



MTW TODAY

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It is with pleasure that Mullin Thwaites Ward, LLP takes this opportunity to publish what is hoped to become a regular newsletter for our clients. We believe that it is important for us to communicate with our clients in an effort to keep them abreast of developments in the law touching their personal or business life or the life of the community. We invite our readers to contact us by telephone, fax or at our website to learn more about us and our practice. In this newsletter brief summaries of Court decisions touching a variety of issues will be provided.

Duty of party host / employer

On February 5, 2001 the Superior Court of Justice concluded that the employer of an individual severely injured in a motor vehicle accident was partially responsible for her injuries, and therefore monetary damages, after failing to ensure the individual did not drive following her consumption of alcohol at a business Christmas party. Similarly the owner of a bar the driver stopped at en route home was also liable for her injuries after permitting her to consume alcohol and then drive. As a result the employer and bar owner had to pay the injured person about \$300,000.00.

*As a party host or employer it is incumbent that steps be taken to ensure participants at events not be permitted to, on leaving, drive if they have consumed alcohol.

Duty of property owners / municipalities

In February, 2001 the Superior Court of Justice held a municipality liable for injuries sustained by an 11 year old boy. The boy had jumped out of a tree on municipal property injuring his leg on a metal stake that was used to secure a garbage can. The Court concluded that the municipality had a duty to design and install the stake in a safe manner. The Court concluded that it had been reasonably foreseeable that children would climb trees and jump/fall and the metal stake could cause injuries. The municipality had to pay monetary damages.

**All owners / occupants of property have a duty to take reasonable care to ensure their property is free of danger and reasonably safe from foreseeable risks.*

Recreational vehicle owner / operators

The Superior Court of Justice has recently decided that the owner of a boat is legally responsible for the actions of the boat operator regardless of the persons experience or skill. The Court decided that the owner of a boat was legally responsible for the fatal injuries sustained by a passenger in the boat which was operated by a person other than the owner.

**Owners of any vehicle, regardless of type, should always ensure they have taken reasonable care of their vehicle and be "diligent" in permitting third persons to operate the vehicle. Owners should ensure that an adequate level of liability insurance is maintained.*

Family Law

As of May 1, 1997, the federal government, and subsequently the province, enacted new laws governing the obligation to pay child support. The laws were enacted in an effort to standardize and make levels more predictable. The law ties the calculation of child support to the income level of the payor spouse using a chart dependent on the number of children.

One of the difficulties has been in determining "income of the payor". Payors who are "self employed" are able to write off various expenses which are "paper write offs" (capital allowance) or otherwise provide a personal benefit to the payor. Courts have struggled with whether these expenses should be added back to "income"

for purposes of calculating child support. To date, the Court's decision has been mixed and unpredictable.

**Income Tax Returns and Financial Statements need to be carefully reviewed to ensure a fair determination of income for support purposes.*

Employment

The Ontario Court of Appeal recently decided a case involving the issue of mandatory drug / alcohol testing of employees in the workplace. The Court decided that an employer cannot discriminate against employees and that there is an obligation to "accommodate" employees with addictions. The Court effectively decided that addictions are "handicaps" as defined by the Ontario Human Rights Code. The Court upheld testing of employees under certain workplace situations but also decided that the consequences of breaching the test needs to be tailored to the employee with an obligation to "accommodate" the handicap.

**Employers should develop written policies to govern workplace testing have reference to the Human Rights Code and being aware of the potential for litigation by a disciplined employee.*

The Ontario Court of Appeal has recently decided in a wrongful dismissal case that an employer is not entitled to a credit during the notice period for any disability benefit received by an employee. The Court concluded that the employer would otherwise receive a windfall for its own breach of contract. The Court did not address the issue of whether the employer

violated the Ontario Human Rights Code in terminating a disabled employee.

**Employers need to seek legal advice prior to terminating an employee to determine the reasonable notice / compensation and to ensure the Human Rights Code has not been violated.*

Municipal Liability

The Ontario Court of Appeal recently concluded that the Ministry of Transportation was liable for \$3.8 Million in damages for injuries sustained by a motorist. In October 1989, the motorist hit black ice on a bridge and lost control of the vehicle. The road was otherwise bare and dry. The Court concluded the MTO knew or should have known of the risk of “black ice” and the danger it presented. The Court decided the MTO had a duty to inspect and “repair” risks.

AND BY WAY OF COMMENT:

Small Claims Court

As of April 2001, the jurisdiction of the

Small Claims Court was increased from \$6,000.00 to \$10,000.00. Any claim for amounts in excess of \$10,000.00 or for certain legal remedies must be commenced in the Superior Court of Justice.

Limitation Period

In Ontario, as in all jurisdictions, there are laws that limit when court proceedings can be commenced dependant on the type of loss, the person “injured” and the “persons” sued. It is important to act in a timely manner in retaining legal counsel and commencing proceedings as otherwise a person may lose the right to advance a claim.

Clergy Housing Deduction

The federal government enacted on June 14, 2001, effective January 1, 2001 a new law governing the calculation of the clergy housing deduction. This law follows prolonged litigation and subsequent consultations on determining “entitlement”, now defined in Interpretation Bulletin IT-141R issued by Canada Customs and Revenue Agency in early 2000.

This MTW TODAY is provided as an information service to our clients and is a summary of legal matters. It is not meant to be a legal opinion. Readers are cautioned not to act on information provided herein without seeking specific legal advice with respect to their unique circumstances. Comments and suggestions are welcome.



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