

September 29 – 30, 2014

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**SPECIAL OFFER:**

\*See last page  
for details.

# WORKPLACE DISCIPLINE & TERMINATIONS 2014

Comprehensive Legal Updates, Best Practices  
and Practical Strategies

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For Added Value, benefit from  
these IN-DEPTH WORKSHOPS  
– October 1, 2014

Workshop A | Progressive  
Discipline Policies and Procedures  
– Understanding the Process  
and Mastering the Practice  
of Employee Turnarounds

Workshop B | Workplace Dispute  
Resolution and Mediation – Current  
Best Practices



An **ALM** Event

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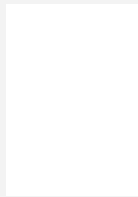
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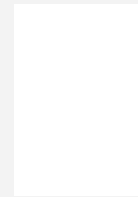
**Ronald E. Pizzo**

Partner  
Pink Larkin



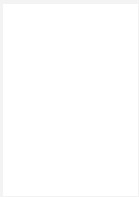
**Dale Darling**

Legal Counsel, Labour Relations  
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**Mildred Royer**

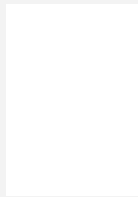
President  
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Conference Co-Chair

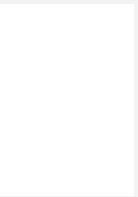
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**Lisa Gallivan**

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**Paméla Schiavoni**

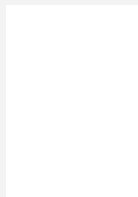
Legal Counsel  
New Brunswick Human  
Rights Commission



Keynote Speaker

**Douglas G. Ruck, Q.C.**

Chair  
Nova Scotia Labour Board



**Myrna Gillis**

Partner  
Gillis & Associates



**Lisa Teryl**

Legal Counsel  
Nova Scotia Human  
Rights Commission



Distinguished Faculty

**Andrea Baldwin**

Partner  
Stewart McKelvey



**Jack Graham Q.C.**

Partner  
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**Kelly VanBuskirk**

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**Clarence Bennett**

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**Gerald Hashey**

Dispute Resolution Manager  
Nova Scotia Human  
Rights Commission



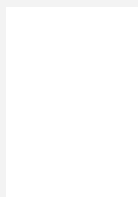
**Tracey Williams**

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**R. Lester (Les) Jesudason, Q.C.**

Partner  
Blois, Nickerson & Bryson LLP



**Hugh Wright**

Partner  
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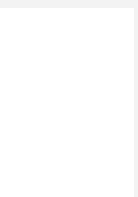
**Amy Bradbury**

Associate  
Ritch Durnford



**Murray L. Murphy, Q.C.**

Partner  
Stewart McKelvey



Workshop Leaders

**Amy Bradbury**

Associate  
Ritch Durnford



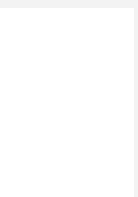
**Karen A. Campbell, Q.C.**

Partner  
Cox & Palmer



**Ronald E. Pizzo**

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**Myrna Gillis**

Partner  
Gillis & Associates



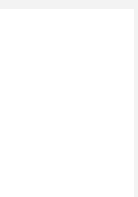
**Michael V. Coyle**

Barrister Arbitrator Mediator  
MVC Private Law



**Kathryn A. Raymond**

Arbitrator, Mediator, Lawyer  
BoyneClarke LLP



**Sarina McKinnon**

Legal Counsel  
New Brunswick Human  
Rights Commission

# WORKPLACE DISCIPLINE & TERMINATIONS 2014

Dear Colleague,

Managing the employment relationship takes skill and commitment. At this year's conference, you will hear from both labour and management side experts as they address tested approaches for managing your communications, policies and your processes for the best possible outcomes in dealing with workplace discipline and performance issues. Learn how to minimize errors, setbacks and counter-productive actions. **This program will provide practical guidance on how to take steps to minimize the risk of grievances and law suits. It will also shed light on how you can manage your pre-termination communications and actions in such a way as to strengthen your case should dismissal and/or litigation ensue.**

Once again **Insight Information** will bring you three information-packed days on the latest legal and strategic developments in this challenging area of practice. Whether you are a human-resources professional, a union or labour official, a corporate executive, or an employment lawyer, you will find this established annual program to be a convenient and comprehensive update on key developments in employment and labour law matters.

