

The Canadian Institute's Forum on

The DUTY to ACCOMMODATE

FACILITATING COMMUNICATION BETWEEN KEY
STAKEHOLDERS TO MANAGE HIDDEN DISABILITIES

Co-Chairs:

David K. Law

Partner

Gowling Lafleur Henderson LLP

Michael Lynk

Associate Professor & Associate Dean

University of Western Ontario

Gain insights from top experts with:

Blake, Cassels & Graydon LLP

Dr. Lisa Berger & Associates

Emond Harnden LLP

Heenan Blaikie LLP

Hicks Morley Hamilton Stewart Storie LLP

Himelfarb Proszanski LLP

Keyser Mason Ball LLP

LifeMark Health

Miller Thomson LLP

Ministry of Government Services

Nelligan O'Brien Payne LLP

Organizational Solutions

Owen V. Gray, Arbitrator & Mediator

Public Service Alliance of Canada

Regional Municipality of Durham

Seiden Health Management Limited

University of Toronto

Understand how a collaborative approach to communication with key stakeholders in the accommodation process will enable you to:

- Limit the effects of absenteeism and mental health claims
- Reduce the risk of costly and damaging law suits
- Implement innovative and fiscally responsible accommodation plans

New For 2011!

- Learn lessons from the recent *Johnstone* and *Piresferreira* cases on how to minimize your risk of damages
- Gain insights from disability management experts to maximize independent medical assessments
- Re-visiting *Honda v Keays*: Reduce exposure to claims for negligent infliction of mental suffering
- Identify and manage your responsibilities with aging employees

Plus, learn practical strategies through in-depth case study analyses at the Interactive Training Session:

A Step-by-Step Guide to Effective Decision Making Throughout the Accommodation Process, led by Dr. Liz Scott and Dr. Howard Seiden

Sponsored by:



Media Partners:



Register Now • 1-877-927-7936 • CanadianInstitute.com/duty2accom



Reduce your risk of litigation and increasingly high damage awards!

Recently, improper handling of accommodation requests for hidden disabilities including stress, mental illness and addiction has cost employers significant time, effort and expense. In the *Johnstone* decision, the Canada Border Services Agency was burdened with \$35,000 in fines for denying an employee a four-day work week. *Piresferreira v. Ayotte* resulted in a \$500,000 award to an employee for mistreatment by a manager. The unsettled nature of the case law is creating uncertainty and confusion in the accommodation arena.

Attend **The Canadian Institute's** Forum on the **Duty to Accommodate** to ensure that you have the tools you need to identify and manage hidden disabilities in an effort to reduce the risk of costly litigation and help to maintain a positive business image.

Leading practitioners, medical experts, management and disability executives will guide you through the emerging principles from recent pro-employee case law and legislation as you learn about:

- How to effectively communicate and work collaboratively with employees, unions, insurers and disability management experts to facilitate timely, effective and fiscally responsible results
- Your legal entitlements to medical documentation while maintaining confidentiality and privacy
- Risk management in terminating the employment of accommodated employees or those with a history of disability
- Drafting new customer service standard policies to comply with the Accessibility for *Ontarians with Disabilities Act*

And much more!

PLUS! Take advantage of our interactive pre-program workshop: "A Step-by-Step Guide to Effective Decision Making Throughout the Accommodation Process," led by Dr. Liz Scott and Dr. Howard Seiden.

Register Now! Don't miss this unique opportunity to network with colleagues and gain invaluable risk management strategies by calling 1-877-927-7936, by fax at 1-877-927-1563 or online at www.CanadianInstitute.com/duty2accom.

