind drifting, simply notice and bring your attention to an object you can hold. For example, pick up a pen. Instead of thinking about your 'to do' list or what you're going to say next, focus on the pen. Notice its color, texture, how it feels in your hand and use that moment to bring your mind back – whether it's to the meeting you're in or the task at hand.

Each time you do this, you will be training yourself to return to focus. By building your mental focussing muscle, you'll be able to call upon it every time you find your mind wandering out of focus.

## ***Tip # 2 Focus on your breath***

Focussing on your breath is another powerful way to overcome distraction.

When you connect to your breath and devote just a few minutes to slow, intentional breathing in a quiet space, you trigger your Parasympathetic Nervous System. This system helps us manage our fight or flight response, induces rest and relaxation that calms our body and brain and also helps lower our levels of anxiety along with our heart rate and blood pressure.

It also boosts brain functioning when you do it over time, leading to better focus, improved clarity and better emotional control.

## ***Are your habits leading to distraction?***

We live in a hyper-connected world, serving up a never-ending stream of potential distraction in a typical day with multiple online platforms, social media feeds and 24/7 news, updates and alerts clamoring for attention. While they can all be useful, they also present an enormous challenge to your ability to focus – without careful, conscious management.

When you are constantly processing information and activity, it's easy to overstimulate your brain and trigger or stimulate both the stress hormone Cortisol and your fight or flight Adrenaline hormone. The result? Your brain suffers and you end up with higher levels of mental fog or scrambled thinking. Instead, consider how you will manage what you focus your attention on throughout the day.

## ***Tip # 3 Set distraction boundaries***

Pay attention to all the ways you are being pulled or interrupted each day. Then make conscious choices about when you will be focussed on a task (uninterrupted) and when you will be 'available', whether it is to take calls, meet with staff or allow incoming notifications on your computer, phone and mobile devices. All can be turned off!

The more intentional you are about your daily habits and patterns – especially your defaults – the more you'll be able to consider and make the conscious choices that serve you best. This really counts when it comes to directing your brain

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Feature

## Brains Are Not Wired to Multi-task: Don't Compromise Performance

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and its precious energy reserves for your most focussed efforts.

### **Tip # 4 Mono-Task versus Multi-Task**

Our brains are not wired to multi-task. Rather, they are master 'switchers', allowing us to switch back and forth between tasks. Regardless of whether you are processing an incoming message, notification or phone call, each one distracts your attention and causes your brain to 'switch'. Then, it must switch again to return to what you were attempting to focus on. The more switching you do, the greater the cognitive load

you place on your brain's daily reserves, leading to brain fog and a marked decline in your ability to make good decisions or complete tasks effectively.

The best strategy? Mono-task - focus on doing one thing at a time and devoting the first few hours of your day to your most important work, especially anything requiring executive functioning skills. Your brain will be at its freshest at that time and able to perform at its peak.

Your mind, just as your muscles, can be trained to pay attention, building your capacity

to be a more focussed leader. Concrete, intentional practices such as these are simple yet powerful ways to develop this skill and bring focus back into your leadership life.

*Michelle Lane is a leadership effectiveness coach and consultant with more than 35 years of diverse leadership experience in the public, private and non-profit sectors. Michelle can be reached at [mlane@vibrantleaders.ca](mailto:mlane@vibrantleaders.ca).*

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Feature

# COVID-19 Rapid Testing Upheld

*Arbitrator approves COVID-19 testing at open-air construction site*

An Ontario arbitrator has upheld an employer's workplace COVID-19 rapid testing policy for construction sites.

The Labourers' International Union of North America, Local 183 (the "Union") grieved the unilateral implementation of a COVID-19 rapid testing policy (the "Policy") by general contractor, EllisDon Construction Ltd. ("EllisDon"), and framework contractor, Verdi Structures Inc. ("Verdi") (collectively, the "Employers") on a mid-rise residential construction project in Toronto.

