



EDITORIAL

Happy New Year! As we start another year, 12 years into the new millennium, there are a number of new developments on which to report. This edition of our newsletter introduces the new Regulation under the AODA, the Integrated Accessibility Standard. There is a new OHSA, proposal for Expediting Resolution of Reprisal allegations. There is also a proposal for new chemical exposure limits. Ontario's workers' compensation regulator has delayed mandatory registration for the construction industry. Recent cases are also reviewed including a random alcohol testing case and a Nova Scotia prosecution of a safety professional.

From the OHS Team at Gowlings, we wish you a happy and safe new 2012!

Norm Keith, B.A., J.D., LL.M., CRSP Partner, Gowlings

Integrated Accessibility Standard - The Next Step in Accessibility Compliance

By: Ryan D. Campbell, B.A., J.D., Associate

With a the deadline for compliance with the Accessibility Standard for Customer Service (ASCS) Regulation to the *Accessibility for Ontarians with Disability Act (AODA)* on January 1, 2012, now past, organizations across Ontario should now turn their minds towards compliance with the second phase of the AODA accessibility regime – the Integrated Accessibility Standard (IAS).

Application

As with the ASCS, the IAS applies to the Government of Ontario, the Legislative Assembly, every designated public sector organization and to every other person or organization that provides goods, services or facilities to the public or other third parties and that has at least one employee in Ontario. However, the application of some sections of the regulation has been restricted; specifically, the employment standard applies only to organizations who are employers, and the transportation standard applies only to organizations who

meet the definition of “conventional transportation service provider” or “specialized transportation service provider,” as prescribed by the regulation.

Compliance

Compliance with the IAS has been phased-in gradually over a nearly 10-year period – from July 1, 2011 to January 1, 2021. In addition to varying compliance deadlines for each of the information and communication, employment, and transportation standards contained within the IAS, compliance deadlines are prescribed for five different classifications of organization:

1. The Government of Ontario and Legislative Assembly
2. Large designated public sector organizations – municipalities and prescribed public bodies with 50 or more employees
3. Small designated public sector organizations – municipalities and prescribed public bodies with

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- at least one but fewer than 50 employees
4. Large organizations – an organization with 50 or more employees in Ontario, other than the Government of Ontario, the Legislative Assembly or a designated public sector organization
 5. Small organizations – an organization with at least one but fewer than 50 employees in Ontario, other than the Government of Ontario, the Legislative Assembly or a designated public sector organization

In most circumstances, compliance will be achieved in phases according to an organization's classification in this order, with the Government of Ontario and Legislative Assembly having to comply first and small organizations having to comply last, if at all.

Information and Communication Standard

The information and communication standard is contained in sections nine through 19 of the IAS, and contains obligations with respect to feedback, emergency procedures,

accessible web content, education and training resources and materials, public libraries, and the provision of accessible formats and communication supports to persons with disabilities. While products and product labels are exempt from the requirements of this standard, web-based applications are not. The first of these to require compliance is the emergency procedures, with a compliance deadline of January 1, 2012.

Organizations have been particularly concerned with the requirement for accessible web content, which references the Web Content Accessibility Guidelines 2.0 published by the Worldwide Web Consortium. Among other things, these guidelines identify four principles of web accessibility – perceivable, operable, understandable and robust – and prescribe measures to ensure that a website respects each of these principles. The accessible web content requirements are to be phased in between January 1, 2012 to January 1, 2021, depending on the classification of the organization.

Employment Standard

Sections 20 to 32 of the regulation address accessibility standards

governing the employment relationship. In particular, the IAS creates obligations for employers with respect to recruitment, accessible information, return to work, career development and advancement, and individualized workplace emergency response information for employees with disabilities. Organizations should take note of the latter requirement for individualized workplace emergency response information, which has a compliance deadline of January 1, 2012. The remainder of the employment standards are being phased in between January 1, 2013 and January 1, 2017.

