



STHI LEGAL NOTES

STEINBERG TITLE HOPE & ISRAEL LLP

BARRISTERS & SOLICITORS · TRADEMARK AGENTS

Volume 57

Winter 2020

Another New Year Means More New Laws

Employment Law

The current minimum wage rates in Ontario will stay the same through September 30, 2020. On October 1, 2020, and annually thereafter, the minimum wage rates may increase. New rates will be published on or before April 1 of every year, beginning this year.

OHIP

With the exception of out-of-country dialysis services, Ontarians are no longer covered for out-of-country inpatient services. Previously, they were entitled to up to \$400 per day for higher levels of care like intensive care, and up to \$50 per day for emergency outpatient and doctor services. . So if travel outside of Canada is in your 2020 plans be sure to purchase private health insurance before heading off.

Family Law

The Divorce Act, which is federal legislation and applies to couples who are legally married, has been given an overhaul. The changes, which come into effect on July 1, 2020, include:

- replacing the terms “custody” and “access” with “parenting time” and “parental decision-making”;
- trying to resolve matters outside of court through negotiation, mediation and collaborative family law;
- clarifying what is meant by the “best interests of the child”, including that a child should have as much time with each spouse as is consistent with the best interests of the child”;
- requiring courts to consider the relevance of family violence when determining parenting arrangements;

- introducing a new framework for relocation cases, ie when one parent wants to move away with the children.

We will take more in-depth look in our spring newsletter.

The Courts

- The maximum amount of a claim in Small Claims Court has been increased from \$25,000 to \$35,000.
- The maximum amount of a claim that qualifies for the Simplified Procedure has been increased from \$100,000 to \$200,000.

Landlord Tenant Law

The new residential rent increase for Ontario is 2.2%. This is the most that a landlord can increase a tenant’s rent without special permission. Rent increases must be in writing and be given to the tenant at least 90 days before the increase is to take effect. Landlords can take only one increase every 12 months.

Wills and Estates

Estates with assets of \$50,000 or less will no longer have to pay Estate Administration Tax when applying for a Certificate of Appointment. The tax on larger estates is being reduced by \$250. Also, the government is extending the deadline for filing Estate Information Returns from 90 to 180 days.

Transportation

Until now, electric scooters (the stand-up kind) were illegal to use anywhere in Ontario but on private property. However, as of January 1, 2020, they will be permitted, as a five-year pilot project, wherever bikes are permitted. A scooter cannot exceed a maximum operating speed of 24 kilometres per hour and must have a horn or bell. Riders must be at least 16 years old and must wear a helmet while driving one of the vehicles, which cannot weigh more than 45 kilograms. This 5-year pilot allows municipalities to choose whether to allow e-scooters on their roadways.

And One for the Dog Lovers

Restrictions related to dogs being allowed in outdoor and certain indoor areas of food premises, such as patios and craft breweries are being reduced. ☞

In this issue

2020 Tax Changes	p. 2
Exclusion for a Tenant - Not!	p. 2
Fired Before Hired.	p. 3
Movie Recommendation.	p. 4

*The articles in **STHI Legal Notes** are necessarily of a general nature and cannot be regarded as legal advice. Our firm will be pleased to provide additional details on request.*

2020 Tax Changes

It won't be long before you have to file your 2019 income tax return. But already, changes are happening which will affect your 2020 taxes. Below are some of the changes we want to bring to your attention. While this may seem more like an accounting exercise, remember changes to tax laws as well as violations of tax laws are definitely legal matters.

Tax Brackets

Not surprisingly the five tax brackets are being adjusted to keep up with inflation. The 2020 rate is 1.9 per cent. So once adjusted, the 2020 federal brackets look like this: \$0 to \$48,535 of income (15 per cent); above \$48,535 to \$97,069 (20.5 per cent); above \$97,069 to \$150,473 (26 per cent); above \$150,473 to \$214,368 (29 per cent); and anything above that being taxed at 33 per cent.

Basic Personal Amount (BPA)

The BPA was created to recognize that no tax should be paid on a certain amount of an individual's income, i.e. the amount that covers basic living expenses. The amount for 2020 is \$13,229. This will continue to increase annually until it reaches \$15,000 in 2023. However, if you earn more than \$150,473 the increase will actually decrease and be phased out completely for those earning more than \$214,368. Instead, those in the two highest income tax brackets will simply receive the non-refundable tax credit on the existing BPA, which will continue to be adjusted annually for inflation.

Canada Pension Plan (CPP)

CPP contribution rates for employees and employers will each increase to 5.25 per cent in 2020, up from 5.1 per cent in 2019. Those who are self-employed pay both portions, for a total of 10.5 per cent.

Employment Insurance (EI)

In 2020, employers will pay 1.58 per cent (down from 1.62 per cent) of insurable earnings. The maximum employee premium for 2020 is \$856.36.