Who You Will Meet

- Human Resource Executives, Managers and Consultants
- In-house Counsel
- Government Counsel and City Solicitors
- Employment, Labour and Human Rights Lawyers
- Union Counsel and Representatives
- Insurance Executives, Managers and Counsel
- Arbitrators and Mediators
- Rehabilitation and Disability Management Professionals

Sponsorship & Exhibition Opportunities

Maximize your organization's visibility in front of key decision-makers in your target market. For more information, contact Director Business Development Daniel Gellman at 416-927-0718 ext. 7389, toll-free 1-877-927-0718 ext. 7389 or by email at d.gellman@CanadianInstitute.com

Distinguished Faculty

Co-Chairs:

David K. Law

Partner, Gowling Lafleur Henderson LLP

Michael Lynk

Associate Professor & Associate Dean, University of Western Ontario

Speakers:

Lisa Addario

Counsel, Public Service Alliance of Canada

Lisa Berger, Ph.D., C.Psych

Clinical, Counselling and Rehabilitation Psychologist

Natalie Bussiere

Partner, Blake, Cassels & Graydon LLP

Jeffrey Goodman

Partner, Heenan Blaikie LLP

Owen V. Gray

Arbitrator & Mediator

D. Brian Loewen

Senior Counsel, Ministry of Government Services

Carol MacDonald

Director of Occupational Therapy Services
LifeMark Health

Robert Monti

Partner, Nelligan O'Brien Payne LLP

Tom Moutsatsos

Partner, Hicks Morley Hamilton Stewart Storie LLP

Patrizia Piccolo

Partner, Keyser Mason Ball LLP

Kecia Podetz

Emond Harnden LLP

Soma Ray-Ellis

Partner, Himelfarb Proszanski LLP

Liz R. Scott PhD, MEng, MBA, MSc, COHN, RN, CRSP

Principal, Organizational Solutions

Howard Seiden, MD, MSc, FCFP, FFADEP

Seiden Health Management Inc., Assistant Professor,
Dept. Family & Community, Medicine, University of Toronto

Carol VandenHoek

Partner, Miller Thomson LLP

Matthew R. Wilson

Labour Relations Counsel, Regional Municipality of Durham

Andrea York

Partner, Blake, Cassels & Graydon LLP

Register at 1-877-927-7936 or in Toronto 416-927-7936 or www.CanadianInstitute.com/duty2accom

DAY ONE – MARCH 31, 2011

8:00 Registration Opens and Coffee Served

9:00 **Opening Remarks from the Co-Chair**

Michael Lynk

Associate Professor & Associate Dean
University of Western Ontario

9:15 **Identifying and Accommodating Hidden Disabilities:
A Medical and Legal Overview**

Lisa Berger, Ph.D., C.Psych

Clinical, Counselling and Rehabilitation Psychologist
Dr. Lisa Berger & Associates

Patrizia Piccolo

Partner, Human Resources Law, Keyser Mason Ball LLP

Mental illness, stress and addiction continue to be leading areas of concern for many employers in assessing accommodation requests. In this session, you will gain a better understanding of how stress can manifest itself in professional office work environments, and your legal obligations, particularly in instances of non-identified illness.

- What is captured under the umbrella of “hidden disability” (stress, chronic fatigue, burn-out, depression)?
- Identifying manifestations of “hidden disability” and best practices to manage their effects in the workplace
- Strategies to reduce and manage the effects of stress
- What are your legal obligations in instances of non-disclosure?
- Techniques to maintain confidentiality of employees with mental health disabilities
- Considerations for the burden of proof: What is required in proving the existence of a mental illness or addiction?
- Weighing accommodation factors for misconduct in the context of disciplinary proceedings

10:15 **Clarifying the Duties and Obligations of Employers
in Accommodating Mental Health Concerns**

Michael Lynk

Associate Professor & Associate Dean
University of Western Ontario

The Duty to Accommodate is essentially a series of seemingly inconsequential decisions, which may ultimately result in large and costly ramifications. In this session, you will learn guidelines to properly manage your decision making process concerning disabilities.