Transportation Standard

The transportation standard is contained in sections 33 to 80 of the IAS regulation. Between July 1, 2011 and January 1, 2017, municipalities, designated public sector organizations, school boards, specialized transportation service providers and conventional transportation service providers will be required to comply with numerous general and technical requirements, including courtesy seating, announcements and modifications to vehicles, and to ensure that the public and persons with disabilities are consulted in

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Enforcement Mechanisms

The IAS also contains directions for the AODA director when exercising his discretion in levying administrative monetary penalties for violations of both the ASCS and the IAS. In particular, the regulation prescribes that the director should consider both the severity of the impact of the contravention and the contravention history of the offending person or organization on a scale of “minor,” “moderate,” or “major”. As a result, the minimum penalty for individuals and unincorporated organization is now \$200 and the maximum penalty is \$2,000. For corporations, the minimum penalty is \$500 and the maximum penalty is \$15,000. The regulation also imposes a daily “cap” on daily administrative monetary penalties - \$50,000 for individuals or unincorporated organizations and \$100,000 for corporations.

Conclusion

A failure to comply with the requirements of the AODA and related regulations can trigger a number of enforcement mechanisms, including orders, administrative monetary penalties and prosecutions, and maximum daily penalties and fines of \$100,000. As a result, organizations across the province should work diligently towards compliance prior to the deadlines prescribed in the regulation.

Gowlings provides consulting services to its clients to assist them in complying with the requirements of the AODA, including compliance

with both the ASCS and the IAS. For further information on this article, or to discuss Gowlings’ AODA Compliance Services, please contact Ryan D. Campbell at ryan.campbell@gowlings.com, 1-866-862-5787 ext. 83558.

Ontario WSIB Delays Mandatory Registration in the Construction Industry

By: David Marchione, BA, CHSC, CRSP, OHS Consultant/ Paralegal

Ontario’s Workplace Safety and Insurance Board (WSIB) has announced that mandatory registration for independent operators, sole proprietors, some executive officers and some partners in a partnership who do not have employees but work in the construction industry will take effect as of January 1, 2013.

Under Ontario’s current system, independent operators, sole proprietors, executive officers and partners in a partnership are exempt from having to register and pay premiums for insurance. The current system allows for a gap in the workers’ compensation system for some individuals who are at significant risk for a workplace injury. Those individuals are not required to pay into the workers’ compensation system, and are not eligible for wage loss benefits in case of a workplace injury. The new system looks to ensure that everyone pays their fair share of insurance premiums, and will provide insurance coverage and services for those individuals who would not otherwise have been covered.

As of January 1, 2012, the WSIB will be launching an education campaign to ensure that everyone impacted by the mandatory coverage requirements know of the changes and how they may be impacted. Individuals in construction may choose to pre-register for coverage now, and their coverage will take effect in 2013. Those individuals would not be required to pay any premiums until 2013.

The mandatory registration requirements will assist employers who hire independent operators or individuals to perform construction work, as they will now be able to obtain Clearance Certificates for these individuals. The new legislation will also mean some changes for construction employers who are currently registered for coverage, as they may have to pay additional premiums for executive officers who have been exempt from coverage under the current system. Employers are encouraged to review the WSIB’s website, or contact the WSIB for information about changes that may impact them.

For further information on this article please contact David Marchione at david.marchione@gowlings.com, 1-866-862-5787 ext 84378.

Avalanche Safety in the Workplace

By: Shane Hopkins-Utter, B.A., M.A., J.D., Associate

Many workplaces in British Columbia are situated in terrain where snow avalanches may occur, such as

forestry operations, ski hills, eco-tourism, transportation and utilities. As of January 2, 2012, the Canadian Avalanche Association's avalanche forecast for most of British Columbia is either "high," meaning that human-triggered avalanches are likely, or "considerable," where natural avalanches are likely and human-triggered avalanches are very likely. Two fatal avalanches in the last days of 2011 killed two backcountry skiers, one a ski patroller at Whistler-Blackcomb who was skiing in the resort's backcountry, the other a tourist on a heli-skiing trip near Revelstoke. Employers whose operations may put their employees at risk of being caught in an avalanche, whether working in avalanche-prone terrain or driving on roads that cross through avalanche slide paths during months when avalanches pose a risk, should identify and assess the risks of avalanches and take the necessary steps to protect their workers.