The project in question was a 59-floor residential condominium building. At the time the Policy was implemented, there were no walls on the floors of the buildings and there were approximately 100 employees on site. Rapid testing on the project began initially in February 2021 as part of a pilot program by the Ontario Ministry of Health and was expanded in May 2021. Pursuant to the Policy, all individuals attending at the job site are required to submit to a Rapid Antigen Screening Protocol to gain access to the site with those refusing being denied access. EllisDon decided which job sites were subject to the Policy based on various factors, including amongst other things, community spread, case counts and risk of transmission. Around the time of grievance, testing was being conducted at 47 job sites, including the site in question, with some job sites having more than 500 employees on site. The test used was the AP Test, which is a form of rapid test approved by Health Canada. The AP Test was conducted on site, twice weekly in accordance with public health guidance.

The AP Test is administered via a throat or a bilateral lower nostril swab rather than through a nasopharyngeal swab and was carried out by third-party healthcare professionals. Testing was only conducted once a screening questionnaire and temperature check had been completed, with results being produced within 15 minutes. Employees provided their name, the name of their employer, phone number and email address in case of a positive result. The information collected was only used by the healthcare professionals and EllisDon management to communicate results to employees and public health authorities. Employees were physically distanced from others apart from the healthcare professionals during testing and could not be observed by others when being swabbed and when test results were read and recorded. The healthcare professionals sanitized before and after each test and all bio-hazardous waste was disposed of properly. Employees with negative test results were permitted to return to work. Those with positive results, which were considered to be presumptive positive results pending a follow-up confirmatory lab-based PCR test, were required to isolate and seek a confirmatory test. Contact tracing and other measures were taken in accordance with public health guidance. Employees were paid at their regular rate during testing and until results were received. EllisDon direct hires who received a positive test result were paid for time spent obtaining a confirmatory test if the rapid test was a false positive and Verdi direct hires were not paid for time spent obtaining a confirmatory test. Requests for accommodation

were dealt with on a case-by-case basis.

In addition to testing, additional health measures were in place, such as: a screening questionnaire; handwashing stations and sanitizer; PPE; prohibition on non-essential visitors to the site; scheduling alterations; social distancing when possible; COVID-19 tracking; temperature checks; and enhanced cleaning.

Around the time of the grievance, 100,237 tests had been conducted pursuant to the Policy, with 179 positive test results, of which 118 were confirmed positive results. There were 20 false positive results and 41 presumptive positive results pending confirmatory test results. At the project in question, there had been 9 cases of COVID-19 all of which were detected off site and 2 cases of COVID-19 transmission among non-bargaining unit employees at the project. There were a number of positive test results at other EllisDon sites in Toronto, with 4 active workplace outbreaks around the time of the grievance.

The Union grieved the Policy, alleging that EllisDon and Verdi violated their respective collective agreements with the Union and arguing that the Policy was an unreasonable exercise of management rights and an unreasonable workplace rule. The crux of the Union's argument was that the Policy was unreasonable because, based on the evidence, the Policy was not a proportionate response to mitigate the risk of COVID-19 transmission in the workplace and the less intrusive measures already in place were sufficient. In the Union's view,

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**Paula Morand**  
CSP  
Keynote Speaker,  
Leadership Expert

# Make Room for Focussed Leadership

*Winning the war against mental clutter*

The rise of the minimalism movement and the trend towards removing physical clutter from our living spaces have opened up a generation to discovering new spaciousness in small-dimension homes and a sense of freedom from the burden of too many possessions.

Leaders of organizations and businesses can experience that same lightness of being by ridding themselves of mental clutter. When your mind is crammed full of negative and conflicting thoughts, it is difficult to find space to make the clear, well-considered decisions that are essential to your future.

The most deplorable mental baggage is centered on fear of failure and doubt in our own abilities. As a leader, you cannot expect that others will see their ways clear to follow you if you can't get past the boxes of disbelief in yourself.

Being bogged down in mental clutter means we are more apt to overspend, overextend and underperform in our organizations. Suddenly we feel paralyzed by the lack of clarity in our minds and we find ourselves locked into a bad decision or course of action that we would never have started if we'd been able to see clearly.

## ***How can you weed out your mental clutter as a leader?***

Just as you clean your clothes closet by deciding which pieces are the basis of your wardrobe and eliminating those things that are too out of style, too old and dingy or too unrelated to stay, you can clean out your mind by deciding on your intent. Then methodically remove all those thoughts, doubts and disturbances that do not clearly support your intent.

