Up To the Point of Undue Hardship

In October of 2004, the Provincial Government introduced Bill 118, a Bill that would see sweeping changes in the way all landlords must adapt and operate with respect to the accommodation of persons with disabilities as defined in the new *Act*.

The Bill has now passed second reading, and is before the Standing Committee on Social Policy. If passed as it stands, the Bill will create frightening new scenarios for Ontario landlords large and small. As Governments so often do, this legislation is put forward by well-meaning individuals whose goal it is to reduce barriers, physical and attitudinal, to those needing the protection of remedial legislation. However, as is often the case, the proposed law would operate without regard to economic and practical realities, and could lead to unintended consequences.

The old *Ontarians with disabilities Act* will be repealed on a day to be named, to be replaced with the new *Act*, the *Accessibility for Ontarians with Disabilities Act*. The predecessor legislation primarily spoke of the Provincial Government, large municipalities as well as hospitals and universities and their duty to create a barrier-free environment. But this new legislation will apply to *all* businesses in Ontario that provide goods, service, employment, accommodation etc.

From reading the Bill, it appears that the goal is to have flexible legislation, adapted to each industry type, or class, with multiple accessibility standards…. not a one-size-fits-all approach. The class an organization fits into will be based on characteristics of the organization, including the industry sector, size of the buildings, structure, number of persons employed by the organization and its revenue. It appears that when the Bill is finally passed and the Regulations written, there may be room for an exemption of certain businesses below a threshold using these criteria.

As its centerpiece, the *Act* will create Standards Development Committees for defining classes and standards, and for developing the accessibility standards appropriate to a given class. The committees will be made up of persons with disabilities, as well as representatives of the industry to which the accessibility standard is meant to apply. Implementation time frames will be permitted as set out by these committees, and the draft Bill suggests that economic, practical and technical considerations will be taken into account when setting these time frames. But it is unknown what the percentage makeup of each committee will be. It is conceivable that an ideologically driven committee dominated by members representing the disabled community, could develop standards that would be costly if not impossible to comply with.

And of course, where remedial legislation begins, a new bureaucracy is sure to follow. The *Act* provides for the appointment of inspectors who will have the right to enter premises to ensure compliance, followed by administrative

penalties assessed by the Director to *encourage compliance*. If you don't pay a fine levied against you, the Ministry has the power to carry out the enforcement of the administrative order as if it were an order of the Superior Court, without a hearing of any sort. Yes, these administrative fines may be appealed, but at the cost of creating another administrative Tribunal that the Minister may designate for handling appeals under the *Act*. Did I mention bureaucracies?

Furthermore, the *Act* sets out a number of absolute liability offences, stating that the business owner is deemed to be guilty of an offence if they failed to comply with an order under the *Act*, and is subject to a fine of up to $50,000 per day for individuals and $100,000 per day for corporations.

It's my belief that all small landlords should be fully exempt from the provisions of this *Act*, otherwise you will see a flood of landlords, currently renting out parts of their homes to those persons most in need of low rents, getting out of the business altogether. The government should act with care. Just as the *Human Rights Code* set out that landlords have the obligation to accommodate disabled tenants right up to the point of undue hardship, it's my bet that this legislation, which codifies landlords' obligations to physically alter their buildings, will have a strong negative effect on the industry. It's conceivable that the Courts will interpret the new legislation as being analogous to the *Human Rights Code*, and rule that a landlord not in compliance with this *Act* is in serious breach of a material covenant of the tenancy agreement, and the tenant is therefore subject to mandatory protection from eviction under section 84(2) of the *Tenant Protection Act*.

Imagine being ordered to replace washroom fixtures, widen doorways, modify entrances and exits, install elevators in small buildings currently without them, put in ramps, modify kitchen cupboards, replace door knobs, install automatic door openers etc. all without regard to the landlord's ability to pay or recover these expenses. At very least, landlords could recover these costs by applying to the Ontario Rental Housing Tribunal based on these capital expenditures, but will market forces allow the landlord to increase the rent to recover these costs even if the Tribunal allows it?

It's time to speak with your MPP and let him or her know about the unique nature of the industry, and your business. Despite the Government's good intentions, the industry is being asked to bear the burden of societal change without being compensated for it, all the while edging closer to the point of undue hardship.