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ONTARIO HEALTH AND SAFETY LAW

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What's New in This Update:

- This release features updates to Chapter 1 (Introduction to Ontario Health and Safety Law), Chapter 3 (Health and Safety Representatives and Committees), Chapter 7 (Work Refusal and Work Stoppages), Chapter 10 (Appealing Ministry of Labour Orders), Chapter 11 (O.H.S.A. Prosecutions), Chapter 13 (Improving Health and Safety in the Workplace), Chapter 14 (Workplace Smoking Restrictions) and Chapter 15 (Alcohol and Drugs in the Workplace).

Case Law Highlights

- **Commercial law — Trade and commerce — Consumer protection —** Public health legislation Tobacco control: Health inspectors attended at shisha lounge and took samples as hookah pipes were being

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prepared by placing lit coal on tin foil covering shisha — One sample proved to contain tobacco, although amount was not proven — Corporate owner of lounge charged under s. 9(3)(a) of *Smoke Free Ontario Act* (SFOA) with failing as operator or employer to ensure that no person held lighted tobacco in enclosed workplace — Owner acquitted — Definition for “enclosed workplace” did not specify that person holding lit tobacco has to be actually engaged or acting as employee of establishment for it to be classified as an enclosed workplace — Corporate defendant met definition of “employer” under s. 9(3) of SFOA, since evidence established beyond reasonable doubt that it was operator of lounge and entity licenced to operate it — Neither common law nor SFAO required judge to make rebuttable presumption of fact that shisha in bowl covered with tin foil is “lit” when piece of lit coal, heat source that creates shisha smoke, was placed on tin foil covering shisha — Neither inspector testified to observing or smelling burning, roasting, or lit shisha coming from bowls of hookah pipes being prepared or that shisha was lit when lit coals were removed from bowls and tin foil removed to take samples of shisha — Prosecution did not meet burden in proving beyond reasonable doubt that corporate accused as employer within SFOA, committed offence under s. 9(3)(a): *Peel (Region, Department of Public Health) v. Le Royal Resto and Lounge Inc.*, 2017 CarswellOnt 18219 (Ont. C.J.),