- What is Undue Hardship?
 - Identifying an updated working definition
 - How to prove it in light of recent case law
- Accommodation made easy: Practical application for large to small workplaces (principles from *Toronto District School Board decision*), and the repercussions for failure to develop and implement consistent standards
- Undue hardship and the duty of good faith: How does the recent case law define the boundaries as they pertain to cost, time and effort?
- Special considerations for large workplaces, versus small to mid-sized employers
- Exploring the requirement to create workplace standards, and the repercussions for failure to develop consistent standards
- Creative cost management: Investigating the availability of government grants to defer the cost of accommodation

11:00 Networking Refreshment Break

11:15 **How to Avoid Being the Next Keays: Panel Discussion
on the Evolving Burden of Proof**

Soma Ray-Ellis

Partner and Co-Chair, Employment and Labour Law
Group, Himelfarb Proszanski LLP

Howard Seiden, MD, MSc, FCFP, FAADEP

Seiden Health Management Inc., Canadian Benefits
Management Limited, Assistant Professor, Dept. Family
& Community Medicine, University of Toronto

- The evolving burden of proof: What is required in proving the existence of a mental illness or addiction?
- Principles from *Andrew Scarlett and Hamilton Health Sciences*: Reducing exposure to discrimination claims under human rights legislation for failure to obtain sufficient medical documentation in a timely manner
- Establishing the boundaries in what medical information an employer is entitled to request
- Is an employer permitted to contact an injured employee’s doctor for information regarding the extent of the disability?
- Understanding the limitations of employee privacy and disclosure rights
- Managing the expectations of an employer surrounding the IME process
- Maximizing IMEs: Examining the strategic use of independent medical examinations, and setting the doctor up for success
- How to get more out of the family doctor: obtaining better and more detailed information from the GP

12:15 Networking Luncheon for Delegates and Speakers

1:45 **Case Law Update: Minimizing Your Risk of Increasingly
High Damage Awards**

Kecia Podetz

Emond Harnden LLP

The body of arbitral and court decisions is rapidly expanding with recent high damage awards against employers, including in unionized environments. This is a brief overview of the highlights from recent Ontario and national cases, with a particular focus on preventing large damage awards.

- An update post-*Honda v. Keays*. Availability of tort claims for negligent infliction of mental suffering in the workplace
 - Ongoing guidance for employers pending an anticipated appeal to the Supreme Court in *Piresferreira v. Ayotte*
- Strategies to accommodate employee child care obligations
- How to manage fraudulent sick leave claims and lessons learned from Greater *Toronto Airport Authority v. PSAC*
- A review of recent damage awards by human rights tribunals for employers’ failure to accommodate
- Understanding the legal consequences of inconsistent enforcement of harassment policy and flawed investigations (*Disotell v. Kraft*)

2:45 Networking Refreshment Break

3:00 **Innovative Strategies to Reduce the Impact of Absenteeism**

Natalie Bussiere

Partner, Blake, Cassels & Graydon LLP

- What are the obligations of an employer in instances of temporary disability?

- Considerations in accommodating pregnancy and parental leave requests post-*Johnstone*
- Reviewing new trends in offering modified full-time duties: What are the risks?
- Effectively managing and reassessing long-term accommodation files
- Treatment of large organizations: Clearing hurdles of stringent controls imposed by arbitrators and judges
- Ensuring compliance in drafting and enforcing attendance management policies
- Exploring the role of the union in the back-to-work process: How can collective bargaining agreements help or hinder accommodation obligations?

4:00 **Improving Relationships with Insurers: A Disability Management Perspective**

Carol MacDonald

Director of Occupational Therapy Services
LifeMark Health

- How to work collaboratively with disability management experts for assistance with workplace reintegration and reducing absenteeism
- Establishing parameters in structuring work modification and accommodation plans in a lean Human Resources environment
- Strategies to facilitate approval by adjusters and adjudicators of ergonomic and other medical recommendations
- Minimizing the recurrence of disability following a return to work
- Focusing on disability insurance: Exploring the legal implications of denying benefits
 - Reliance upon independent assessments to reduce your exposure to litigation
 - A fresh perspective on employers' rights and obligations in accommodating employees who return to work after being denied benefits
 - Innovative ideas for managing unionized workplaces

