Institute of Chartered Secretaries and Administrators

Canadian Division
Applied Business Law

Sample Paper – Suggested Answers

Important notice

When reading these answers, please note that they are not intended to be viewed as a definitive 'model' answer, as in many instances there are several possible answers/approaches to a question. These answers indicate a range of appropriate content that could have been provided in answer to the questions. They may be a different length or format to the answers expected from candidates in the examination.

Questions

*Answer **four** questions from this paper.*

All questions carry EQUAL marks

1. Marlow, a medium size hardware distribution firm, received an order from a business trading retailer, Matrix, operating from 23 Holly Road, Kanata, Ontario, for 50 HP laptops. The order was presented on Matrix's letterhead, Matrix, 23 Holly Road, Kanata, Ontario.

   Unknown to Marlow, there is an established business called S&B Matrix & Co. Ltd., whose place of business is also on Holly Road, Kanata but operating from number 32. A letter purporting to come from the Holly Road Branch of Scotia Bank, supporting the credit worthiness of Matrix, accompanied the order. However, this letter was subsequently discovered to be a forgery.

   Marlow despatched the laptops, which were delivered to 23 Holly Road, Kanata. The following day, a man representing himself as James Crowe, the proprietor of Matrix, called at Marlow's premises. He thanked Carles, the order clerk, for the delivery of the laptops and asked for five HP netbooks which he wanted to take with him.

   Carles telephoned the number on record, taken from the Matrix's letterhead from which the order for the laptops had been made and he obtained confirmation that James Crowe was the proprietor of Matrix. The netbooks were handed over to Crowe.

   It was later discovered that no business was being conducted at 23 Holly Road, Kanata and the person calling himself James Crowe cannot be found. Further, it was revealed that the computers were purchased in good faith by Stephen Smith from the man purporting to be James Crowe. This came to light because Marlow had not been paid for the goods. The invoice and the statement of account were returned by Canada Post, the reason being "addressee unknown". After contacting Hewlett-Packard (Canada) Co. in Mississauga with the serial numbers of the computers, Marlow learned that the computers are registered to Stephen Smith of Caveat & Emptor Enterprise.

   Required

   Advise Marlow as to their rights against Stephen Smith.

   (25 marks)

   Question 1 Textbook references:

   The Criminal code: crime corp p382, commercial fraud, p5, p12, p232
   The Competition Act, Misleading information p187, p602
   The Sale of Goods Act, title p586 p587 p591
   Sales of Goods Act – remedy of breach, title, p586, p587, p591
   Void and voidable contracts, p174
   Justification of void, p181, p182
   Doctrine of mistake, p184

Mistaken identity, p184, p185, p186
Misrepresentation, p182, p281
Misleading information, p187, p602
Due diligence, p604
Credit bureau, p663
Fraud, p280
Tort of deceit, p183
Deceit, passing off, p230
Remedy to owing, judgement of seizure of asset, p671, p673

Suggested Answer

Marlow's right against Smith lies, based on the contract of sale of the goods to Matrix and Crowe, on whether the title of the goods has passed to Matrix and Crowe. This further centres on whether the contract is void (no contract) for mistake or voidable (enforceable until any party having the right decides to rescind) because of fraudulent misrepresentation. These situations are included in the legislative regimes of the Criminal Code, the Competition Act and the Sale of Goods Act.

If the contract were determined to be void, sale did not take place and the title to the goods did not pass on to Matrix & Crowe who therefore could not transfer title to Stephen Smith. Marlow can therefore reclaim the goods from Stephen Smith.

To show the contract to be void, it is required to demonstrate:

(i) Mistaken identity
The identity of the entity and person Marlow contracts with is crucial to the contract. However, this may be difficult for Marlow to establish since Marlow does not know of the existence of S&B Matrix & Co Ltd and therefore there is no confusion between S&B Matrix and Matrix. If Marlow were aware of the good reputation of S&B Matrix & Co Ltd and established that they only intended to deal with the reputable company and not with Matrix and Crowe, the contract is void for mistaken identity.

