

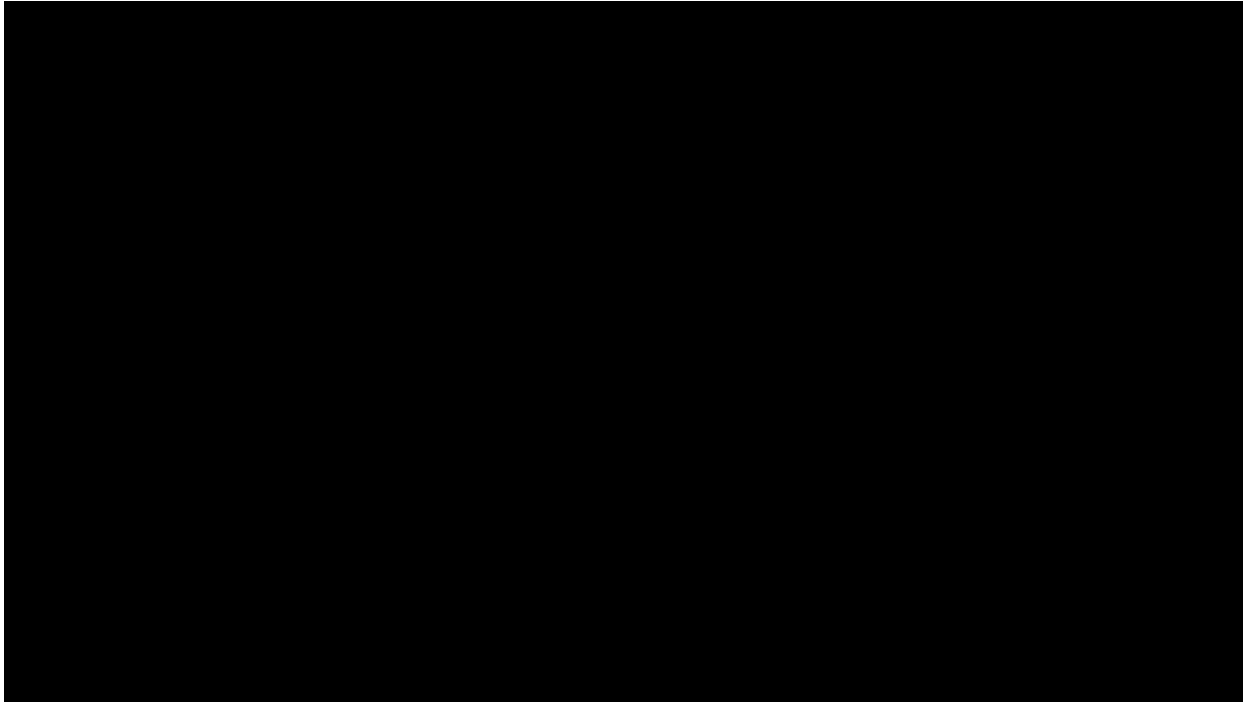
# Human Rights Update: Support/Service Animals in the Workplace

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# Guide Dogs, Service Animals, Support Animals...

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# Guide Dogs, Service Animals, Support Animals...

- We are all well aware of the use of guide dogs for the visually impaired but service animals, including both dogs and an array of other animals, are now being used for more and more purposes:
  - Dogs that can smell when a diabetic person's blood sugar is too low;
  - Miniature horses used in the place of guide dogs; and
  - A variety of animals are used for emotional support including pigs, ferrets and even peacocks.

# Human Rights Code Protection

- Disability is a protected ground under the Ontario *Human Rights Code*.
  - Provides protections to be free from discrimination in employment, housing and services on the basis of disability.
- Under section 10(1) of the *Human Rights Code*, “disability” includes:
  - “physical reliance on a guide dog or other animal.”
- Employers and service providers are required to accommodate guide dogs or other animals to the point of undue hardship.

# What Defines a “Service Animal”

- Different provinces have different legislation and definitions.
- In Ontario:
  - *Accessibility Standards for Customer Service* Regulation under the *Accessibility for Ontarians with Disabilities Act* (“AODA”):

s. 4(9) For the purposes of this section, an animal is a service animal for a person with a disability,

(a) if it is readily apparent that the animal is used by the person for reasons relating to his or her disability; or

(b) if the person provides a letter from a physician or nurse confirming that the person requires the animal for reasons relating to the disability.