5:00 **Co-Chair's Closing Remarks
Conference Adjourns for the Day**

DAY TWO – APRIL 1, 2011

8:00 **Registration Opens and Coffee Served**

9:00 **Opening Remarks from the Co-Chair**

David K. Law

Partner, Gowling Lafleur Henderson LLP

9:15 **Evolving Trends in Family Status Accommodation:
When does everyday care-giving become a workplace accommodation?**

Case Study – *Johnstone v Canada Border Services*

Lisa Addario

Counsel for the Applicant in *Johnstone*
Public Service Alliance of Canada

Owen V. Gray

Arbitrator & Mediator

David K. Law

Partner, Gowling Lafleur Henderson LLP

- Learning plaintiff and defence perspectives on family status claims
- What is required of an employer in conducting an appropriate investigation?
- How has *Johnstone* modified the accommodation landscape post-*Campbell River*?
- Exploring the scope of family leave in the accommodation context
- Identifying the expectations of employees and unions in advancing a family status claim

10:15 **Maximizing Dispute Resolution Tools to Avoid Costly Litigation**

Jeffrey Goodman

Partner, Heenan Blaikie LLP

Owen V. Gray

Arbitrator & Mediator

Matthew R. Wilson

Labour Relations Counsel, Regional Municipality of Durham

- Effectively utilizing dispute resolution to keep decision making power in your hands: Key strategies for success
- Considerations in choosing the most appropriate venue to suit your needs
- How to prepare your case to achieve success in resolving the claim
- Strategies to minimize claims imparting a negative business image
- What does the future hold for the Ontario Human Rights Tribunal? Will the new proposed Tribunals Cluster prolong accommodation claims?
- Comparison of the federal and provincial systems: What is the acceptable standard in accommodation for large multi-national organizations?

11:15 **Networking Refreshment Break**

11:30 **Proven Techniques to Increase Employee Cooperation throughout the Accommodation Process**

Robert Monti

Partner, Nelligan O'Brien Payne LLP

In this session, you will learn strategies from plaintiff's counsel to help you improve communications with employees to streamline the accommodation process.

- Exploring the legal obligations of an employee in facilitating the implementation of an accommodation proposal
- Identifying the parameters of the duty to cooperate in providing consent to obtain medical documentation
- What are the repercussions of not identifying problems or seeking assistance at an early stage?

12:15 **Networking Luncheon for Delegates and Speakers**

1:30 **Best Practices in Moving Toward Termination: Emerging Principles from the Case Law**

Andrea York

Partner, Blake, Cassels & Graydon LLP

When legitimate performance issues that warrant termination are attributed to employees with a history of illness or disability, the risk of litigation is great. This session will teach you how to navigate the legal minefield associated with terminating the employment of accommodated employees, or those that have a history of disability.

- How can a leave of absence result in frustration of the employment contract?
- When does a failure to return to work following the denial of disability benefits constitute job abandonment?
- Strategies for moving toward termination
- Considerations for severance agreements
 - Notice and severance considerations
 - Benefits considerations
- Exploring the operational impact of automatic termination clauses

2:15 **Networking Refreshment Break**

2:30 **Compliance with the Accessibility for Ontarians with Disabilities Act (AODA)**

Carol VandenHoek

Partner, Member National and Southwestern Ontario Labour and Employment Law Groups
Miller Thomson LLP

All businesses with at least one employee must be in compliance with the new legislation by January 1, 2012. In this session, you will hear concrete examples of compliant clauses for the customer service standard and policies under Bill 168.