As you remove each conflicting thought, you will find a ray

of awareness suddenly has room to shine. By understanding why you are doing something and being aware of what is guiding your actions, your day starts to take on a clearer form and meaning.

Next, remove the wasted thoughts that you exert that are of a repetitive nature. Establish routines that become so automatic that you don't have to clutter your brain thinking about them. Get up at the same time each morning, minimize your breakfast dilemma into three or four nutritious, rotating choices and establish regular exercise times, regular eating times and regular sleeping times.

Minimize your wardrobe to essential workable pieces so you can set up a week's worth of outfits and not have to think about them. Establish consistent work routes and morning routines that keep your mind free to clearly focus on other things.

As a leader, it is likely that you are also an ideas person. While that is an admirable trait, it can lead to too much mental clutter. Get into the habit of capturing your ideas in an app or notebook so the amount of information you need to process every day doesn't overwhelm you. Designate a time of day where you can calmly look over the ideas you have gathered and consider which ones are workable, which ones need to be filed and stored for another day and which ones need to be discarded as unworkable.

Establish your priorities and clear out the wants and whims floating through your mind that don't support what you want to do. There is a school of thought based on research that most of us work best when we have no more than four primary goals at one time.

That does not mean that you can't manage the multiple projects that cross your desk. It does mean that before you leave your work area each day, you should clearly establish which four projects need your full attention the next day and focus on them. If you keep rotating your priorities, you will keep all projects moving forward to complete them on schedule.

Finally, establish a strategy for calmness and clarity when the mental clutter creeps back in and threatens to unbalance you again. For many people it is two minutes of mindfulness meditation; for others it is a five-minute walk in the fresh air or a 20-minute physical workout. Never schedule your day so full that you do not leave opportunities to engage your coping and clean-out strategies when they are needed.

Overall, the best way to keep your mind clutter-free in the long term is to live authentically, focussed on the real and genuine aspects of yourself and aligning them with how you lead.

When you are true to yourself and the special talents you possess, you will be less inclined to veer too far away from being who you are and what you have a talent for doing. If your mind is full of doubt and other clutter, it generally means that you are unhappy in your heart because your success and your work do not line up with who you are.

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Feature

# Workplace COVID-19 Rapid Testing Upheld

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testing was invasive and violated employee privacy and bodily integrity which was not justified given the safety measures already in place, lack of transmission of COVID-19 amongst its members on the project and the nature of the workplace: an open-air construction site. The Employers argued that the Policy was reasonable because its interests in the safety of its workforce, as well as the safety of the public and preventing the spread of COVID-19 outweighed the privacy interests of employees in the circumstances.

In making his determination, Arbitrator Robert Kitchen considered the essential nature of construction work as well as the transitory nature of the construction industry in which employees regularly move between job sites and employers, thus increasing the risk of transmission. Arbitrator Kitchen also considered that employees cannot always maintain physical distancing, and although the project in question was an open-air job site, there had been COVID-19 cases at the

project and a number of other outbreaks at other EllisDon construction sites in Toronto. Arbitrator Kitchen highlighted the steps taken by EllisDon to protect employee privacy throughout the testing process, including the fact that the swabbing was a throat or bilateral nostril swab, rather than nasopharyngeal, and that swabbing and test results could not be observed by anyone apart from the healthcare professionals conducting the testing. He went on to consider two other recent decisions regarding workplace COVID-19 testing: one involving a retirement home and the other involving a food production facility. In both cases, testing was upheld. Arbitrator Kitchen found that the risk of COVID-19 transmission on the project was "not hypothetical or speculative" given there had been cases at the project already and there was no evidence that the other mitigation efforts in place significantly reduced transmission. Ultimately, Arbitrator Kitchen found that in weighing the intrusiveness of the testing against the objectives of the

Policy: to prevent the spread of COVID-19, the Policy was reasonable and dismissed the grievance.

Workplace COVID-19 rapid testing is a hot topic across the country. Whether or not workplace COVID-19 testing is appropriate will depend on a number of factors, including: the workplace itself; the nature of the work being performed; the risk of transmission in the workplace; other safety measures in place; the type of testing and the testing process; and whether the workplace is unionized or not.

While this decision turns on the specific circumstances, it may provide some support and guidance for employers considering the implementation of workplace COVID-19 testing.

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