In September 2011, WorkSafeBC revised its guideline for snow avalanche assessment under section 4.1.1 of the *Occupational Health and Safety Regulation* (British Columbia) (Regulation). The guideline refers to a senior vice president directive

that has been issued providing that section 4.1.1 will not be enforced until December 31, 2013, or until such earlier time as the regulation review process may come into effect. However, the Guideline explains that employers still have statutory obligations to have safety assessments and plans in place, and furthermore advises employers to rely on "qualified persons" knowledgeable in the work, the hazards involved, and the means to control those hazards, to identify and control avalanche risks.

Section 4.1 of the Regulation requires workplaces to be planned, constructed, used and maintained to protect from danger any person working at the workplace. Section 4.2 states that the employer must ensure that each building and temporary or permanent structure in a workplace is capable of withstanding any stresses likely to be imposed on it. Under section 115(1) of the *Workers Compensation Act* (British Columbia) (Act), every employer has a duty to ensure the health and safety of all workers working for that employer, and of any other workers present at a workplace at which that employer's work is being carried out. Furthermore, section 115(2)(e) of the Act requires that

persons working in the avalanche hazard area receive the necessary information, instruction, training and supervision. Although not presently being enforced, section 4.1.1 of the Regulation provides guidance on what measures can be taken to ensure compliance with the other statutory requirements. Taking reasonable steps to follow those provisions could likely be used as evidence of due diligence.

In early December 2011, WorkSafeBC updated several guidelines relating to the heights for guardrails on work platforms relating to sections 4.55 and 13.2 of the *Occupational Health and Safety Regulation* (British Columbia), the use of control zones and safety monitors for fall protection, and electrical safety procedures under the Regulation section 19.15 and 19.16(2)(a).

As of February 1, 2012, a number of amendments to the *Occupational Health and Safety Regulation* will be in effect. These include amendments relating to updating asbestos requirements, atmospheric testing of confined spaces by a qualified person, safer driven-feed mobile chipper requirements, and workers riding on rear-mounted work platforms on a vehicle for retrieving

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traffic cones. One amendment to Part 20, Construction, Excavation and Demolition, requires that concrete pumps and placing booms meet the requirements of Canadian Standards Association Standard Z151-09. Several requirements for “prior approval” or “prior permission” before proceeding with certain types of work or using certain work arrangements under Part 5, Chemical Agents and Biological Agents, relating to extended work periods, Part 14, Cranes and Hoists, relating to chimney hoists, Part 19, Electrical Safety, relating to high voltage, and Part 21, Blasting Operations, relating to mobile drill rigs, have also been removed.

For details of the approved amendments and explanatory notes, visit the WorkSafeBC website at <http://www2.worksafebc.com/Publications/OHSRegulation/Home.asp> and click on the link to the February 1, 2012 pending regulatory amendments.

For further information on this article please contact Shane Hopkins-Utter, at Shane.hopkins-utter@gowings.com, 1-866-862-5787 ext 42785.

Random Alcohol Testing Case Approves use of Breathalyser on Employees

**By: Norm Keith B.A., J.D., LL.M.,
CRSP, Partner**

In a recent, important decision, Irving Pulp and Paper Limited has been lawfully permitted to impose random alcohol testing by breathalyser on employees. The New Brunswick Court of Appeal unanimously ruled that

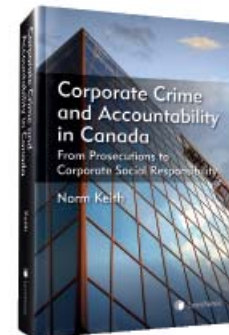
the lower court judge was right in upholding the testing policy of the employer.

Irving Pulp and Paper Limited operates a paper mill in New Brunswick. Because of problems with alcohol use and alcoholism among its employees, the paper mill implemented a policy of annual random alcohol testing of 10 per cent of the workers in safety-sensitive positions. The names of the workers would be randomly selected by a computer program. Although a worker passed his random alcohol breathalyser test, he filed a grievance with the Union complaining that this violated his right to privacy, and his right to be free from discrimination on the basis of a disability. The Arbitration Board ruled that the policy, without a history of prior incident supporting its development, was inappropriate and unenforceable. The arbitrator held that “without cause” or random alcohol testing through a breathalyser was not reasonable. In balancing the employer’s interest and obligation to provide a safe workplace, with the employees’ rights of privacy and freedom from discrimination, the Arbitration Board held that the employees’ interests outweighed those of the employer.