# Where are Service Animals Permitted?

- The Regulations apply to every designated public sector organization and every person or organization that provides goods to members of the public or other third parties and has at least one employee in Ontario.
- The standards require that all of the above organizations/persons permit access for service animals.
  - s. 4(2) If a person with a disability is accompanied by a guide dog or other service animal, the provider of goods or services shall ensure that the person is permitted to enter the premises with the animal and to keep the animal with him or her unless the animal is otherwise excluded by law from the premises.

# The Restaurant Exception

- Under the Ontario *Health Protection and Promotion Act*:
  - s. 59. Every operator of a food premise shall ensure that in respect of the food premise,
    - (e) every room where food is manufactured, prepared, processed, handled, served, displayed, stored, sold or offered for sale is kept free from,
    - (ii) subject to section 60, live birds and animals.
- s. 60 expressly allows guide dogs for the visually impaired or persons with a medical disability or dogs other than guide dogs if it is readily apparent that the dog functions as a service dog or the person using the service dog can provide a letter from a physician confirming the need for a service dog.

## ***Sweet v. 1790907 Ontario Inc. o/a Kanda Sushi***

- Applicant – Emily Sweet, diagnosed with Autism.
- Support dog initially acquired as pet but underwent some basic training to provide support.
- Respondent – a small sushi restaurant – refused to allow Ms. Sweet to enter the restaurant with her support dog.
  - Was aware that restaurant was required to allow guide dogs for blind persons onto the premises but the Applicant was clearly not blind.
  - Tribunal found it was likely that the support dog was wearing a vest identifying it as such.
- Respondent ordered to pay \$2,500 for injury to dignity, feelings and self-respect.

## *Sweet v. 1790907 Ontario Inc. o/a Kanda Sushi*

“A person with a disability other than blindness who requires a service dog is also legally entitled **to service** at a restaurant. However, this legal right is not as well-known and accepted. As the applicant in this case has learned, it is prudent to understand this and to be prepared for it. For example, it is important to carry a letter confirming the medical need for the service dog and to offer it to the service provider.”

# Outside of Restaurants, are there any Limits?

- January 2018 – United Airlines refuses to allow passenger to fly with support peacock.



# Outside of Restaurants, are there any Limits?

- October 2018 – Nova Scotia taxi driver ticketed for refusing blind passenger with seeing eye dog.



# ***J.F. v. Waterloo Catholic District School Board***

- J.F. – autistic child entering grade two.
- Father requested that support dog be permitted to attend school with J.F.
- Dog trained through Lions Foundation of Canada Dog Guides program.
- But, due to J.F.'s age and size, educational assistant in the classroom would need to act as the dog's handler.

# ***J.F. v. Waterloo Catholic District School Board***

- School Board went through accommodation analysis:
  - Met with J.F.'s father to understand why the support dog was necessary.
  - Had a behaviour support team conduct an assessment of J.F. at school.
  - Father provided written reports from two of J.F.'s psychologists.
- School Board ultimately denied request on the basis that J.F. was functioning well and the support dog was not necessary at school.
- Tribunal upheld the Board's decision.
  - School Board fulfilled the procedural duty to accommodate and the substantive duty to accommodate.

# Best Practices

- Requesting medical documentation.
  - Be cautious of stigmatization – especially with psychological/mental health disabilities.
  - Is the individual's disability and the reliance on the service animal obvious?
- Otherwise, follow a normal accommodation process:
  - Employer/service provider is entitled to sufficient information to allow it to understand and comply with accommodation obligations.
  - Ensuring safety – is the animal properly trained?
  - Undue Hardship:
    - The Peacock example: is the animal so large that it creates a safety concern for other customers?
- Be aware of ability to re-assess periodically, where appropriate.

# How to Address the Use of Service/Support Animals

- What if two competing human rights interests arise?
  - Example: what if you have an employee who requires the use of a guide dog but their coworker has an extreme allergy to dogs and provides medical documentation to support that?
- Ontario Human Rights Commission on Competing Human Rights:
  - Case-by-case search for solutions that reconcile competing rights and provide accommodation where possible.
    - Step One: recognize competing human rights;
    - Step Two: reconciling competing human rights claims; and
    - Step Three: making decisions.

# Thank you

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