Tax Free Savings Accounts (TFSA)

The maximum amount you can contribute to your TFSA in 2020 is \$6,000 (same as 2019), assuming you have made the maximum contributions since TFSAs first came into existence in 2009. But remember you never lose your TFSA contribution room.

Small Business - Ontario

The small business corporate income tax rate of 3.5 per cent is being reduced to 3.2 per cent. Also Ontario's small business (non-eligible) dividend tax credit rate is being reduced from 3.2863 per cent to 2.9863 per cent, corresponding to the reduction in the small business corporate income tax rate. ☞

Exclusion for a Tenant - Not! The Appellate Court Has Its Say

In the 2019 fall edition of STHI Legal Notes, we wrote about a case involving Betty who was injured when she fell from her mother Elizabeth's porch. Betty lived with her mother and paid her \$400 a month rent.

Elizabeth had a homeowner's insurance policy which provided Elizabeth coverage should she become legally liable to pay damages to someone injured on her property. However, the policy did not cover claims made against her arising from bodily injury to her or any person residing in her household. The one exception being for a residence employee.

The lower court found that Betty was part of Elizabeth's household but that she was not a residence employee. The court went on to find that Betty was a tenant. Therefore, since there was no exclusion for a tenant in the policy and that it had to have been in the reasonable contemplation of the parties that the owner may have rented a room to a tenant, and that the owner may call upon that policy if a tenant were injured on the property, Betty could sue under the insurance policy in her capacity as a tenant.

The insurance company appealed the decision and last month the Ontario Court of Appeal reversed the above decision.

The appellate court agreed with the lower court's findings that Betty was member of Elizabeth's household and that she was not a residence employee. However, the court concluded that even though Betty paid rent, she was a member of Elizabeth's household and the insurance policy was clear that all persons residing in the insured's household are excluded from coverage unless they are residence employees.

The bottom line is that where an insurance policy is unambiguous, as here, the court will give effect to its clear language, reading the policy as a whole. ☞

Discover back issues of
STHI Legal Notes
online at
sthilaw.com

Fired Before Hired!

Over the years we have written about a number of wrongful dismissal cases. Letting someone go from their job can be such a tricky thing and it is why it is so important to seek legal advice before terminating someone's employment. But what happens when an employer withdraws an offer of employment before the person has even worked one day? A recent case, decided by the Human Rights Tribunal of Ontario, provides a look at what can go wrong.

The Facts

Haseeb was an international student studying mechanical engineering at McGill University. Following the completion of his degree he would become eligible for a "postgraduate work permit" for a three year term. This particular work permit would allow him to work full time, anywhere and with any employer in Canada. Although neither a Canadian citizen nor a permanent resident, Haseeb did anticipate that he would attain permanent residency status within three years and thus be able to settle and work in Canada indefinitely.

During the final months of his schooling, Haseeb responded to a job notice by Imperial Oil for a project engineer, an entry level position. One of the conditions listed in the hiring notice was that applicants had to be able to work in Canada on a permanent basis. Although not true, Haseeb, throughout the interview process, indicated that he was eligible to work in Canada on a permanent basis. He ranked as their number one candidate and was offered the job, which paid \$86,700 a year. As part of accepting the job offer, Haseeb had to provide proof of his eligibility to work in Canada on a permanent basis by way of a Canadian birth certificate, a Canadian citizenship certificate or a Canadian certificate of permanent residence.

A month after the deadline for accepting the job offer, Imperial Oil rescinded the job offer. The rescission letter sent to Haseeb invited the applicant to re-apply if he became eligible to work in Canada on a permanent basis in the future.

Haseeb filed a complaint with Ontario's Human Rights Tribunal on the ground that he was being discriminated against because of citizenship.

In the meantime, he accepted a \$50,000 a year job with Deloitte so he could earn the Canadian job experience he needed to qualify for permanent residence.

The Parties' Arguments

During the tribunal hearing, Haseeb took the position that at the time he would have been expected to start work, he was legally qualified to work in Canada.

Imperial Oil put forward three arguments to support its

decision to rescind the job offer, including that:

- 1) Haseeb had lied in his job application and this was the reason for the revocation of his job offer;
- 2) as permanent residency was accepted along with Canadian citizenship, Imperial Oil did not discriminate on the basis of "citizenship" but rather "immigration status"; and
- 3) it was reasonable to require permanent ability to work in Canada due to future corporate investment in new employees.

The Decision

The Tribunal ruled in favour of Haseeb, concluding that requiring a candidate to show that he or she has a permanent ability to work in Canada was discriminatory on the basis of citizenship.

With respect to Imperial Oil's first argument, Haseeb's deception about his residency status, the Tribunal concluded that his dishonesty was irrelevant as to whether the requirement was discriminatory. Further, "but for" Imperial Oil's discrimination based on citizenship, Haseeb would have had no need to lie.

