

# EMPLOYERS' ALERT

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## WHAT'S NEW at RUBIN THOMLINSON LLP

We are thrilled to announce that we have been nominated for the 2008 RBC Canadian Women Entrepreneur Awards. This national award recognizes the business success and achievements of Canadian women entrepreneurs, including their contributions to the Canadian and global economies and to their communities. In our sixth year of business, we are deeply honoured to be included in the company of such a select group of successful Canadian women entrepreneurs. Winners will be announced at the gala ceremony this December.

**David Whitten** spoke at the 26th Annual Conference and Trade Show that was hosted by the Canadian Payroll Association on Thursday June 12. David discussed the differences between employees and independent contractors.

**Chris Thomlinson** spoke at the Law Society's annual "Six-Minute Employment Lawyer" program on Thursday June 12. Chris spoke about recent updates to just cause terminations.

**Chris Thomlinson** Co-Chaired The Canadian Institute's Advanced Forum on Managing Legal Risks in Employing Executives on June 16th and 17th.

**Janice Rubin** spoke on July 9th at the webinar series, "Wednesday's with WXN". This series was hosted by the Women's Executive Network. Janice discussed toxic workplaces and bullying in the workplace.

The recent decision in *Heintz v. Christian Horizons* demonstrates the interpretation the Ontario Human Rights Tribunal will give the duty not to discriminate, in this case on the basis of sexual orientation, under the Human Rights Code.

### Tribunal Orders Damages Payable to Employee Terminated because of her Sexual Orientation

Ms. Heintz, an individual of deep Christian faith, was a model employee for five years with Christian Horizons. In her position, she provided care and support to individuals with developmental disabilities.

Like other employees, when first hired, Ms. Heintz was required to sign a Lifestyle and Morality Statement, which prohibited, among other things, homosexual relationships. After several years, Ms. Heintz came to terms with her sexual orientation as a lesbian. When Christian Horizons discovered this, they advised her that she was not complying with the Statement and required her to leave the organization.

Christian Horizons describes itself as an Evangelical Christian Ministry that provides care and residential services to 1,400 developmentally disabled individuals of all races, creeds and sexual orientations.

With over 180 residential homes across Ontario, and 2,500 employees, Christian Horizons is the largest provider of community living services in the province, funded almost exclusively by the Ontario Ministry of Community and Social Services.

When Ms. Heintz filed a human rights complaint, Christian Horizons attempted to rely on Section 24 of the Human Rights Code which states:

Special employment

24. (1) The right under section 5 to equal treatment with respect to employment is not infringed where,  
a. a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment.

Christian Horizons submitted that there were four elements to the section 24(1)(a) exemption, all of which it had met. The organization argued that:

- a. it was a religious organization;
- b. it was primarily engaged in serving the interests of persons identified by their creed;

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This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered, and without seeking the advice of legal counsel. No part of this publication may be reproduced without prior written permission of Ruben Thomlinson LLP. This has been sent to you courtesy of Ruben Thomlinson LLP.

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c. it employed or gave preference in employment to persons similarly identified; and

d. that the qualification (the restriction in employment to persons similarly identified by creed) was a reasonable and bona fide qualification because of the nature of the employment.

The Tribunal rejected the argument that this exception applied to Christian Horizons, and it ruled that Christian Horizons could not require its employees to sign the Statement. It also found as a matter of fact that Christian Horizons was primarily engaged in serving the disability-related needs of its clients. Therefore, the prohibition on homosexual relationships was not a legitimate job requirement for providing quality care and support to disabled residents.

In addition to awarding Ms. Heintz lost wages, general damages and damages for mental anguish, Christian Horizons was ordered to end its practice requiring employees to sign a Lifestyle and Morality Statement, and to develop anti-discrimination policies and provide training to all employees and managers. Finally, the organization was required to review all of its

employment policies to ensure that they were in compliance with the Code.

### What does this mean for employers?

#### Exceptions from the duty not to discriminate are interpreted narrowly

This case is a clear reminder of the primary mandate of human rights legislation, and the legal bodies that interpret it: To prevent discrimination in the workplace and provide remedies to victims of discrimination. Exceptions to these protections, such as section 24 set out above, are narrowly interpreted, and there must be a clear link between the exception and the work of the organization, and the individual working within it.

#### Consider the service being provided

Here, there was no doubt the services were provided by a Christian organization, that viewed homosexuality as something contrary to its religious beliefs. However, discrimination was found because as a matter of fact, the organization's services were provided to disabled individuals of all faiths. As such, the employer could not impose its morality beliefs on its employees because they were not rationally connected to the services provided. ●

## UPCOMING EVENTS

### September 11

Our next breakfast seminar will take place on September 11. The topic for the morning will be "Termination for Tough Times". If you would like to attend, please contact us at (416) 847-1814 or breakfast@rt-law.ca to register.

### September 15

**Janice Rubin** will be speaking at the Credit Union Managers' Association's Silver Anniversary Conference on September 15. She will be discussing what you need to know to manage your workplace effectively and legally.

### September 17

**Janice Rubin** will be conducting a webinar entitled "Creating Inclusive Work Environments: Legal Update You Want to Know" on September 17. This webinar will be hosted by the Conference Board of Canada and run from 12:00 pm - 1:00 pm.

### September 19

**James Heaney** will be speaking at the Ontario Dental Hygienists' Association's Annual Conference on September 19. James will be reviewing the basic principles of employment law and human rights law as they apply to dental hygienists.

### September 23 & 24

The third session of **Conducting Internal Workplace Investigations** will take place on September 23 & 24. This session is currently full, however if you would like to attend our next session on December 3 & 4 please contact us at (416) 847-1814 or contact@rt-law.ca to register.

### September 25

**David Whitten** will be speaking at Miller Dallas on September 25 about employment contracts.