(ii) Crowe's intention to misrepresent
James Crowe knows that he is not the person Marlow intends to deal with and Crowe deliberately misrepresented this to Matrix with a forged bank letter and passing off (the offence of resembling forgery) by using a similar name and address to S&B Matrix &Co Ltd.

(iii) Marlow has exercised reasonable due diligence to secure proof of identities of Crowe and Matrix
Marlow should use reasonable steps to verify the identity of Crowe and Matrix.This could also be a problem for Marlow as they had limited their verification to a letter from the bank to satisfy themselves that Matrix is a reputable firm and Crowe is the proprietor of Matrix by phoning the number in the purchasing order. A credit check with a credit bureau (Equifax Canada or D&B Canada**) [or any valid bureau in Canada],** as well as an independent confirmation call to the Scotia Branch should have been made so as to reduce the possibility of potential default risk. Any default in collection amounts to a substantial loss to Marlow. The

order is on credit and the value is significant (price of a HP laptop is around $800/unit, including the netbooks, the sale proceeds would be in the magnitude of $40K).

In the case of the contract being voidable, it would appear that the title did pass to Crowe and legitimately transferred to Smith who becomes a bona fide purchaser for value who has acted in good faith and is thus entitled to keep the goods. This is because the fraudulent misrepresentation has not been discovered in time to rescind the sale contract. However, if Crowe could be found, Marlow may claim damages for misrepresentation. Additionally, Marlow could also seek reparation under tort of deceit for fraudulent misrepresentation.

In the context of the above analysis, with respect to the rights against Stephen Smith, this may not prove to be very optimistic, because of the difficulty of proving that title of goods did not pass to Matrix and Crowe. As such, the contract of sale of the goods to Matrix and Crowe cannot be considered void. There would appear to be no mistaken identity and insufficient due diligence to secure the proof of identities of Crowe and Matrix, though Crow's appears to intend to defraud Marlow by misrepresentation. Nonetheless, the evidence appears to suggest that a judgement could be secured against Matrix and Crowe, since Matrix/Crowe failed to pay for the purchase and money is owed to Marlow. With the court order, if and when Crowe is located his assets may be seized. However, the possibility of finding Crowe is unlikely. Therefore, Marlow may be required to write off the sale as loss and treat this as a lesson learnt and adding this to its knowledge inventory.

2. Caroline Goodbos, the CEO of Latimer Incorporated, in Toronto, decides to reward her staff for all their hard work during the previous 12 months by organising a trip to see horse racing at the Woodbine & Mohawk Racetrack, Rexdale. She asks Valerie Prioracis, the assistant company secretary, to organise the event. Valerie makes a number of enquiries and finally hires a coach**,** on behalf of Latimer**,** from Executive Coaches to take the staff to the racetrack at Rexdale. Executive Coaches is a small, newly formed limousine provider, owned by four ex-employees of B&W Dalmatian Incorporated, specializing in luxury transport services. They were chauffeurs of B&W Dalmatian's limousine division, where they had taken early retirement because of company restructuring and downsizing.

   Executive Coaches charges $1,000 and Valerie, on behalf of Latimer, paid a deposit of $250 in advance.

   On the morning of the trip, it is announced on CBC Radio 2 that the races have been cancelled as animal rights activists have damaged the course. As this will take considerable time to repair, the Racetrack is closed.

   Latimer is demanding a refund of the $250 deposit and is refusing to pay the outstanding balance on the ground that the contract has become frustrated.

   Required

   Advise Latimer.

   (25 marks)

   Question 2 Textbook references:

   Void and voidable contracts, p174
   Frustration p202, p205-7
   Force Majeure p206-7
   Provincial statutes dealing with frustration, p207
   Case: (Taylor v Caldwell 1863), p206

   Suggested Answer

   Latimer's issues centre on voiding a contract and the doctrine of frustration. Voidable refers to a contract being enforceable until any party having the right decides to rescind. The doctrine of frustration is one of the ways in which contractual obligations can be terminated. It arises where an external event, which is not the fault of either party renders performance of the contract impossible or radically different from what has been contracted for**,** (Taylor v Caldwell 1863).