The assembled faculty of top labour and management counsel, mediators and other experts will be available to share their expertise and practical insights with you. Take advantage of the opportunity to have them address your issues and questions. Among the important topics to be covered will be:

- The role of pre-termination mediation in the modern labour environment
- How arbitrators assess discipline
- What is the test for frustration of the employment contract?
- Addressing age discrimination at the workplace
- What may be deducted from damages awards?
- Recent court decisions on drug and alcohol testing
- Temporary Foreign Workers – Latest developments on employer compliance
- Supporting the employee through the termination process - reducing the risk of violence
- Drafting employment clauses for the termination scenario – Essential considerations

You will not want to miss this opportunity for comprehensive updates and analysis of the implications of the latest legal developments. There will also be plenty of opportunity for off-line dialogue, networking and catching up with colleagues from across the region.

We look forward to seeing you in September.

Conference Co-Chairs:

**Ronald E. Pizzo**

Partner  
Pink Larkin

**Donna VanBuskirk**

Manager of Human Resources, Atlantic Canada  
Purolator Inc.

**A faculty of top labour and management counsel, mediators and other experts will share their expertise and practical insights on:**

- Conflict resolution and avoiding employment breakdown
- Progressive discipline – Does it always start with a verbal warning?
- Extended leaves of absence – When is the employment relationship over?
- Recent court decisions on the employee's obligation to mitigate damage
- Family status, human rights and dismissal – Recent trends
- Terminations for just cause – Latest legal developments and their implications
- The role of the third party LTD insurer in the accommodation dynamic
- Quit/fired – Latest cases on what constitutes a "quit"
- Knowing how to say goodbye – Conducting effective termination interviews
- Pensions and other benefits on dismissal – Avoiding the minefields
- Protecting competitive information on employment termination

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**September 29, 2014**

8:15 | **Registration and Continental Breakfast**

8:55 | **Welcoming Remarks from Insight Information**

9:00 | **Co-Chairs' Opening Remarks**

**Ronald E. Pizzo**

Partner  
Pink Larkin

**Donna VanBuskirk**

Manager of Human Resources, Atlantic Canada  
Purolator Inc.

9:10 | **Conflict Resolution and Mediation in Employment Relations – Avoiding Employment Breakdown**

**Kathryn A. Raymond**

Arbitrator, Mediator, Lawyer  
BoyneClarke LLP

Some have described employment termination as a failure in relationship building. While not all employment issues can be resolved through mediation, third party interventions, and improved communication, many can. Learn how pre-termination interventions may avoid costly, unproductive disputes and loss of human resource value at the workplace.

- Which intervention approach to use and when?
- Communication – for better or worse
  - Pitfalls
  - Must do's
  - Common mistakes
  - Meaningful disclosure and avoiding the privacy impasse
- Impartial mediation
- Relationship repair
- Trust and issue resolution
- Case studies and examples

9:50 | **Progressive Discipline – Does it Always Start with a Verbal Warning?**

**Dale Darling**

Legal Counsel, Labour Relations  
Health Association Nova Scotia

**Jack Graham Q.C.**

Partner  
McInnes Cooper

The concept that discipline must be progressive in nature has become part of the landscape of labour relations in Canada. Managers face the challenge of ensuring that the unwanted behaviour is addressed with an adequate but measured response. This session is intended to review the principles of progressive discipline and some recent case law on the issue.

