



# THE LAWRENCES<sup>®</sup> LETTER

News and information for clients and friends of Lawrence, Lawrence, Stevenson LLP

FALL 2010

## EMPLOYMENT AND LABOUR LAW

### Preventing Violence and Harassment at Work

#### Karie Ann Benham

Janet manages a dry cleaning branch that employs six people in different shifts. On receiving government notices about new regulations concerning violence and harassment in the workplace, she calls her regional manager for guidance. He tells her, "Oh, you don't have to worry about that. It's just for big places like factories and hospitals." Janet responds: "But it says here that any workplace with five or more employees has to comply with these regulations."

Janet is correct.

Amid growing concerns about violence and harassment in the workplace, the Ontario government recently amended the *Occupational Health and Safety Act* (OHSA). The amendments (Bill 168) came into force on June 15, 2010 and impose significant obligations on employers of five or more workers in Ontario.

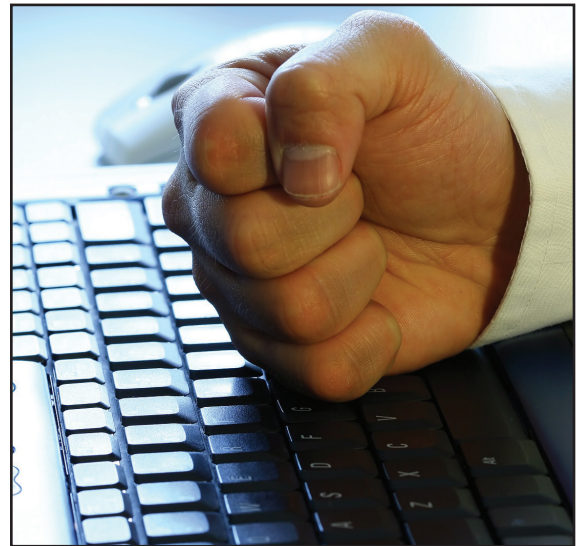
Employers found guilty of breaching these new OHSA provisions can be subject to fines of up to \$500,000 per conviction. Individual employees and supervisors can be fined up to \$25,000 per breach and be subject to 12 months' imprisonment. In light of over \$1 million in fines recently levied against a Canadian company for breaches of the OHSA, Ontario employers would be wise to take a proactive approach.

#### Required Policies and Programs

Bill 168 requires employers to identify potential sources of violence and harassment in their workplaces, and then implement comprehensive policies and programs to protect their workers.

Drafting and posting a simple workplace violence and harassment policy is only the first step toward compliance. Programs must monitor and control any associated risks and include procedures for reporting, investigating and resolving incidents or complaints of violence and/or harassment in the workplace.

Employers must also reassess the workplace for violence risks as often as necessary to ensure effective protection for workers.



#### Employee Education and Training

Training employees how to interpret and use these policies and programs, especially those employees in a supervisory or managerial role, is critical to the prevention and appropriate handling of workplace violence or harassment.

Under the new Act, supervisors must advise workers about the existence of any potential or actual danger to their health or safety of which the supervisor is aware. In some cases, this involves disclosing certain personal information, which can raise potential privacy concerns. It would be prudent to consult an employment lawyer for guidance.

Our lawyers are familiar with the obligations created by Bill 168 and can help your organization implement a comprehensive and effective program to address potential violence and harassment in your workplace. We also offer on-site training for your employees.



Karie Ann Benham is an associate in Lawrences' Litigation Group. Her practice is focused on all aspects of employment, labour, human rights, and health and safety law. She can be reached at (905) 452-6878 or [kbenham@lawrences.com](mailto:kbenham@lawrences.com)

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## Blended Families: Who Gets What?



### Michael J. Prsa

With the rise in divorce and remarriage, many family units involve children from prior relationships and multiple sets of parents. In many such families, the challenge is to make fair provision for the second spouse while also leaving something for the children of the prior relationship and/or the current relationship. The law imposes different obligations for the division of assets depending on whether the spouses are living common law or are legally married.

The law also requires that we make fair provision for our “dependents”. Many couples are surprised when they find out that the plan they designed may not be upheld after one or the other of them dies.

The following fact situation illustrates just a few of the issues and planning considerations that couples in blended families must deal with.

### The Situation

Jim, a divorcee, and Carol, a widow, married two years ago.

Jim has two children from his first marriage. Both are financially independent adults. Jim is paying spousal support to his ex-wife pursuant to a Separation Agreement.

Carol has three adult children from her first marriage. Two are married and financially independent. The third child, Martha, has special needs and lives with Jim and Carol.

Carol’s children are civil to Jim, but their relations are strained; they suspect that Jim is a “gold-digger” as Carol had significantly more assets than Jim when they married.

Jim and Carol each have wills they made before their marriage.

### Prior Wills

On Jim and Carol’s marriage, their prior wills would automatically be revoked, unless the pre-existing wills state otherwise. If either of them dies before new wills are completed, that spouse would die without a will (“intestate”) and that spouse’s estate would be distributed in accordance with the rules for intestate succession, not the terms of the prior will.

### New Wills

A will is not a contract: either Jim or Carol can change their respective wills at any time. If they want a particular plan to remain in effect, they may need more than a will; i.e. a trust, a mutual will agreement or a marriage contract. There are pros and cons to each option.

