



Winter 2016

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AODA

The *Accessibility for Ontarians with Disabilities Act* (“AODA”) has been impacting businesses since its introduction in 2005. But the most recent regulations, which came into force on January 1, 2016, impose obligations on employers that require immediate attention. As a quick re-cap, the purpose of AODA is to make Ontario accessible for the disabled by 2025. The Act imposes standards regarding the provision of goods and services, employment, accommodation, buildings, and other structures. This article focuses on the requirements for what the Ontario government considers “Large Employers” (50 or more full- and part-time employees). Many of the same requirements will be mandatory for small employers (1-49 employees) on January 1, 2017.



By now, private sector employers should have:

- ✓ created and posted an Accessibility Policy (commitment to meeting accessibility needs of persons with disabilities in a timely manner) and an Accessibility Multiyear Plan (preventing and removing barriers for the disabled in the workplace in the future);
- ✓ trained employees on customer service accessibility standards (if part of their duties) and on the requirements of the Human Rights Code. All current employees should already be trained and new hires must be trained as soon as practical upon hire;
- ✓ individualized workplace emergency response information for any employee who has a disability, if necessary, and the employer should be aware of what the accommodated needs are in the case of an emergency;
- ✓ shared the workplace emergency response information with persons designated to assist employees in the case of a workplace emergency;
- ✓ been checking that the workplace emergency response information is updated from time to time (e.g. if the person designated for assistance resigns, the work stations change, the employee's requirements have changed, etc.);
- ✓ been filing on-line Compliance Reports with the Ontario government.

As of January 1, 2016, Large Employers have new obligations under AODA. These are:

- **Recruitment:** When seeking candidates, employers are required to include statements in their external and internal postings that accommodation is available for applicants with disabilities in the recruitment process (e.g. *The Company is committed to providing accommodations for applicants with disabilities. If you require accommodation with our recruitment process, please advise us of your needs when submitting your application*). Next, successful applicants must be told that accommodations are available and, if requested, the employer must consult with the applicant to identify the support required (e.g. consider whether the applicant can access the meeting location and if they need other accommodation in the interview). Finally, when making an offer, employers must notify the successful candidates in writing of its policies for accommodating employees with disabilities (e.g. include this commitment in the job offer or employment agreement).
 - means to assess the employee's request for accommodation;
 - method to get outside assessment of any accommodation request, at employer's cost;
 - the manner for the employee to include a union or workplace representative in the process;
 - steps to protect the privacy of personal information shared through this process;
 - how often the accommodation plan is reviewed and updated;
 - if the accommodation plan is denied, the manner in which the denial will be communicated and;
 - the most suitable format, accounting for the employee's disability, in which to provide a copy of the individual plan.
- **Accommodation Process:** Employers must have a written process for developing individual accommodation plans. This process is to be shared with employees as soon as possible after hiring. The written process has to consider:
 - how the employee can participate in the development of an individual accommodation plan;

Employers must ensure that all existing employees are aware that there are policies and programs to assist, support, and accommodate disabilities. If asked by employees, employers must ensure that accessible formats and communication support (e.g. large print, recorded audio, and Braille) are provided. Finally, the employer must provide and update individualized workplace emergency response information to disabled employees who require it.

- **Return to Work Process:**

Employers are required to develop and use a return to work process when an employee is off work for disability-related reasons. The process will result in an accommodation plan that outlines the steps for contact while on leave, necessity of appropriate medical care, assessment of ability to return to work with or without accommodation, and the steps the employer will take to accommodate the return to work. If there are no limitations, the employer will return the employee to their former position. If there are temporary limitations, the employer will return the employee to their former position with temporary accommodations. If there are permanent limitations, the employee will be returned to their former position with permanent accommodations or will be permanently re-assigned. This process must be documented in writing. An employee will be required to cooperate in this return to work process. The return to work plan must be monitored and reviewed until the plan comes to an end or needs re-assessment.

- **Performance Management:**

When conducting performance management, employers must take into account specific accessibility needs of employees with disabilities. This includes assessments of employee performance, productivity, and effectiveness. This may mean that there will be varying standards for employees doing the same job.



- **Career Development and Advancement:** If employers encourage development and movement up the ranks, individual accommodation plans will have to be taken into account. As noted above in Performance Management, employers may have to vary their standards to accommodate disabilities when determining career advancement.
- **Redeployment:** Employers will be required to consider accommodation plans and accessibility needs when redeploying employees and before layoffs. The physical changes to the workplace and the reassignment of duties must be reviewed and updated in the context of the pre-existing accommodation plan.

This amounts to a long list for an already burdened employer in Ontario. The government is committed to assisting employers with this process by providing free web-based tools and resources (see www.aoda.com and from the Conference Board of Canada: www.conferenceboard.ca/e-library/abstract.aspx?did=7159).