The majority Arbitration Board decision was overturned on a judicial review by a Judge that was ultimately upheld by the New Brunswick Court of Appeal. Due to many high-risk pieces of equipment and processes at the paper mill, the Court accepted the employer’s argument that workers are exposed to a high degree of danger, and in this inherently dangerous workplace, a policy of random alcohol testing

Corporate Crime and Accountability in Canada From Prosecutions to Corporate Social Responsibility

By Norm Keith



Corporations are increasingly becoming the subject of criminal investigation and prosecution. Reputational damage from prosecutions can be devastating and permanent. Investigations and prosecution can drive down corporation’s stock price, erode public confidence, and result in crippling fines. In an era when corporations are being increasingly scrutinized, business leaders must take immediate steps to protect themselves and their enterprises.

Author Norm Keith has successfully defended more than 1,000 regulatory and criminal charges against corporations across Canada. He studied trends in corporate crime during his master in law degree. Drawing on this experience, he provides a reliable, concise and practical review of corporate crime, regulatory offences, and accountability of corporations under Canadian law.

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was justified even without a history of alcohol-related problems at the workplace.

The court acknowledged that the use of alcohol may be a prohibited grounds of discrimination under Human Rights legislation as a “disability”. Therefore, random alcohol testing must be justified as a reasonable good-faith requirement. The use of a breathalyser as a means to detect impairment by alcohol was inherently more reliable than testing workers for drugs. Therefore, the Irving Pulp and Paper decision stands for the proposition that workplace safety is a valid justification for alcohol testing, as long as the employer can show the concern is genuine for workers’ safety, and the testing is a reasonable and necessary precaution to protect the workers and the property at the plant. This case will support employers with significant workplace dangers in their attempt to conduct random alcohol testing, before there is a serious incident at the workplace.

For further information on this article please contact Norm Keith, at norm.keith@gowlings.com, 1-866-862-5787 ext 85699.

Racking and Storage Hazards Blitz at the Ministry of Labour

By: Kitty Leung, H.B.Sc., M.P.H., OHS Consultant

The Ministry of Labour (MOL) decided to focus its inspections on racking and storage hazards at industrial workplaces across Ontario.

As part of the Safe At Work Ontario strategy, MOL inspectors will target hazards involving the installation, use, maintenance and repair of racking and storage systems. Specifically, they verify the following:

- **Installation and Selection:** Ensure racking and storage systems are properly selected and installed to ensure the safety of workers.
- **Condition of Racks:** Ensure racking, storage systems and pallets are properly maintained, repaired, and replaced as necessary.
- **Use of Racks:** Ensure materials are properly loaded into the racking and storage systems. Ensure safe operation of forklifts and that the forklift has the capacity to carry the required loads of the materials.
- **Related Issues:** Ensure there is adequate lighting in racking and storage system area, and aisles between racking and storage systems are not obstructed.

MOL inspectors will focus their inspections at workplaces that has been identified as high-priority due to potential hazards involving racking and storage systems, workplaces with poor compliance history, and workplaces where there are complaints in relation to racking and storage systems.

According to the MOL, workplaces with racking and storage facilities such as warehouses, distribution centres, retail operations and manufacturing plants may contain potentially serious hazards. Employers and supervisors must take every precaution reasonable to ensure the safe operation and

maintenance of racks. Between 2006 and 2010, three workers were fatally killed and 45 workers received serious injuries in relation to racking and storage incidents. Improper racking and storage can result in materials falling from the racking and storage systems, materials blocking fire and emergency exit routes, sprains and strains from improperly lifting loads

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or moving loads that are too heavy, racking system collapsing, and spillage of materials that may result in slips, trips and falls and/or environmental damage.