- An introduction to the AODA: Who must comply and when?
- What requirements must an employer meet under the service standard to successfully pass the inspection and enforcement systems, and to avoid the embarrassment of an appearance before the Licence Appeal Tribunal?
- Additional requirements applying to public sector organizations with 20 or more employees
- Best practices for interacting with disabled persons, both employees and guests
- Deconstructing an accommodation plan: Design and implementation strategies
- Updates for constructing an effectual and compliant harassment policy in the context of *Bill 168*

3:30 **Identifying and Managing Responsibilities with Aging Employees and Religious Accommodation Requests**

D. Brian Loewen

Senior Counsel, Ministry of Government Services

Tom Moutsatsos

Partner, Hicks Morley Hamilton Stewart Storie LLP

- Strategies to manage health and safety issues in the workplace for aging employees in the era of an aging society
- Identifying whether declining performance at work is related to age, and your accommodation obligations towards aging employees with growing limitations
- Best practices in due diligence and dismissal of aging workers through offers of early retirement, termination or lay-off
- What are the obligations of an employer in a religious accommodation request?

4:30 **Co-Chair's Closing Remarks – Conference Concludes**



Enhance your meetings and add to your bottom line by offering audience response solutions from **Turning Technologies Canada**, the global leader in audience response

technology. The first choice of presenters everywhere, our simple, intuitive, polling products add engagement, encourage interaction, collect valuable data and provide instant feedback in meetings and events using RF or web-based devices. Invest in workplace training and employee development with the press of a button. Visit us at www.turningtechnologies.ca

Interactive Training Session

March 30, 2011 2:00–5:00 pm

A Step-by-Step Guide to Effective Decision Making Throughout the Accommodation Process

Workshop Leaders

Howard Seiden, MD, MSc, FCFP, FFADEP

Seiden Health Management Inc., Canadian Benefits Management Limited

Assistant Professor, Dept. Family & Community Medicine, University of Toronto

Liz R. Scott PhD, MEng, MBA, MSc, COHN, RN, CRSP

Principal
Organizational Solutions

This in-depth, practical, and comprehensive module covers all aspects of accommodation based on case studies. Learn in a collaborative format based on past successes and mistakes of leading organizations. Return to the office with the tools to plan and manage all aspects of the accommodation process more effectively. Topics covered include

- Examining how symptoms of the most common hidden disabilities impact workplace functionality
- New trends and legal implications in attributing work duties to exacerbating symptoms of mental illness
- Exploring the effects of hidden disabilities on productivity, social skills, memory, and cognitive ability
- Practical solutions and case studies of successful workplaces to integrate mentally ill employees in a fiscally responsible manner
- How to handle aggressive and inappropriate behaviour of an employee while at work and while on leave
- Working with medical professionals
- Escalated performance issues, disciplinary action and issues of termination
- Responding to harassment of management by a mentally ill employee
- Employment as a rehabilitative tool
- Provincial and federal mental health training resources for employers

Legal Accreditation

This program can be applied towards 9 of the 12 hours of annual Continuing Professional Development (CPD) required by the **Law Society of Upper Canada**. Please note that these CPD hours are not accredited for the New Member Requirement.



This program has been approved by the **Law Society of Saskatchewan** for 12 CPD hours for the conference. Members will also receive 3 additional CPD credit hours for workshop attendance.

The same number of hours may be applied toward your continuing legal education requirements in **British Columbia**.

The **Barreau du Québec** automatically recognizes the same number of hours for this training activity, the latter having been accredited by another Law Society subject to MCLE.

Attendance at this program by members of the **Law Society of Alberta** may be submitted to the Law Society for Continuing Professional Development credits.

The Canadian Institute's Forum on

The DUTY to ACCOMMODATE

FACILITATING COMMUNICATION BETWEEN KEY STAKEHOLDERS TO MANAGE HIDDEN DISABILITIES

Top Reasons to Attend

- ✓ Learn proven strategies to eliminate costly litigation
- ✓ Gain insights from leading experts for fiscally responsible accommodation plans
- ✓ Reduce absenteeism and ensure a seamless return to the workplace
- ✓ Ensure compliance with the recent case law and legislation

REGISTRATION FORM

To expedite your registration, please mention your Priority Service Code

242XLS

CANADA	POSTES
POST	CANADA
Postage paid Adressed Admail	Port payé Médiaposte avec adresse
7243028	

Special 15% discount courtesy of Liz Scott.
Mention her name when you register!