- What is progressive discipline?
- Culpable v. non culpable behaviour
- Investigation and documentation
- Union representation

- Imposing discipline – factors to consider
- How arbitrators assess discipline
- Mitigation and aggravating factors
- Are there “last chance” agreements?
- Disability and discipline
- Beyond discipline – alternative methods to address behaviour

10:45 | **Refreshment and Stretch Break**

11:00 | **Extended Leaves of Absence – When is the Employment Relationship Over?**

**Kelly VanBuskirk**

Partner  
Lawson Creamer

Among the most common and fraught work scenarios leading to a breakdown in the employment relationship is the extended and/or repeated leave of absence. Among the issues these cases may raise are questions relating to human rights, deemed abandonment of employment, undue hardship on the employer, etc.

- What are the best ways to approach such situations?
- What is the test for frustration of the employment contract?
- Can you manage such situations through contractual provisions?
- When may an employer reasonably conclude the employment relationship has come to end?
- What is the best way to confirm this?
- How can an employee best protect her/his position in cases of extended absences?
- Recent case law
  - *Parent v. Spielo Manufacturing Incorporated*, 2013 NBQB 394

11:45 | **Non-culpable Terminations – Issues, Entanglements and Complications**

**R. Lester (Les) Jesudason, Q.C.**

Partner  
Blois, Nickerson & Bryson LLP

- Non-culpable termination – complexities that arise
- Human rights issues and non-culpable terminations
- Impact of the duty to accommodate
- Recent noteworthy caselaw
- Some strategies and lessons learned

12:15 | **Networking Luncheon**

1:15 | **Terminations for Just Cause – Latest Developments**

**Clarence Bennett**

Partner  
Stewart McKelvey

- What will make the termination stick?
- Insubordination... crossing the line
- Lack of competence... what is the test?
- Toleration by employer

# WORKPLACE DISCIPLINE & TERMINATIONS 2014

- Latest court decisions
  - *Saturley v. CIBC World Markets Inc.*, 2013 NSSC 300
  - *Telus Communications Inc. and Telecommunications Workers' Union* 2013 ABQB 355
- Employment relationship breakdown – what does this mean?
- Dishonesty
- Breach of trust
- Absenteeism
- Harassment, violence
- Misrepresentation at the time of hiring
- Impact of seniority
- Cumulative events
- Lessons, takeaways, practical strategies

## 2:00 | Wrongful Termination – Latest Direction from the Courts and the Implications for Workers and Employers

### Lisa Gallivan

Partner  
Stewart McKelvey

- When will unjust dismissal be found?
  - Key elements
  - Common pitfalls
- Reasonable notice
- Bad faith
- Termination clauses
  - When can they be set aside?
  - How to make them stick?
- Employee's obligation to mitigate damage
  - Decision of the SCC in *Evans v. Teamsters*
  - Implications
- Damages awards
- Noteworthy recent court decisions

## 2:45 | Refreshment and Stretch Break

## 3:00 | Family Status, Human Rights and Dismissal from Employment

### Amy Bradbury

Associate  
Ritch Durnford

### Ronald E. Pizzo

Partner  
Pink Larkin

The cross-over between human rights law and employment and labour law is significant. Increasingly, issues around family status and employment rights are coming up as a ground for human rights complaints at the workplace.

- Family status as a ground for discrimination and termination of employment
- Maternity leaves, child care and discrimination at the workplace

- Elder care, parallel considerations?
- What is the test?
- What does “necessity” mean?
- Contractual remedies and other strategies

## 4:00 | Age Discrimination at the Workplace

### Alison Bird

Associate  
Cox & Palmer

### Paméla Schiavoni

Legal Counsel  
New Brunswick Human Rights Commission

- Aging and employment
  - Common scenarios and recent legal developments
  - When age impacts on performance
  - Bringing employment to a close
  - Terminations for cause with age issues

## 5:00 | Co-Chairs' Summation and Conference Adjourns for the Day

**September 30, 2014**

## 8:30 | Continental Breakfast

## 9:00 | Co-Chairs' Opening Remarks

## 9:10 | Accommodation, Undue Hardship and Termination – Latest Approaches and Legal Developments

### Myrna Gillis

Partner  
Gillis & Associates

- How to achieve full and meaningful disclosure
- The role of the third party LTD insurer
- How this third party may change the accommodation dynamic
- Impact on the role of the employer
- When to end the accommodation?
- What are the key steps in managing the end of accommodation?
- Establishing *bona fide* occupational requirements (BFOR)
- What does an employer need to do to establish undue hardship
  - Key elements of the test
- Use of last chance agreements
- Special requirements in cases of mental health issues
- Latest case law and the key takeaways
  - *Fair v. Hamilton-Wentworth District School Board*, 2013 HRTO 440

