



LEGAL UPDATE

OASIS Finance Directors Summit 2014

October 20, 2014

Cheryl Wiles Pooran & Brendon Pooran

PooranLaw Professional Corporation

416-322-2875

www.pooranlaw.com

Overview

1. Supported Banking
2. RDSP Update
3. Work Experience Programs after *Garrie v. Janus Joan Inc.*

Supported Banking

Survey Results

- Individual choice/autonomy is promoted
- Internal accounting and reconciliation processes are very strong
- Most open separate bank accounts for each client
- Many refer to clients giving consent for assistance
- References to “co-signatories” and POAs
- References to Letters of Direction & Indemnities

Outstanding Issues

- Consent
 - What if the individual is unable to provide consent?
- Liability
 - What kind of account is opened?
 - Are co-signatories/attornies acting in personal capacity or on behalf of agency?
 - Are employees named personally as ODSP trustees?
 - Which entity is providing the indemnity?

Recommendations

- Move away from co-signatories/attorneys
- Formalize procedures re: consent, capacity & decision-making
- Ensure that principled approach remains
- Launch pilot project

Proposed Pilot Project

1. Agreement with ODSP to name agency as trustee (with client's consent)
2. Open informal trust account for each client with agency as trustee & client as beneficiary
3. Seek Letter of Direction & Indemnity from Ministry
4. Funds may flow from ODSP to trust account or to agency's account

RDSP Update

RDSP Update

- Federal Budget 2012
 - Temporary provision introduced allowing spouses, common-law partners & parents to be plan holder for adult beneficiary
 - Provinces encouraged to address issue
- Ontario Budget 2013
 - Delegated responsibility to Law Commission of Ontario to develop recommendation
- Law Commission of Ontario
 - Final report to be issued in late 2013

**Work Experience
Programs After
*Garrie v. Janus Joan Inc.***

Facts

Janus Joan Inc.

- For-profit
- Founded by 2 individuals previously employed in DS Sector
- Founded as a work experience program for persons with developmental disabilities
- Eventually came to employ others without disabilities
- No longer in existence

Facts (Con't)

Work Experience Program

- Individuals with disabilities treated as “trainees”
- Trainees performed general labourer duties
- Worked 40 hours per week
- Paid “\$1.00 to \$1.25 per hour which allowed continued receipt of ODSP
- No deductions remittances for Income Tax, EI, CPP, No T4s issued

Facts (Con't)

Terri-Lynne Garrie

- Trainee for 10 years
- Performed “substantially similar work” to that performed by other employees without disabilities
- Mother employed as a supervisor, aware of the Honorarium arrangement
- Employment terminated in 2009
- Filed application to the Human Rights Tribunal in 2009

Tribunal Decision

2010 Decision

- Named Janus Joan Inc. and owner, Stacey Szuch
- Defendants did not participate and stated that the Janus Joan was closed
- Original decision determined that the application as to failure to pay minimum wage was statute barred because the practice was initiated 10 years earlier, but awarded damages for discrimination in termination of employment.

Tribunal Decision (con't)

2014 Decision

- Overturned decision as to failure to pay minimum wage. Found that it was a continuous act of discrimination and therefore was not statute barred.
- Found that Trainees were performing substantially similar work to other employees but were being paid less than minimum wage, were denied overtime etc.
- Practice constituted discrimination contrary to Code
- Awarded \$180,000 in lost income and for injury to dignity, self esteem, and feelings.
- Ordered Human Rights Commission to Consider

Tribunal Decision (con't)

2014 Decision – key factors

- Substantially similar work
- Minimum wage is intended as an absolute minimum
- Trainee for 10 years doesn't make sense
- Employment Standards Act (ESA) specifically amended to delete exclusion to minimum wage for programs for persons with disabilities
- “Road to hell is paved with good intentions”

Implications

Types of Programs Affected

- Any program that provides an honorarium or other payment less than minimum wage = potential risk
- Piece work activities
- Day programs
- Co-op/work placements

Forums & Limitation Periods

- **Human Rights** – 1 year to file application after last incident but unlimited recovery period if application files in a timely manner. Extension where good faith and no substantial prejudice to parties.
- **Employment Standards** - can only claim for wages lost in 6 months preceding complaint, unless it was a continuing failure to pay in which case can claim for wages lost in 12 months preceding complaint. Exception where employer misled employee.
- **CRA** –
 - “Honoraria” are payments made by virtue of a persons holding an office = employment income to be reported and deductions etc. made accordingly. Depends on a number of variables related to the nature of the payments
 - Volunteers – some cases indicate a payment for expenses will not result in finding of employment and corresponding obligation to remit, indicates that intention of the parties will be paramount
- **ODSP**
- **Public Opinion**

QUESTIONS



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