ATTENTION MAILROOM: If undeliverable to addressee, please forward to:
Legal Affairs, Human Resources, Counsel



5 EASY WAYS TO REGISTER

- Phone:** 1-877-927-7936 or 416-927-7936
- Fax:** 1-877-927-1563 or 416-927-1563
- Email:** CustomerService@CanadianInstitute.com
- Mail:** The Canadian Institute
1329 Bay Street
Toronto, Ontario M5R 2C4
- Online:** www.CanadianInstitute.com/
duty2accom

ADMINISTRATIVE DETAILS

VENUE: The Sutton Place Hotel
ADDRESS: 955 Bay Street, Toronto, Ontario
TEL.: 416-924-9221

Hotel Reservations

For information on hotel room availability and reservations, please contact The Sutton Place Hotel at 1-866-378-8866. When making your reservation, please ask for "The Canadian Institute's Corporate Rate".

Registration Fee

The fee includes the program, all program materials, continental breakfasts, lunches and refreshments.

Program Materials

Program participants will receive a comprehensive set of program materials prepared by the speakers. If you have paid and are unable to attend, these will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the program.

Payment Policy

Payment must be received in full by the program date to ensure admittance. All discounts will be applied to the Program Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization. **Groups of 4 will be invoiced individually at 25% off the available rate at the time of registration.** For groups of 5 or more please call 1-877-927-7936 for additional discounts.

Cancellation and Refund Policy

You must notify us by email at least 48 hrs in advance if you wish to send a substitute participant. Delegates may not "share" a pass between multiple attendees without prior authorization. If you are unable to find a substitute, please notify **The Canadian Institute** in writing no later than 10 days prior to the program date and a credit voucher will be issued to you for the full amount paid. Credit Vouchers are valid for 1 year and are redeemable against any other program by **The Canadian Institute**. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the program date. **The Canadian Institute** reserves the right to cancel any program it deems necessary and will, in such event, make a full refund of any registration fee, but will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by **The Canadian Institute** for changes in program date, content, speakers or venue.

PROGRAM CODE: 242L11-TOR

YES! Please register the following delegate for the DUTY TO ACCOMMODATE

Register 4 for the price of 3!

FEE PER DELEGATE	Register & Pay by March 3, 2011	Register & Pay after March 3, 2011
<input type="checkbox"/> Program (on site)	\$1995 + 13% HST	\$2195 + 13% HST
<input type="checkbox"/> Program + Interactive Training Session	\$2490 + 13% HST	\$2690 + 13% HST
<input type="checkbox"/> Live Webcast (Program Only)	\$1595 + 13% HST	
Program participants will receive a CD-ROM of the program materials as part of their registration fee		
<input type="checkbox"/> Please add a copy of the *Program Proceedings (BINDER) to my order for \$195 + \$21.95 (S&H) + applicable taxes <small>*Published and shipped within 4 weeks from program</small>		
<input type="checkbox"/> I cannot attend, but I would like to purchase the CD-ROM for \$320 + 15.95 (S&H) + applicable taxes		

CONTACT DETAILS

NAME _____ POSITION _____

ORGANIZATION _____

ADDRESS _____

CITY _____ PROVINCE _____ POSTAL CODE _____

TELEPHONE _____ FAX _____

EMAIL _____

TYPE OF BUSINESS _____ NO. OF EMPLOYEES _____

APPROVING MANAGER _____ POSITION _____

PAYMENT

Please charge my VISA MasterCard AMEX

NUMBER _____ EXP. DATE _____

CARDHOLDER _____

I have enclosed my cheque for \$ _____ including applicable taxes made payable to **The Canadian Institute** (GST No. 84221 1153 RT0001)

Wire Transfer (\$CAD)

Please quote the name of the attendee(s) and the program code 242L11 as a reference.
Beneficiary: **The Canadian Institute**
Bank Name: HSBC / Account #: 362-055319-001
Address: 150 Bloor St, Suite M100, Toronto, ON
Swift Code: HKBCCATT / Branch #: 10362

STEP 1

STEP 2

STEP 3