### Legally Married Spouses and Property

Under the Family Law Act (FLA) of Ontario, a legally married spouse is entitled to an “Equalization of Net Family Property” on dissolution of the marriage or on the death of the other partner. This right to equalize Net Family Property does not presently extend to common law spouses. If Jim’s or Carol’s plan does not leave the surviving spouse an amount equal to or greater than the entitlement under the FLA, the surviving spouse may make a claim against the estate of the deceased spouse for the value that he or she is entitled to under the Family Law Act.

### Dependants

In Ontario, each of us has a legal obligation to make adequate provision for our dependants. If adequate provision has not been made, the dependant can make a claim against the estate. Each spouse and child may be a dependant of the other. Carol’s adult daughter, Martha, may also be a dependant because she has

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special needs. If Carol leaves all of her estate to Jim, Martha may make a claim against Carol's estate. Martha may also be Jim's dependant, since she is living with him and Carol and Jim may be providing financial assistance to her. Jim may be legally obliged to provide for Martha as well as Carol.

### Special Needs Beneficiary

If Jim and Carol wish to set aside a portion of their respective estates for Martha, they should consider a Henson Trust structure. This type of structure may preserve Martha's entitlement to government benefits relating to her disability.

### Support Obligation from Prior Relationship

Jim should ensure that his estate plan deals with his support obligations to his former wife. If life insurance has not been arranged, this would be a good time to consider it, to avoid a claim from the former spouse after Jim dies.

### Income Tax Considerations

Significant capital gains tax obligations can be deferred on death if the beneficiary of certain assets is a spouse or a spousal trust. If Jim names Carol as beneficiary of his registered plan, the full value of the plan may be rolled over to Carol's plan on his death and immediate tax consequences avoided. If, on the other hand, Jim named his children as beneficiaries of his RRSP, subject to some exceptions, the full value of the RRSP would be taxed upon Jim's death. Jim's estate would pay the tax, even though the RRSP would be paid to the children.

### Choice of Executors

This is a very difficult decision in most cases. Should Jim appoint Carol or should he appoint his children? Executors have certain powers and may be tempted to prefer their own interests to the interests of other beneficiaries. It is generally not recommended that the second spouse be appointed jointly with the children or child from the prior relationship.

These situations are ripe for conflict and litigation, with accompanying cost to the estate. In appropriate cases, a neutral third party and/or a corporate executor should be considered.

This article touches on some of the issues and the complexity of estate planning for couples with blended families. Failure to obtain proper advice and to plan may result in unintended consequences, not to mention significant cost and delay in the administration of the estate.

This article is intended as a general overview and is not intended as specific legal advice. Readers are cautioned not to rely on the information provided herein and should seek specific legal advice for their own situation.



*Michael Prsa chairs Lawrences' Wills, Estates, and Trusts Group. A member of the Society of Trusts and Estate Practitioners, Mike focuses his practice on estate planning, estate administration and estate litigation. He can be reached at (905) 452-6880 or mjprsa@lawrences.com.*

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### Notice to Farmers and Developers of Farm Lands

The bobolink, an Ontario bird that nests in hayfields, has been added to the list of threatened species under a new regulation of Ontario's *Endangered Species Act* that came into effect on September 28, 2010. Since the bobolink and its habitat are now protected, this has implications for farmers and developers of farm lands. There are substantial fines and even jail terms for contravening the Act by disturbing the birds' habitat.

Lawrences recommends that farmers who plant hay and developers considering purchasing farm lands contact us for advice on how to comply with the new legislation with the least disruption to their operations.

Contact Heather Picken at 905 452-6891 or hpicken@lawrences.com

## Life at Lawrences®

*Lawrences®' lawyers lead active lives in the profession and in the community. Here are some of their latest achievements.*



Professional of  
the Year!

New Arrivals

Northern  
Exposure

### Professional of the Year!

It's a long tradition at Lawrences to be active in the community, so we were very proud when the head of our Estates & Trusts Group Michael J. Prsa recently received the Professional of the Year award from the Canadian-Croatian Chamber of Commerce. Over 400 people attended the chamber's annual awards banquet to recognize leadership, innovation and excellence within the Croatian Canadian business community. Above, John Marion (centre left), President of the Croatian Canadian Chamber of Commerce, presents Mike with a water colour painting of his hometown in Croatia. Congratulations, Mike!

### New Arrivals

Lawrences' Litigation Group is growing apace, welcoming two new members this year.



Karie Ann Benham joined Lawrences from a large, downtown law firm. Her practice is focused on all aspects of employment, labour, human rights and health and safety law. Karie Ann works closely with corporations, human resource professionals, in-house legal counsel and employees, providing proactive and long-term strategic advice on a full range of employment and labour law matters. Karie Ann can be reached at (905) 452-6878 or [kbenham@lawrences.com](mailto:kbenham@lawrences.com).



Sahar Cadili joined Lawrences after being called to the bar this year. Her practice is focused on civil litigation, including corporate/commercial disputes, landlord and tenant matters, expropriations, loan transactions and

estate litigation. She has already successfully handled a very high profile case that attracted considerable media attention. Sahar can be reached at (905) 452-6885 or [scadili@lawrences.com](mailto:scadili@lawrences.com).

### Northern Exposure



The recession has kept Lawrences' Bankruptcy and Insolvency Group very busy. Since municipalities are sometimes the creditor when local businesses go bankrupt, the group's leader Rob van Kessel was called upon this spring to give seminars on bankruptcy and insolvency law for municipalities in northern Ontario. Organized by Municipal Tax Equity Consultants, the seminars took place in North Bay and Thunder Bay. Representatives from 16 Ontario municipalities attended.

## THE LAWRENCES® LETTER

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