But if employers do not act, the government has the right to conduct inspections, issue Notices of Proposed Order (NOPOs) advising why the organization is not in compliance with the law and what it must do to comply to avoid a penalty, issue Director's Orders, and prosecute matters in court for convictions and fines. In November 2013, private and non-profit sector organizations that had not submitted a 2012 accessibility compliance report were contacted. If steps were not taken to remedy the deficiency, Director's Orders were issued with financial penalties. By October 2014, approximately 95% of such cases had been resolved. In the future, the government intends to audit organizations to ensure that they are in compliance with AODA and will continue to follow up when necessary with NOPOs, Director's Orders, fines, and prosecution.

As mentioned, there are resources available to employers to meet the AODA requirements. If you have questions or would like our assistance with AODA compliance, please speak to Tracy Kay at 416.369.4330.



Tracy Kay
Partner
tkay@mindengross.com

Firm News

Minden Gross LLP is pleased to announce the admission to partnership of **Yosef Adler**. Yosef assists and advises businesses with issues that arise throughout various stages of growth, including corporate organization, shareholder disputes, financings, mergers and acquisitions, and contract law matters.



Yosef Adler
yadler@mindengross.com



Alexandra (Sasha) L. Toten
stoten@mindengross.com



Angela Mockford
amockford@mindengross.com

Minden Gross welcomes **Alexandra (Sasha) L. Toten** as an Associate in our Business Law Group and **Angela Mockford** as an Associate in our Commercial Leasing Group.

Professional Notes

The 2016 *Lexpert/ALM Guide to the Leading 500 Lawyers in Canada* continues to recognize lawyers **Stephen Posen** and **Stephen Messinger** as the country's top practitioners in Property Leasing.

On November 9, 2015, **Stephen Messinger** was featured in *Canada: Real Estate Analysis 2015* as one of the 10 "Most Highly Regarded Individuals" in *Who's Who Legal's* Real Estate category.

Stephen Messinger, Stephen Posen, Adam Perzow, Michael Horowitz, Boris Zayachkowski, Benjamin Radcliffe, Melissa Muskat, and Carly Caruso of the Commercial Leasing Group presented "What's Next? The Future is Now" at the 7th Annual Dealing with the Lease conference on November 24, 2015. The program was sponsored by Lexpert. The **Commercial Leasing Group** also participated in ICSC Whistler held January 24-26, 2016.

Melodie Eng presented "Negotiation of Letters of Intent/Offers to Lease" at the Commercial Real Estate seminar hosted by Legacy Education Alliance, Inc. on January 16, 2016.

Joan Jung, Michael Goldberg, Samantha Prasad, Matthew Getzler, and Ryan Chua of the Tax Group presented the CCH webinar "Tax Traps" on November 19, 2015.

Michael Goldberg hosted the second of four conference call sessions for *Tax Talk with Michael Goldberg: Year 3* on November 18, 2015. These informal sessions share current, relevant and real life tax situations with professional advisors that serve high net worth clients.

Samantha Prasad published a three-article series on *Fund Library* titled "How to avoid family-business tax traps" that highlights pitfalls in Corporation Attribution Rules for family-owned businesses. She also published three articles in *The TaxLetter*, including "Early Exit - what qualifies as retiring allowance?" in November.

Steven Pearlstein and Reuben M. Rosenblatt, QC, LSM, spoke at the Six-Minute Real Estate Lawyer 2015 hosted by the Law Society of Upper Canada on November 24, 2015. Steven shared his knowledge on the topic "Electronic Signatures on Agreements of Purchase and Sale – Are They Enough?" and Reuben presented "After 50 Years – And Still Scared". Reuben also led a panel on "Requisitions, Title Insurance, and Litigation" as part of a half-day session hosted by the Law Society of Upper Canada on "Safeguarding Real Estate Transactions 2015" held on November 24, 2015.



BARRISTERS & SOLICITORS
145 KING STREET WEST, SUITE 2200
TORONTO, ON, CANADA M5H 4G2
TEL 416.362.3711 FAX 416.864.9223
www.mindengross.com



Litigator **Matt Maurer** was listed in *Real Estate Professional Magazine* (REP) as one of 2015's Young Guns in the Winter 2016 issue; the only lawyer on the list. He published "Landlord Facing 305 Charges and 61 Outstanding Work Orders Fails to Convince Judge That Waterloo's Rental Housing Licensing Program Is Unconstitutional" on *Slaw* on November 10, 2015, and "Court decision expands risks of disclosure with seller property information statement" in *Real Estate Magazine*

Online on November 11, 2015. Matt's article "Appeal Judge Rips Trial Judge's Conduct Towards Self-Represented Defendant" was listed as one of the *TLA Weekly Verdict's* Top 20 Articles of the Year.

Irvin Schein published three blog posts on irvinschein.com, including "Who Really Owns Your Leafs Tickets? - Part 2" on November 12, about the US lawsuit between StubHub, Ticketmaster, and the NBA's Golden State Warriors.

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