   The purpose of the hire of the coach stated in the agreement between Latimer and Executive is therefore crucial. There is a difference between Executive being contracted to take the staff for a day out at the races and Executive is being contracted to transport them to the Rexdale Racetrack only. If it is the latter, then, arguably this can still go ahead. However, if the purpose for hiring the coach is to take staff to the races, which is the foundation for the contract and is written into it, and this can no longer be achieved then the purpose of the contract is frustrated.

If the contract for hiring Executive is frustrated, the common law view would be that the $250 would have forfeited to Executive and at the same time the outstanding balance is not collectable. However, some provinces have statutes which attempt to address the issues with frustration. Further, a contract only becomes frustrated if the contract is impossible to perform or performance has become radically different and not simply more difficult or expensive to perform. Furthermore, if there is a dual purpose to the contract and one of those purposes is still achievable then the contract is not frustrated. Hence, if the visit to the races was not the sole purpose of the coach trip the contract would not be frustrated as Latimer's employees could still get some benefit even if the main event is no longer possible.

Nonetheless, provisions are normally included in a contract as to what is to happen in certain circumstances, e.g. a force majeure clause. If an event and its condition were provided for in the contract, the contract would not be deemed to be frustrated and the contract would continue. In this scenario, there is nothing to indicate that the parties have made any provision as to how to allocate risk in the event of the contract becoming impossible to perform (indications are provided that Executive was newly formed by four operatives who are inexperience in contract dealings). Hence, the doctrine of frustration may apply. However, the court may deem that such an event as animal rights activists damaging the course is foreseeable (which is a possibility in a climate of political unrest). As a result, frustration will not apply and the court will decide on the allocation of risk between the parties.

Latimer should be advised that if the contract has been frustrated, under common law, the deposit will be forfeited but will not be liable to pay the balance, subject to any order for recovery of expenses. If, however, the court finds that the contract has not been frustrated because the purpose of the contract is hiring of the coach, and that can still go ahead, then Latimer will not be able to recover the $250 deposit and will be required to pay the balance of the hiring charges.

3. Jenny Brondumbe is employed as a company secretarial assistant of Fabrico Ltd ('Fabrico'). She was instructed to order a cargo of cotton to be shipped from India to the port of Vancouver, on the Luciana, a ship owned by Dreadle Ltd. Unfortunately, the ship collided with another ship, the Blackwatch 2, owned and operated by Carson Line. The collision was entirely due to Carson Line's negligence. Part of the Luciana's cotton cargo was damaged by sea water and it could only be sold at a reduced price for low-grade cloth. The collision delayed the Luciana and, by the time the cotton was delivered, the market price had fallen dramatically.

   This incident severely affected Fabrico's business, but Artur Townsend & Co. ('Townsend'), Fabricos' auditor, negligently failed to discover this when examining Fabricos' books. As a result, Fabricos' annual profit was grossly over-stated. At the time, as Townsend knew, Fabrico was the subject of takeover negotiations with Nately & Co, who subsequently bought Fabrico.

   Required

   Advise with regard to the following:

   (a) Inadvertently, insurance was not placed on the cargo. Fabrico Ltd, therefore, wish to sue Carson Line for the damage to part of the cargo and the loss of profit on the whole cargo.

   (10 marks)

   (b) Nately & Co claim that they relied on Townsends' audit report when they purchased Fabrico Ltd at an inflated price.

   (10 marks)

   (c) Greg Shreudmun claims, in relying on Townsend's audit report, that he retained his shares in Fabrico Ltd and he suffered losses when the value of the shares fell as the true facts became known.