Concerning its second argument, the Tribunal stated that while Imperial Oil's permanency requirement distinguished on the basis of "Canadian citizenship" and "permanent residence" this did not change the analysis to being a distinction based on "immigration status". It was enough that their requirement cited "Canadian citizenship" as a criterion to engage the prohibited ground of "citizenship".

In regard to their third argument, the Tribunal found that Imperial Oil had failed to demonstrate that the permanency requirement was either necessary or connected to the essential elements of the work of a project engineer. This was particularly so given that Imperial Oil agreed that in some circumstances, e.g. candidates whose skills were in high demand, this requirement was sometimes waived.

The Remedy

When awarding damages, the court or in this case the tribunal, strives to put the injured party into the position they would have been in, but for the wrong. In this case, where would Haseeb be if Imperial Oil had not asked him the discriminatory questions? The answer is that he would not have lied, and he would have been hired.

Therefore, any award must include the full period of employment that Haseeb lost out on. Haseeb would have begun working for Imperial Oil on March 30, 2015 and he would have stayed until May 3, 2019. This latter date was

see **FIRE**d page 4

Movie Recommendation – Dark Waters

Dark Waters is a David and Goliath story inspired by a number of lawsuits brought against DuPont in the 1990s. This edge of your seat legal thriller pits cattle farmer, William Tennant, against not only the corporate giant, but also the townspeople who depend on DuPont for jobs.

Robert Bilott, played by Mark Ruffalo, works for a law firm that represents big corporations in environmental cases. One day he gets a visit from William Tennant who believes that DuPont is poisoning the water system, which in turn is killing his cows and maybe his family. (It seems that Robert’s grandmother figured her lawyer grandson could help out since he is originally from the affected town.) It takes a few visits as well as seeing the graves of more than a hundred cattle, but Robert agrees to help out. Once Robert finally sinks his teeth into the case, he is like a dog with a bone who simply will not give up despite threats, his fellow lawyers who are not always supportive and the toll it takes on his family and his health.

The balance of the movie follows the long and difficult battle against a company who has millions at stake if they are not successful in ridding themselves of this pesky lawyer.

Dark Waters, which scored 91% on the Tomato Meter, was released in early December but is still playing in a few theatres. If you like legal dramas, you won’t want to miss this movie. 📁

FIRED continued from page 3

based on when he left his employment with Deloitte to pursue other opportunities. It should be noted that Haseeb took a 10 month unpaid leave of absence while at Deloitte and therefore those 10 months were subtracted, leaving a period of approximately 39 months. The tribunal then calculated the difference in salary over those 39 months, plus the average annual salary increases received by the three engineers that Imperial Oil actually hired. All this amounted to approximately \$100,000.

The Tribunal also awarded Haseeb \$15,000 as compensation for injury to dignity, feelings and self-respect.

In granting the award, the Tribunal did state that, *“My intent in this Decision is not to excuse or condone dishonesty, or to suggest that an employer cannot terminate a person’s employment or refuse to hire a person due to dishonesty... Rather, this Decision is restricted to a person’s dishonesty solely in response to questions asked during a hiring process that are themselves found to be in violation of the Code.”*

Employer Takeaways

If you are an employer, you need to be aware that when hiring, it is illegal to discriminate on the basis of the employee’s future ability to work in Canada permanently. What does matter is whether that person is eligible to work at the time of hiring.

We recommend that employers review not only their hiring policies and practices, but also any materials used in the hiring process, e.g. postings, application forms, questionnaires, etc., to ensure that they satisfy the above requirement. Remember, Haseeb never actually worked one day for Imperial Oil.

If you need assistance to review your policies and materials please contact our firm. We would be pleased to work with you. 📁

Steinberg Title Hope & Israel LLP

5255 Yonge Street - Suite 1100
Toronto, Ontario M2N 6P4

T: 416 225-2777 F: 416 225-7112
www.sthilaw.com

LAWYERS

Irwin Steinberg
isteinberg@sthilaw.com

Jack W. Hope
jhope@sthilaw.com

David M. Israel
disrael@sthilaw.com

M. Michael Title
mtitle@sthilaw.com

Derrick M. Fulton
dfulton@sthilaw.com

David A. Brooker
dbrooker@sthilaw.com

Eli Leibowitz
eleibowitz@sthilaw.com

Shelley Brian Brown
sbrown@sthilaw.com

Patricia Virc
pvirc@sthilaw.com

Taras Kulish
tkulish@sthilaw.com

Jason Rosen
jrosen@sthilaw.com

Daria Krysik
dkrysik@sthilaw.com

Eli B. Hoffman
ehoffman@sthilaw.com

PRACTICE AREAS

Corporate & Commercial
Commercial & Civil Litigation
Commercial & Residential Real Estate
Tax Law
Condominium Law
Matrimonial & Family Law
Employment Law
Wills, Trusts & Estates
Construction Law
Trademark Law
Health Discipline Law
Administrative Law