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LABOUR AND EMPLOYMENT COMMUNIQUÉ

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LICENSING OF SECURITY GUARDS AND PRIVATE INVESTIGATORS AND THE REGISTRATION OF BUSINESSES THAT EMPLOY THEM APPROACHING QUICKLY

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Due to the enactment of the Ontario *Private Security and Investigative Services Act* ("Act"), and unless subject to the Act's exemptions, any federally or provincially regulated employer that directly employs a security guard or private investigator performing work in Ontario must be registered with Ontario's Ministry of Community Safety and Correctional Services ("Ministry") by August 23, 2008. In addition, and unless subject to the Act's exemptions, individuals who will be working as a security guard or private investigator in Ontario after that date must also obtain a licence from the Ministry.

Under the Act, any "business entity" that employs a "private investigator" or "security guard", as defined by the Act, is required to register with the Ministry. Generally, the registration requirement will apply to any federally or provincially regulated business with operations in Ontario unless otherwise exempt under the Act. In other words, any business that directly employs its own in-house security personnel must register before August 23, 2008, by completing and submitting a standard form to the Ministry and paying the \$80 annual registration fee.

Note:

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A "security guard" is, according to the Act, a "person who performs work, for remuneration, that consists primarily of guarding or patrolling for the purpose of protecting persons or property". A "private investigator", according to the Act, is "a person who performs work, for remuneration, that consists primarily of conducting investigations in order to provide information".

In addition, an individual employed as a security guard or private investigator and who performs that work in Ontario must become licensed unless otherwise exempt under the Act. For example, an individual may be exempt if they are licensed under a jurisdiction outside Ontario and will be coming into Ontario solely for the purposes of that investigation. To be eligible for a licence, the individual employed as a security guard or private investigator must (i) possess a "clean criminal record", (ii) be 18 years old or older, (iii) entitled to work in Canada, and (iv) have successfully completed all prescribed training and testing.

An individual is considered to have a "clean criminal record" if the person has not been convicted of a "prescribed offence", or if they have been convicted of a prescribed offence but they have received a pardon. A regulation to the Act lists 80 "prescribed offences", ranging from forging a trade-mark to theft to murder to sexual exploitation, which, if convicted, would automatically prohibit the individual from becoming licensed.

For an individual to obtain a licence, an application must be submitted to the Ministry before August 23, 2008. The cost of a licence for an individual acting only as a private investigator or security guard is \$80. The cost of a dual individual licence, which applies to an individual who is

acting as a security guard and private investigator, is \$160. All licences are valid for one year from the date of issue. The individual, as opposed to the employer, is responsible to apply for and obtain a licence.

To clearly distinguish between police officers and security guards, the Act also imposes detailed requirements on security guard clothing. For example, the term “security” must be clearly identified on the front and back of all uniforms and uniforms cannot include black or navy collared shirts or rank chevrons.

Since the registration and licensing deadline is fast approaching, consult your Miller Thomson LLP Labour & Employment lawyer if you require assistance in registering your business or determining whether your business is exempt from registration, or if you require advice on whether your organization is required to continue employing an individual who is convicted of a prescribed offence.

ABOUT THE AUTHORS :

Michael Conradi and Cliff Hart are members of our Labour and Employment Group in Toronto. They provide legal services and advice to a wide range of clients in the private and public sectors.

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