   (5 marks)

   (Total: 25 marks)

   Question 3 Textbook references:

   Tort p229
   Tort – do not deal with economic loss p255
   Damage and remedy, p213
   Difference between Contract law and Tort, p213
   Remoteness, p214, p253
   Privity of contract p208
   Duties of auditors p258
   Case: (Hercules Management Ltd v E&Y 1997), p258

   Suggested Answer

   (a) The central issues are the responsibility for damage and remedy for economic loss under the law of tort. The law of tort usually only permits claims for primary and direct economic loss such as a claimant who suffers a personal injury and is unable to work, or damage to person or property. A claim, therefore, may be made under the law of tort for these losses. However, it generally does not allow claims for pure economic

loss, which is secondary and indirect. The law of contract is the means to compensate pure economic loss.

Fabrico could have a good claim against Carson Line for the damage to the cargo and loss of profit resulting from the loss of the cotton. They would not be successful for the loss of profit on the undamaged cotton which had been sold cheaply due to the decline in market price.

(b) An auditor (a public accountant) assesses the statements prepared by management of a company and expresses his opinion with respect to these statements after an examination of the company's books and other appropriate inquiries. The statements then become audited statements. The purpose of the audited statements and the opinion is to report to the shareholders the validity of the financial health of the company enabling the existing body of shareholders to exercise control over the company. The shareholders of a company appoint the auditor. The auditor owes his duty of care to the company and not others such as potential investors, (Hercules Management Ltd v E&Y 1997).

If Nately were just another potential investor, Nately's action against Townsend, as there is no privity of the contract and would be unlikely to succeed in a claim against Townsend. However, Townsend was aware of Nately and Fabrico possible takeover negotiations for a possible takeover and Townsend would owe a duty of care to those people they know will rely on its audit. Therefore, Nately may succeed in a claim against Townsend.

The public policy arguments that to find auditors liable for the negligent audits would expose them to liabilities in an indeterminate amount, for an indeterminate time , and to an indeterminate class will not apply here . It is because they will not be liable to all potential claimants who rely on their audits for the purpose of making a takeover bid and Shreudmun was not aware of the the takeover bid. Townsend, however, will only be liable to those parties of whom they have actual knowledge in the negotiation, i.e. Nately & Co.

(c) An auditor does not owe a duty of care to any individual shareholder who relies on the auditor's opinion to buy shares with a view to profit. But, the auditor owes a duty of care to the company as a whole enabling shareholders to exercise informed control over the company.

The advice provided to Greg should be that an auditor owes no duty of care to any individual shareholder who relies on the auditor's opinion. Therefore, retaining, buying and/or selling shares with a view to profit based on the opinion of the audit report for guidance is not the auditor's responsibility**,** it is unlikely that Greg would succeed in a claim against Townsend.

4. Sophia von Lauder is an aesthetician and distributor of high-end beauty products based in Hull, Quebec. She travels around the country as a beauty consultant, selling her products to beauty salons. While visiting Ottawa, she only stays at the Grande, a boutique hotel, and drives her 1954 Gullwing Mercedes which she inherited from her grandparents. She also always asks for Room 121. Behind the bedroom door, there is a notice that reads:

"The management accept no liability for loss or damage suffered by visitors which is caused by the negligence of our employees or contractors."

Sophia once again visits the Grande Hotel ('the hotel') with her Gullwing and is booked into Room 121.

(i) Karles, the valet, parks her Mercedes but accidentally reverses into the garden wall, causing damage to the trunk and bumper.

(ii) Sophia decides to have dinner at Zoé, a chic lounge restaurant of Chateau Laurier, and on the way, she trips over a loose carpet in the hotel's lobby and falls to the floor, breaking her foot and damaging her new Christian Dior sunglasses.

(iii) After returning from the local hospital, Sophia discovers that her Gullwing has been stolen from the hotel premises because the security guard employed by Star Security left opened the gate of the hotel garage. Star Security has a contract with the hotel to guard their property.

(iv) It was later discovered that the thieves knew the security guard who left the gates open intentionally.