# WORKPLACE DISCIPLINE & TERMINATIONS 2014

## 10:00 | **Drafting Employment Clauses for the Termination Scenario – Essential Considerations**

**Karen A. Campbell, Q.C.**

Partner  
Cox & Palmer

- Weighing the pros and cons – to ink or not to ink
- Contract provisions and how they go wrong
  - Enforceability
  - Consideration
  - Duress
  - Bonus clauses and share options
  - Pension and benefits on termination
- What can you do at the drafting stage to contain the damage?
  - Defining cause for termination in the contract of employment?
  - Contract provisions for termination without cause
  - Limiting liability
- Consider additional clauses for
  - Extended absences
  - Constructive abandonment of employment

## 10:30 | **Refreshment and Stretch Break**

## 10:45 | **Legislative and Case Law Roundup – Drug and Alcohol Testing, Quit/Fired, and More**

**Michael V. Coyle**

Barrister Arbitrator Mediator  
MVC Private Law

- *Labour Standards Act* amendments in Newfoundland and Labrador
  - Extended unpaid leave and reasonable necessity
- Essential Services legislation in Nova Scotia
- Drug and alcohol testing
  - *Suncor, Samia, and Irving* decisions
  - *Teck Coal Limited* – what the BCLRB said about expert evidence and mandatory random drug and alcohol testing in safety-sensitive workplaces
- Fired/quit – latest cases on what constitutes a “quit”
  - *Ruparell v. Armbrae Academy, 2012 NSSC 211*
  - *Kerr v. Valley Volkswagon 2014 NSSC 27*

## 11:15 | **Temporary Foreign Workers – Latest Developments on Employer Compliance**

**Andrea Baldwin**

Partner  
Stewart McKelvey

It is becoming more and more complex to hire and retain foreign national employees. The rules governing employer compliance with Canada's Temporary Foreign Worker Program (“TFWP”) are becoming stricter and the risks of non-compliance are significant. This session will provide an overview on recent developments to the TFWP, with a focus on the labour market opinion process and government initiatives to monitor employer compliance.

## 11:45 | **Knowing How to Say Goodbye – Effective Termination Interviews, Avoiding Nightmare Scenarios**

**Mildred Royer**

President  
Royer Thomson Associates

Recently we have seen tragedy unfold in Canada in the aftermath of some employment terminations. The importance of effectively handling this process for both the employee and the employer cannot be overstated. The mental health and future of the employee, the morale at the workplace and indeed, even lives, may depend upon it.

What are the key steps to take in preparing for and conducting this sensitive and often challenging encounter?

- Due diligence, policies and programs that address violence at the workplace
- Employee/employer preparation
- Identifying a vulnerable/violent employee
- Privacy and the obligation to protect others at the workplace
- Employer risk assessment and due diligence in regard to potentially violent staff
- Regulations under s. 82 the *Occupational Health and Safety Act* of Nova Scotia
- Supporting the employee through the termination process
- What if new information emerges at the meeting?
- What pitfalls must the employer avoid? When has liability been found?
- What should the employer do to prepare for an extreme reaction?
- What guidance have the courts given?
- When will damages be awarded?

## 12:30 | **Networking Luncheon**

### KEYNOTE ADDRESS

## 1:45 | **The View from Here – Observations on Recent Trends from the Nova Scotia Labour Board**

**Douglas G. Ruck, Q.C.**

Chair  
Nova Scotia Labour Board

## 2:15 | **Damages – Who Gets What and When?**

**Michael V. Coyle**

Barrister Arbitrator Mediator  
MVC Private Law

This session will offer an update on the law of damages in the employment context and analysis of the relevant cases. What are the implications of these decisions for employers and workers respectively? What proactive lessons can we take away from the analysis?

