



December 2012

Dec 13-14
2012

James Heeneey will be speaking at the *7th Employer's Duty to Accommodate Course*



Dec 17
2012

James Heeneey will be speaking at The Osgoode Certificate in HR Law for HR Professionals *Equity, Diversity and Accommodation: Human Rights at Work*



Jan 23-25
2013

Kevin Robinson will be speaking at the *HRPA Annual Conference and Trade Show*



At Issue:

Deadline Approaching: The Accessibility for Ontarians with Disabilities Act (AODA)

In 2005, the *Accessibility for Ontarians with Disabilities Act* ("AODA") was enacted for the purpose of "recognizing the history of discrimination against persons with disabilities in Ontario" and "to benefit all Ontarians by; (a) developing, implementing and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025; and (b) providing for the involvement of persons with disabilities, of the Government of Ontario and of representatives of industries and of various sectors of the economy in the development of the accessibility standards."

The first set of standards to be developed was the Accessibility Standards for Customer Service (the "Standards"). It has almost been a year since organizations which provide goods and services to members of the public and have at least one employee have been required to comply with the Standards. The Standards include the establishment of policies, practices and procedures, notification of temporary disruptions, training, a feedback mechanism process for providers of goods and services, the availability of certain documents to the public, and rules about the format of documents and service animals and support people.

The most pressing AODA issue for employers currently, is the requirement that most organizations must file online reports regarding their compliance with the Standards by **December 31, 2012**. The AODA allows for a variety of penalties, including significant monetary penalties.

For more information about the AODA requirements apply to your specific organization and for assistance in meeting the requirements, please contact us.

Employee Awarded \$470,000 for Sexual Assault and Battery in the Workplace

A recent decision of the Ontario Court of Appeal serves as a glimpse into the amount of damages for which employers and individuals may be responsible for in a post-Bill 168 world. While the amount of damages awarded in this case is surprisingly high when compared to previous awards, this case¹ serves as a reminder of the importance of the employer's obligation to provide a safe work environment and the seriousness with which the court will view failure in this regard.

¹ *M.B. v. 2014052 Ontario Limited (Deluxe Windows of Canada)*, 2012 ONCA 135.

M.B. moved to Canada in June 2002 and worked from December 2003 until May 2005 as a commissioned sales person for Deluxe Windows of Canada and Deluxe Windows Industries. Mr. Weig was her supervisor, as well as principal and part owner of the companies. Over a span of 10 months in 2004, Mr. Weig committed four sexual assaults on M.B., which were not denied on appeal. M.B. brought actions for assault and battery against both the companies and Mr. Weig personally. She also claimed for damages for loss of income however this latter claim was unsuccessful.

At trial, a jury found the companies and Mr. Weig jointly and severally liable for the following damages on account of the assaults and battery:

- \$300,000 for general damages;
- \$25,000 for aggravated damages;
- \$45,000 for future health care costs; and
- \$98,969.18 in pre-judgment interest.

The judge awarded a further \$150,000, plus GST in costs and \$24,382.82 in disbursements.

The defendants appealed the trial decision on six grounds, including the question of whether the award for general damages was too high in light of the damages that M.B. suffered and the damages

awarded in other sexual assault cases. Ultimately, the unanimous Court of Appeal observed that while the award for general damages was high and beyond that which might typically be expected, the decision of the jury was not unreasonable and therefore the award was upheld.

FYI...

Steve Blondin, a Director of six Ontario based businesses was recently sentenced to 90 days in jail and ordered to pay \$280,000.00 for failing to pay his employees.

Sixty-one employees from Mr. Blondin's companies filed claims with the Ministry of Labour between 2007 and 2009 for a total of \$125,000 in unpaid wages. The Ministry found that the employees had valid claims and ordered Mr. Blondin and the companies to pay the outstanding wages. Despite the orders, the outstanding wages were not paid.

Mr. Blondin and his companies pled guilty to failing to comply with the Ministry's orders. Justice of the Peace Vladimir Bubrin sentenced Blondin to 90 days in prison and ordered that Mr. Blondin and the companies pay the wages owing as well as a 25% victim surcharge, as required by the *Provincial Offences Act*.

'Tis the Season at Robinson Heeney LLP

In light of the holiday season, Robinson Heeney LLP has undertaken charitable initiatives and will be giving back to the community in a number of ways:

- ❖ Participated in Movember, raising over \$1,580 for prostate cancer research and male mental health initiatives
- ❖ Donating a percentage of all monthly billings for December 2012 to the Toronto Daily Bread Food Bank
- ❖ Collecting toys or other gifts from the office staff for the Toronto Firefighters Toy Drive

Happy Holidays!



Stay Tuned...

In our next issue, we will discuss recent developments in the case law on employment contracts.