(v) Sophia considers bringing a claim against the hotel to recover the high insurance deductible of the Gullwing. The hotel also considers taking legal action against Star Security. Star Security denies liability based on a clause in their contract with the hotel which states:

'Under no circumstances will Star Security be responsible for any loss or damage caused by an employee unless this could have been foreseen and avoided by the exercise of due diligence.'

Required

Advise Sophia and the Grande Hotel with respect to each, (i) to (v), of the appropriate incidents outlined in the question.

(25 marks)

Question 4 Textbook references:

Exemption clause p161
Doctrine of privity P207-8
Negligence p248
Duty of care p256
Voluntary assumption of risk p256
Contributory negligence p237
Vicarious liability p234
Case: (Tilden v Clendenning 1978) p161
(Crocker v Sundance Northwest Resort Ltd 1988) p256

(Donoghue v Stevenson 1932), p250

Suggested Answer

The focus of the issues is exclusion clauses (exemption clauses), negligence and the doctrine of privity.

An exclusion clause is designed to exclude or limit liability for breach of contract or negligence. Traditionally the courts have tried to limit the application of exclusion clauses because they can often be used to the detriment of consumers. However, exclusion clauses are permissible in certain circumstances and can be justified that they are useful in enabling the parties to allocate risk between them.

The common law rules provide a number of methods of incorporating an exclusion clause into the contract:

1) By signature
2) By reasonable notice
3) By previous dealings

In establishing whether an exclusion clause satisfies the test of being fair and reasonable, it is necessary to consider the bargaining position of the parties. The court tends to interpret exclusion clauses 'contra proferentem' (taking the most reasonable interpretation favouring the buyer, the insured, and the weaker party etc.) in a given situation. The second important element is whether the buyer has adequate notice of the clause. Further, the nature of the notice required will depend upon the how broad the clause purports to be and how unusual the clause is. Factors to be considered include how the clause is introduced into the contract, whether the buyer has had time to read and consider the contract as a whole, the wording of the clause and the size, boldness and placement of the clause. In other words, for an exclusion clause to be effective, it must be worded broadly enough to cover the precise situation for which it is being relied on. However, some exclusion clauses are absolutely void, such as an exclusion of liability for personal injury or death due to negligence.

Therefore, in order to succeed in legal action against exclusion clauses covering potential negligence, one will need to argue that the exclusion clause has not been incorporated into the contract and therefore cannot be relied upon to exempt from liabilities.

The doctrine of privity also provides that a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it. The premise is that only parties to contracts should be able to sue to enforce their rights or claim damages. However, the doctrine has proven problematic due to its implications upon contracts made for the benefit of third parties who are unable to enforce the obligations of the contracting parties. This does not mean there is no remedy for a third party who suffered. The third party could claim under a duty of care.

Sophia is trying to claim damage and remedy from Grande,

a) Damage to her Mercedes
b) Related to theft of her Mercedes

c) Her personal injuries
d) Damage to her Dior sunglasses

Grande is trying to claim damage and remedy from Star Security on the potential liability arising from the theft of Sophia's Mercedes. Grande and Star include exclusion clauses as disclaimers in their contracts, respectively, notice behind the guest room doors and inclusion in the contract.

Sophia should be advised:
The notice, behind the guest door, does take effect because Sophia has had many previous dealings with Grande. These previous dealings have been regular and consistent. The notice, therefore, can be considered reasonable, (Tilden v Clendenning 1978).

If the exclusion clause takes effect, it would appear that it does cover the damage to Sophia's car caused by the employee, Karles, under the doctrine of privity, but Sophia can claim damage under a duty of care, (Crocker v Sundance Northwest Resort Ltd 1988). However, this exclusion clause may not cover the theft of the car. The 'contra proferentem' rule requires that any uncertainties or ambiguities in the exclusion clause be interpreted against the meaning claimed and by the person seeking to rely on it. The application of the Contra proferentem rule may, in the context of this case, not be found to be fair and reasonable as theft is a criminal act and not negligence.