- Latest case law on when damages will be awarded
- Key considerations by the courts
- Aggravated damages
- Calculation of quantum – important factors
- What may be deducted from damages awards
  - *IBM Canada Limited v. Waterman 2013 SCC 70*

## 2:45 | **Refreshment and Stretch Break**

# WORKPLACE DISCIPLINE & TERMINATIONS 2014

## 3:00 | Pensions and Other Benefits on Dismissal – Avoiding the Minefields

### Hugh Wright

Partner  
McInnes Cooper

- Possible benefits and pension scenarios on termination
- Avoid the “benefit cliff”
- Lump sum versus salary continuance
- Contested terminations – re-instatement and issues that arise
- Relevant case law
  - *O’Neill v. General Motors of Canada, 2013 ONSC 4654*
- Implications for the employee and the employer
- Minimizing class actions risk
- Best pension and benefit practices on termination

## 3:30 | Protecting IP and Competitive Information on Employment Termination

### Murray L. Murphy, Q.C.

Partner  
Stewart McKelvey

- Use of non-compete and non-solicitation clauses
- Drafting tips and strategies
- Are they being enforced by the courts?
  - *Payette v. Guay Inc., 2013 SCC 45*
- How are they being restricted?
- How can you make them stick?
- Workplace policies and protecting sensitive information
- Other workplace strategies to contain the leaks
- Confidentiality and confidentiality agreements – timing and use
- Protecting the confidentiality of settlement information
  - *Globe and Mail v. Communications, Energy and Paperworkers Union of Canada, Local 87-M, Southern Ontario Media Guild (Jan Wong Grievance)*

## 4:00 | Closing Panel: Restorative Workplaces, Conflict and Discipline – Where do Terminations fit in a Restorative Workplace?

### Gerald Hashey

Dispute Resolution Manager  
Nova Scotia Human Rights Commission

### Lisa Teryl

Legal Counsel  
Nova Scotia Human Rights Commission

### Tracey Williams

Director and CEO  
Nova Scotia Human Rights Commission

Poisoned workplaces and the underlying distrust often drive human rights complaints and grievances. The challenge is often to find a way to rebuild relationships when workplaces have undergone conflict and strife.

The Nova Scotia Human Rights Commission will share some of its experiences with restorative investigations and discipline processes within workplaces. Restorative principles and relational theory have provided a philosophical foundation for these changes in handling workplace conflict.

What are the differences between a restorative versus a punitive discipline process? How does each approach impact on productivity? Is a restorative approach more than just a group hug? Tales from the trenches will be explored for lessons learned and workable strategies.

## 4:45 | Co-Chairs’ Closing Remarks and Conference Concludes

## WHO SHOULD ATTEND

This program has been designed for HR and Labour Relations Professionals and Union Representatives from all industries.

- Vice Presidents, Directors & Managers of:
  - Human Resources
  - Labour Relations
  - Employee Relations
  - Benefits, Compensation and Payroll
- Union Presidents, Business Agents, Stewards and Committee Members
- In-house Counsel
- Chief Operating Officers
- Employment and Labour Lawyers
- Administrative Law Practitioners
- HR and Labour Relations Consultants
- Benefits and Pension Consultants

## POST CONFERENCE WORKSHOPS - OCTOBER 1, 2014

### WORKSHOP A

## Progressive Discipline Policies and Procedures – Understanding the Process and Mastering the Practice of Employee Turnarounds

9:00 AM – 12:00 NOON

Amy Bradbury, Associate, Ritch Durnford

The purpose of workplace progressive discipline is to guide and support an employee towards performance improvement. It is not a form of punishment, nor is it a necessary step in strategizing a termination. Rather it is a comprehensive and sometimes complex process for turning around an employee who, for whatever reason, is not performing to the required standard.

There are a number of possible strategies and tools that the HR manager may bring to bear to support a successful turnaround. This workshop will explore these concepts and utilize case study approaches as well as other learning techniques to help you develop the knowledge base necessary to provide progressive and effective discipline to employees.