To prevent injuries and fatalities related to racking, we recommend the following:

- Conduct a pre-start health and safety review on the racking or storage system.
- Train workers that work in the vicinity of the racking and storage systems or operate equipment used to load the racks. Training should include the potential hazards and applicable safe work practices.
- Supervisors and workers should conduct daily and monthly inspections of the racking and storage system to determine whether there are structural problems or damaged parts.
- Ensure racking systems are maintained in good condition.

The CSA Standard A344.2-05 User Guide for Steel Storage Racks/ Standard for the Design and Construction of Steel Storage Racks is a great resource for ensuring a safe environment where storage racks are utilized. The CSA Standard contains useful information including racking specifications, installation, inspections and hazards.

For further information on this article please contact Kitty Leung at kitty.leung@gowlings.com, 1-866-862-5787 ext 85411.

“Due Diligence” may require insubordination or a breach of confidentiality, says Court

By: David Law, B.A., LL.B, Partner

The Nova Scotia Provincial Court has delivered a troubling judgment for occupational health and safety professionals.

James Della Valle was the OHS Coordinator for the Cape Breton Island Housing Authority when on October 4, 2005 some colleagues told him about a piece of old asbestos found at work. Mr. Della Valle sent it for testing which confirmed that it contained asbestos. The lab also advised about the hazards of asbestos. Mr. Della Valle advised his supervisors in person and in writing about the issue and how to deal with it. One of the supervisors, Mr. McNeil, in turn reported it to his boss.

The Authority did nothing until the matter became known to the Nova Scotia Department of Labour in 2006 and issued 515 orders for remediation work. When charged with an offense under the *Occupational Health and Safety Act (OHS)* the supervisor Mr. McNeil pleaded guilty, saying “the buck stops with me.” The Department of Labour did not agree and charged Mr. Della Valle under s. 17 of the OHS for failing to take every precaution reasonable in the circumstances to protect the health and safety of persons in the workplace.

In the Court’s view, it was proven “beyond a reasonable doubt” that Mr. Della Valle had not taken reasonable steps to protect people. The only question was whether he had been duly diligent, within the meaning of the term as first defined by the Supreme

Court of Canada in *R. v. Sault Ste-Marie*.

At trial, Mr. Della Valle contended that having obtained information, reporting it to more senior management and advising them on how to manage it, he had satisfied both his job description and his legal duty under the *Act*. In its judgment the Court said:

There is nothing wrong with what Mr. Della Valle did. The question is whether what he did was sufficient compliance with s.17 of the OHS Act. After his meetings with MacNeil and Routledge the defendant assumed a passive role.

In convicting Mr. Della Valle and fining him \$1,000, the Court said that working within the job description was not enough to meet the legal duty; Mr. Della Valle should have done more, such as:

- Notifying others of the risk (and effectively, disclosing that his bosses weren’t dealing with it)
- Following up to see if his superiors were taking action

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- Notifying the Joint Health and Safety Committee
- Taking unilateral action to protect workers from the potential hazard

The upshot of the Court's ruling is this: if a person's legal duty exceeds the boundaries of his job description, he must act anyway – going so far as to nag his superiors, disclose their failure to act, or even act without authority to protect people from harm. To be “duly diligent” then, means to be insubordinate and possibly to violate obligations of confidentiality within the company.

To many, the public interest of reporting a hazard will seem more important than a person's loyalty to the employer. Yet this principle would place a burden on occupational safety professionals, who are hired specifically to identify risks and advise companies on how to address them. OHS professionals are hired to find and know about problems, and to fix them – when they can. To turn OHS professionals into watchdogs for the public interest could interfere with the positive difference they make in thousands of workplaces, and put them in an impossible conflict of duties. Such a rule, applied broadly, could do more harm than good and

would seem the very opposite of the practical due diligence envisaged under the law.

For further information on this article please contact David Law at david.law@gowlings.com, 1-866-862-5787 ext 58829.

2011 Notice of Proposal to Adopt New or Revised Occupational Exposure Limits or Listings for Hazardous Chemical Substances

By: Roshni Vaz, B.A.Sc., CRSP., OHS Consultant

The Ontario Ministry of Labour (MOL) is seeking input on the proposed adoption of new or revised occupational exposure limits (OELs) or listings for nine hazardous chemical substances. These hazardous chemical substances and their corresponding OELs are set out in Regulation 833, Control of Exposure to Biological or Chemical Agents, R.R.O. 1990 (Regulation). The Regulation, made under the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 (OHS) sets the criteria for controlling

worker exposure to hazardous biological and/or chemical agents in the workplace.