Sophia tripped over a loose carpet, as a result, injured herself is clearly negligence on the part of the hotel. It is not possible to exclude liability for personal injury due to negligence. Hence, Sophia should be successful in her claim for personal injury. However, she may not be able to claim for her Dior sunglasses as the exclusion clause satisfies the test of being fair and reasonable.

The Grande should be advised:
In establishing whether an exclusion clause satisfies the test of being fair and reasonable, the bargaining position of the parties is of prime importance. As both the Grande Hotel and Star Security are large organisations of equal bargaining power, there is no 'contra proferentem'. The exclusion clause can be relied upon and the Grande Hotel ought to bear the loss, (Donoghue v Stevenson 1932).

5. Peter Green is the Executive Assistant to the Human Resources (HR) director of Delta Ltd, a provincial (New Brunswick) incorporated firm in Saint John New Brunswick. The HR director asks Peter to recommend solutions to several matters on which he has some concerns:

- Christopher Johnson had been made redundant from his position with Delta five years ago but within a matter of months Christopher was back working with Delta on a 'consultancy' basis. Christopher invoiced Delta with HST and received no holiday and vacation entitlements. He was responsible for his own income tax, CPP and IE remittances. Presently, Christopher's service is no longer required and he has been advised accordingly.

- The HR department has now received a letter from Christopher claiming that he was, at all times when acting as a consultant, a deemed employee. He is therefore claiming compensation for unfair dismissal.

- Paul Clark, who is employed by Delta as a finance officer, has discovered that his boss, Mary Thomas, the CFO, has over the past five years claimed expenses without providing receipts to support her claims. Paul sent an email to Suzanne Smith, the CEO, reporting the matter. However, Suzanne ordered Paul to delete the email and to remain quiet. Suzanne believed that if this news reached the press it could adversely affect the price of Delta's shares. Suzanne further indicated that if this information was leaked, Paul would lose his job. Paul reported the matter directly to HR.

Required

Advise Peter on:

(a) Christopher's status as an employee or self-employed. In particular, advise how this matter would be addressed in law.

(18 arks)

(b) Paul's possible claim for unfair dismissal if he subsequently was dismissed.

(7 marks)

(Total: 25 marks)

Question 5 Textbook references:

Employment versus independent contractor, p502
Characteristics of Employment contract, p501, p515
Whistleblower p546
Case: (671122 Ontario Ltd v Sagez Industries Canada 2001), p503
(Merk v International Assn of Bridge, Structural, Ornamental and Reinforcing iron Workers, local 771 2005), p546

Suggested Answer

The issues are related to:

(a) Distinction between an employee and an independent contractor

(b) Protection with respect to “whistleblowers”, and remedy to wrongful dismissal .

(a) The distinction between an employee and an independent contractor is not always clear-cut. If a contract of employment exists, there is a relationship of employer and employee where this relationship imposes certain rights and duties on each party. These rights and duties are not imposed upon independent contractors.

Employees work under a contract of service (employment) whereas an independent contractor works under a contract for services. Tests have been developed to distinguish between them:

(i) The worker agrees to provide his own work and skill in return for a wage or some form of remuneration, i.e. a ‘mutuality of obligation’ between the employer and an individual.

(ii) The worker agrees, expressly or impliedly, that in what way he will be under the control of the person paying for his work.

(iii) The remainder of the terms of the contract are consistent with a contract of employment or a contract for service. This would include factors such as who remit the income tax , who provide the equipment , membership of company pension scheme , holiday pay , vacation pay , sick pay , prohibition on working for a competitor , supply of uniform , work done on employer’s premises rather than at home , and lack of personal business risk on the part of the worker , etc.

(iv) The integration test (the organization test). The criterion is whether the worker is part and parcel of the organization (Is he in the organization chart? Is he authorized to execute important documents?)