- Developing a progressive discipline policy – crucial elements and considerations
- Communicating company policies and securing buy-in
  - Fairness
  - Positive messaging
- Establishing consistent standards and clear expectations
- Ensuring codes of conduct and balance in the discipline process
  - Accommodation and other complicating factors
- Opportunities for regular performance-related communications and coaching
  - Hiring and orientation process
  - Feedback and performance reviews
  - Special meetings and conversations
  - Training and policy information sessions
- “Progressive” discipline – what does this mean?
  - Progressive discipline – which steps and when to use them?
  - Deciding when to move to the next stage
  - Reinforcing and cementing progress
  - When progressive discipline is not an option
- Formal discipline – steps and stages
  - Verbal warning or reprimand
  - Formal written warning or reprimand
  - Use of formal performance agreement
  - Demotion, suspension
  - Successful turnaround or termination
- The art of the verbal warning
  - When and how often
  - Exercising judgment and discretion
  - Understanding the nature of the issues, the offences, the history
  - Effective investigative practices
  - Documenting the warnings
- Coaching and communication essentials to support turnarounds
  - Listening, observing, acknowledging, responding
  - Buy-in and employee input?
  - Issue acceptance and willingness/ability to change?
  - Developing an action plan and timelines – a joint process
- Closure - reinforcing the gains and maintaining the standards
- When to acknowledge that turnaround will not happen?
- Bringing the process or the employment to conclusion

By attending this workshop, you will benefit from in-depth coverage of the topic and have ample opportunities to have your questions answered by experts in the field. Specially prepared materials will be of long-term benefit to you and your organization.

12:00 NOON – 1:00 PM A light lunch will be served for those attending both workshops.

## WORKSHOP B

### Workplace Dispute Resolution and Mediation – Current Best Practices

1:00 PM – 4:00 PM

**Myrna Gillis**, Partner, Gillis & Associates      **Paméla Schiavoni**, Legal Counsel, New Brunswick Human Rights Commission

Experiencing some level of conflict in the workplace is normal and to be expected. Today’s Canadian workforce is diverse in multiple ways and thus employees bring with them different experiences, values, and beliefs. The workforce is changing and a positive and constructive workplace environment will be dependent on the willingness and ability of staff members to accept this diversity and work within these changing parameters.

More and more employers are designing and accommodating processes and structures for early and effective resolution of conflict at the workplace so that improved tolerance, communication, engagement and harmony will result and thereby minimizing distractions and interruptions to the workplace objectives, while improving the quality of work-life for all concerned.

This workshop will explore the various approaches and steps for workplace conflict and dispute resolution, providing an introduction and primer on the subject for those new to the field and a refresher for those who would like to go back to the first principles and renew their approaches.

- Key elements of a workplace dispute resolution policy
- Implementation and development process
- Communication of the objectives and the process
- Buy-in and staff participation
- Training and facilitation
- Internal vs. external facilitation and mediation
- Steps and milestones in the process
- Case studies and examples

The objective of workplace dispute resolution policies and processes is to provide a clear and effective mechanism to facilitate successful and timely resolution of disputes. Having these policies and processes in place and effectively implementing them will help to avoid an escalation of conflict and lead to a stronger, healthier, more tolerant and productive workplace environment.

Attend this workshop to receive step by step analysis of the key elements and implementation approaches for effectively tackling disputes, mediating conflict and avoiding escalations in workplace tensions.



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### VENUE AND HOTEL RESERVATIONS

The Casino Nova Scotia is conveniently located at 1983 Upper Water Street, Halifax, Nova Scotia. For overnight accommodation, please call the Halifax Marriott Waterfront Hotel located at 1919 Upper Water Street. Tel. 902-421-1700.

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A refund (less an administration fee of \$500 plus taxes) will be given if notice of cancellation is received in writing six weeks before the event. We regret that no refund will be given after this period. A substitute delegate is welcome at any time.

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Private sector attendees who register under the Public Sector or Aboriginal pricing structure will receive a 1 day conference pass only.

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