The intent of these controls is to protect workers from hazardous exposure related to the storage, handling, processing or use of hazardous chemical and/or biological agents in the workplace. OELs restrict the amount and duration of worker exposure to hazardous chemical and/or biological agents.

The Canadian Centre for Occupational Health and Safety (CCOHS) defines hazardous as potentially harmful. The hazards of a material are evaluated by examining the properties of the material, such as toxicity, flammability and chemical reactivity, as well as how the material is used. How a material is used can vary greatly from workplace to workplace and, therefore, so can the hazard. Hazardous substances come in different forms. They may be categorized as one or more of the following: dust and fibres, gas, vapours, smoke and fumes, and chemical substance.

The proposed changes are based on recommendations by the American Conference of Governmental Industrial Hygienists (ACGIH). ACGIH is a private,

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not-for-profit, nongovernmental corporation, made up of members who are industrial hygienists or other occupational health and safety professionals. ACGIH publishes guidelines known as Threshold Limit Values (TLVs) and Biological Exposure Indices (BEIs) for use by industrial hygienists and safety professionals in making decision regarding safe levels of exposure to various chemical and physical agents found in the workplace.

A chart posted on the Ministry of Labour's website contains the proposed new and/or revised OELs or listings for the following nine hazardous chemical substances: Acetic anhydride, Allyl chloride, Carbon black, Ethyl benzene, Maleic anhydride, Methyl isopropyl ketone, 2,4-Pentanedione, Soapstone and 4,4'-Thiobis(6-tert-butyl-m-cresol).

Highlights of the proposed changes include the revisions to OELs or listings for seven hazardous chemical substances currently regulated, the addition of one substance, 2,4-Pentanedione to be regulated and the withdrawal of the listing and specific exposure limit for a substance called Soapstone. The ACGIH has recommended that Soapstone be regulated under the OEL for Talc.

Changes to OELs may have an impact on certain components of a company's industrial hygiene control program such as sampling and methods used to determine the concentration of the agents. It is for this reason, among others that the MOL is interested in hearing comments from stakeholders about the proposed changes.

Stakeholder input has historically been, and continues to be, an essential part of the OEL updating process. As referenced on the MOL website, stakeholders are invited to submit comments on any or all of the proposed OEL changes. This consultation opportunity also allows stakeholders to submit a substance(s) for OEL development. Submissions must include specific information with respect to the proposed limit, along with supporting documentation used by a jurisdiction that has adopted the proposed limit as safe practice, if any.

The consultation period ends February 17, 2012. For additional information go to the MOL's website at www.labour.gov.on.ca/english/about/consultations/oels. For assistance with developing an industrial hygiene control program please contact Roshni Vaz at roshni.vaz@gowlings.com, 1-866-862-5787 ext 84409.

New OHS Regulation Proposed to Expedite Resolution Of Reprisal Allegations

By: Ryan D. Campbell, B.A., J.D., Associate

On December 16, 2011, the Ministry of Labour released a proposal to create an additional Regulation under the *Occupational Health and Safety Act (OHS)* to expedite the resolution of reprisal allegations under section 50 of the OHS. This new Regulation would broaden the mandate of the Office of the Worker Advisor (OWA) and the Office of the Employer Advisor (OEA) to include the providing of educational information, legal advice and representation to non-unionized workers and small employers in respect of reprisal complaints and referrals to the Ontario Labour Relations Board (OLRB). These additional services would be provided free of charge.

Both the OWA and the OEA are constituted by section 176 of the *Workplace Safety and Insurance Act, 1997*, which assigns to these organizations the functions of educating, advising and representing workers and employers. The only restriction on this mandate is that the OWA is to represent workers who are



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not members of a trade union, and the OEA is to represent employers that have fewer than 100 employees.

The proposed additional obligations of the OWA remain consistent with its purpose to educate, advise and represent non-unionized workers. However, this Regulation proposes to limit the availability of OEA assistance on reprisal matters to employers with fewer than 50 employees.