Addressing Christopher’s case would necessitate comparing and contrasting the criteria stated above with respect to an employee or an independent contractor. The advice to Peter is that he should inform Christopher, taking into account the criteria, that it is likely he will be classified as an independent contractor and he will not be able to claim unfair dismissal. In the first place, he was dismissed and rehired on a ‘Consultancy’ basis. Under this basis, he invoiced Delta with HST, instead of collecting wages, and he received no holiday and vacation entitlements. He was responsible for his own income tax, CPP and IE remittances, (671122 Ontario Ltd v Sagez Industries Canada 2001). These evidence the characteristics of a contract for services contrary to a contract of service.

(b) Workers dismissed or penalised for making a complaint or disclosing information/evidence by the employee against the organisation may complain to Employment Standards Board.

Peter should be advised that if Paul were dismissed for whistleblowing, without proper compensation after reporting the matter of the expenses

claims without receipts, he would have a good chance of succeeding in a claim for wrongful dismissal, (Merk v International Assn of Bridge, Structural, Ornamental and Reinforcing iron Workers, local 771 2005), under the Employment Standards Legislations **and the Criminal Code.**

6. Royal Belmont Club ('the Club'), a fitness and leisure centre in Toronto, contacts you (being a human rights expert) for advice. It is because of one of the recommendations amongst the implementation objectives of Kaizen Wellbeing.

Kaizen Wellbeing is a recently conducted continuous improvement initiative at the Club. The recommendation, for better customer service and operational efficiency, is that a new female changing room attendant should be hired.

Required

(a) Advise the board of directors of the Club, in general, on the obligations imposed upon them in relation to discrimination in the recruitment and selection of employees.

(19 marks)

(b) Advise the board of directors of the Club if it would be possible to employ a female to work in the female changing room without transgressing discrimination legislations.

(6 marks)

(Total: 25 marks)

Question 6 Textbook references:

Human rights and discrimination, p506
Adverse and systemic discrimination, 507
Bona fide occupational requirement, p507
Case: (BC [Public Service Employee Relations Commission] v BCGSEU 1999), Ther Meiorin Case, p508

Suggested Answer

The issue is centred on human rights, particularly, discrimination concerns.

(a) Advice to the Board on obligations in general:

Legislation such as The Ontario Human Rights Code, and the Charter of Rights and Freedoms provide protection against discrimination. The prohibited grounds for discrimination in Canadian human rights legislation are Marital status, Race, Colour , Physical or mental disability , Religion or Creed , Sex and Age . And, discrimination can be in the direct or explicit discrimination and indirect discrimination – adverse effect and systemic.

In the area of recruitment and selection of employees, the legislation does not allow:

(i) making discriminatory arrangements (e.g. advertising) for the purposes of determining who should be offered employment ; or
(ii) offering discriminatory terms of employment ; or
(iii) refusing or deliberately omitting to offer employment .

However, defences to discrimination exist. It is possible and permissible to discriminate on prohibited grounds; the most common being a bona fide occupational requirement. Further, insurance companies and pension plans are allowed to discriminate in their group policies based on age, sex, marital status, family status or handicap but only if those distinctions are made on reasonable and bona fide grounds .

Violating human rights legislation can result in inquiry and investigation by the Authority where penalties are dependent on the seriousness of the offenses. It ranges from the issue of a prohibition notice, re-engagement or reinstatement pf the particular individual, paying compensation, written apology, to institute an affirmative program or action plan. Nonetheless, the violation and penalties can result in unwelcome media attention with negative publicity as well as harming organizational morale and incurring unnecessary expenditure. Therefore, an employer needs to reduce risks related to human rights violations, i.e. review all aspect of the employment processes to ensure compliance. This includes avoiding discrimination in the recruitment process, information solicited in the application forms, and questions asked in interviews.

(b) The Board should be advised that Royal Belmont will be permitted to advertise for a female and employ a female to work in the female changing room as an attendant on the grounds of preserving decency or privacy without transgressing human rights legislation, (BC [Public Service Employee Relations Commission] v BCGSEU 1999). This is because the situation is a bona fide occupational requirement.