This proposed regulation comes in response to recommendations of the Expert Advisory Panel on Occupational Health and Safety, which conducted a comprehensive review of Ontario's health and safety system in 2012. Specifically, the Panel recommended:

- The Ministry of Labour and the Ontario Labour Relations Board should work together to develop a process to expedite the resolution of reprisal complaints under the *Occupational Health and Safety Act*
- The Ministry of Labour should review its prosecution policy and develop guidance for inspectors on when to lay charges for a contravention of section 50 of the

Occupational Health and Safety Act

- A worker or employer involved in a reprisal complaint should have access to information and support from an independent, third-party organization, such as the Office of the Worker Adviser or Office of the Employer Adviser

In light of these recommendations and proposed statutory amendments, employers are reminded that the *OHS Act* prohibits the dismissal, threat of dismissal, discipline or suspension, threat of discipline or suspension, penalization, or intimidation or coercion of a worker because the worker has acted in compliance with the *OHS Act* or the regulations or an order made thereunder, has sought enforcement of the *OHS Act* or the regulations, or has given evidence in a proceeding in respect of the enforcement of the *OHS Act* or the regulations or in an inquest under the *Coroners Act*.

Ensuring that all parties are properly informed and adequately represented in reprisal proceedings before the OLRB certainly has the potential to speed up the process of resolving

reprisal allegations, provided that adequate resources are allocated by the Ministry of Labour to support this new initiative.

At this time, the Ministry of Labour is inviting public comment on the proposed Regulation, from December 16, 2011 to January 31, 2012 to the Ministry of Labour within this window to ensure that their opinions are considered in the drafting of the proposed Resolution.

If you have any questions, or if you would like further information on how this proposed Regulation could affect your organization, please contact Ryan D. Campbell at ryan.campbell@gowlings.com, 1-866-862-5787 ext. 83558.

Due Diligence Requires All Workers to be Trained in Safe Work Procedures

By: David Marchione, BA, CHSC, CRSP, OHS Consultant/
Paralegal

In November 2011, BFI Canada Inc. was convicted of charges under Ontario's *Occupational Health and*



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Gowlings is offering a 2 three (3) hour seminar on the new **Integrated Accessibility Standard (IAS)** and the new **Accessibility Standards for Customer Service (ASCS)**, established under the *Accessibility for Ontarians with Disabilities Act, S.O. 2005 (the AODA)*.

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Safety Act following an injury to a temporary worker. Information from the Ministry of Labour following the conviction indicates that BFI was convicted of failing to provide information, instruction and supervision to a temporary worker. The worker, hired through a temporary personnel agency, was performing garbage collection services when he suffered an injury to his foot. The worker exited the garbage truck while it was still moving and the truck ran over it. BFI had procedures on the safe collection of garbage but did not advise the temporary worker of them. BFI was fined \$150,000 upon conviction, plus a 25 per cent victim surcharge.

Health and safety legislation across the country sets out duties for workplace parties, including employers, supervisors and workers. Employers are generally required to take all reasonable precautions to protect

workers at the workplace. That would include their own workers, and anyone else performing work at the workplace. Unfortunately, we do see cases where temporary workers are not given the same training as an employer's own workers.

Discussions with employers who hire workers through temporary personnel agencies indicate that they do not provide the same training to temporary workers as they do to their own workers as there is a perception that those workers are sent from the personnel agency with the training required to perform the work. Although temporary personnel agencies often do provide training to workers, it is still the principal employers' responsibility to ensure that any workers are trained on work- or site-specific hazards, including any specific work procedures in place to ensure worker safety.

From a due diligence standpoint, employers should not discriminate

between their own workers and temporary workers. Employers should ensure that all workers performing their work, or exposed to hazards at their workplace are provided with the information and instruction for their protection. This may include orientation training as well as information on all safe work procedures required for their protection. The BFI conviction serves as the latest example of the importance of providing such instruction and is meant to act as a message to other employers to ensure that such training is provided.

For further information on this article please contact David Marchione at david.marchione@gowlings.com, 1-866-862-5787 ext 84378.

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