

What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT EMPLOYMENT LAW™



Greetings!

Doctors often ask us what the maximum period for which they might have to pay a terminated employee is. For a very long time, the conventional wisdom in the employment law bar was that 24 months was the “cap” above which a Court would generally not go. But no more.

The Ontario Superior Court of Justice has confirmed that there is no cap. In a recent case* involving the sale of a business, the employees were offered continued employment with the purchaser but on very different terms. The employees rejected the offers and sued. The Court held that the employees (one of whom was 63 years old with 39 years of service; and the other 57 years old with 36 years of service) were each entitled to 26 months, which, for these two employees totaled over **three-quarters of a million dollars** (*excluding* the employer’s legal fees and likely the bulk of the employees’ legal fees because we have a “loser pays” system. (In other words, Courts will generally order the losing party in a lawsuit to pay the legal fees of the winning party.)

The trend in the case law is now clear: there is no 24-month cap on reasonable notice periods. In certain cases (such as long-standing service, say over 25 years, or older employees, say over 55) the law may require the employer to give the employee *over two years* of reasonable notice, or more likely, pay in lieu of reasonable notice.

The Gist

It would be difficult to overstate the importance of using the proper process in all cases:

(1) involving termination (and recall that this can be you *choosing* to fire them, or them *quitting* and claiming “constructive dismissal”); and

(2) involving the sale of a practice.

My (Mariana's) father was a stickler for getting things done right. He always said, "The bitterness of poor quality remains long after the sweetness of low price is forgotten. In today's world, hyper-specialization is even more important than before my father retired. When you get a demand letter from an employee-side lawyer, you will pray that your staff contracts:



(a) are of sufficiently high quality to achieve the rights that are essential for a Canadian employer (especially the right to rebut the presumption of reasonable notice in excess of two years' pay!); and

(b) were implemented in a process that the Court will actually enforce.

There is no substitute in employment law for hiring specialized employment lawyers who know what they are doing. At MBC Legal, we have been hyper-specializing in transitioning staff in health-care workplaces to high quality contracts and policies for over 14 years. We were the first firm to recognize the pressing need and to educate health employers on it.

If you are considering selling your practice, our brokerage division can help you at any time (contact: mbc@mbcbrokerage.ca or 905-825-2268). However, if you **contact** our **legal division** at least 3 years in advance of listing (but preferably as soon as possible) your range of options will be so much wider, your piece of the pie will be dramatically bigger, and perhaps most importantly, you and your spouse will sleep so much better!

If you have a problem employee whom you would like to terminate, or who may claim she was constructively dismissed, contacting us before you get a demand letter will increase your options and minimize your expense.

The stakes have never been so high for Canadian employers: if you haven't already transitioned all staff to high-quality contracts and policies (using a process the Courts have approved as enforceable), what are you waiting for? **Contact** us today.

Sincerely,

Dirk, Mariana and your team

* *Dussault v. Imperial*, 2018 ONSC, 1168.



#Me Too Much



The #Me too movement has unleashed an avalanche of sexual harassment claims against myriad men in power. It is a bad time to be a man.

No one would deny that it is positive that victims of sexual impropriety in the workplace feel empowered to come forward. But a dark side of this phenomenon is that some unscrupulous women are using the opportunity to make false claims for mercenary reasons.

Health and Safety Training

Do you feel overwhelmed by the myriad health and safety regulations and how to train your staff? Yet another dental office has been closed by Public Safety.



MBC Legal is delighted to announce that we have expanded our Health and Safety training services. **Maria Turner** has not

It is doubly unjust for a woman to lie about being harassed, first, because it falsely accuses her employer, but secondly, it makes it that much less likely a truly sexually harassed or assaulted woman will be believed. Doctors are particularly vulnerable to false claims of harassment because of the disparity in income (and perception that doctors have "deep pockets") and the gender and power imbalance in many health care workplaces.

The majority of lawsuits currently faced by our male doctors involve allegations that they sexually harassed the employees. It seems to be a virtually obligatory last-minute throw-in to every lawsuit against a male doctor. Fortunately, some of the claims are demonstrably false.

At MBC Legal, we are proud to be winning cases where doctors were wrongfully accused, thereby restoring doctors' valuable reputations. For example, we recently defeated a hygienist's scurrilous claims against one of our dentists. The Court not only dismissed her claims as patent lies, the judge also awarded our client over \$50,000 in legal fees! Look for articles in the near future documenting that excellent result and other cases we are winning on behalf of our valued doctors.

If you are concerned about a sensitive situation involving one of your staff, the sooner you contact us, the more we can help. Contact us at 905-825-2268 or [email here](#)..



Patricia Latimer

Patti is an Associate Litigation Lawyer at MBC Legal. While she is far too modest to

boast about her impressive litigation prowess, I (Mariana) think you should know that she is an absolute rock star in the Court room, and a perfect fit in MBC's stellar roster.

Patti has appeared at all levels of Court in Ontario as well as tribunals like the

only joined MBC Brokerage as an Associate, but she is also bringing her decades of dental office expertise to the Legal Division to allow us better to serve your needs.

If you need help with your onerous obligations to train staff on health and safety or IPAC, call us today. You can reach Maria at 905-464-2545 or mct@mbclegal.ca.

Contact Maria

"I have very recently been involved in a complex employee termination. I write to indicate in the strongest possible terms that Mr. [Dirk] de Lint acted in the most cordial, highly professional, empathetic and efficient manner. His attention to detail and the speed which he performed the turn-arounds of the various draft letters to the opposing lawyer, were extraordinary. Most notably, as a result of careful consideration and thoughtful negotiation, we were able to obtain a 4-fold reduction in the anticipated pay-out to the employee at the time of the termination. In short, Mr. de Lint enabled a difficult situation to be managed in a calm, deliberate and humane manner while at the same time providing first-rate value for the cost of his services.

Christopher A. McCulloch, D.D.S., Ph.D., F.R.C.D. (C)

Canada Research Chair in MatrixDynamics
Professor, MatrixDynamics Group
Faculty of Dentistry, University of Toronto

"We hired MBC Legal to transition our staff to proper, legal contracts

Canadian Human Rights Tribunal. She has been independent legal counsel to administrative tribunals at regulated health colleges and General Counsel to the College of Opticians of Ontario. She is a Council Member of the College of Respiratory Therapists of Ontario.

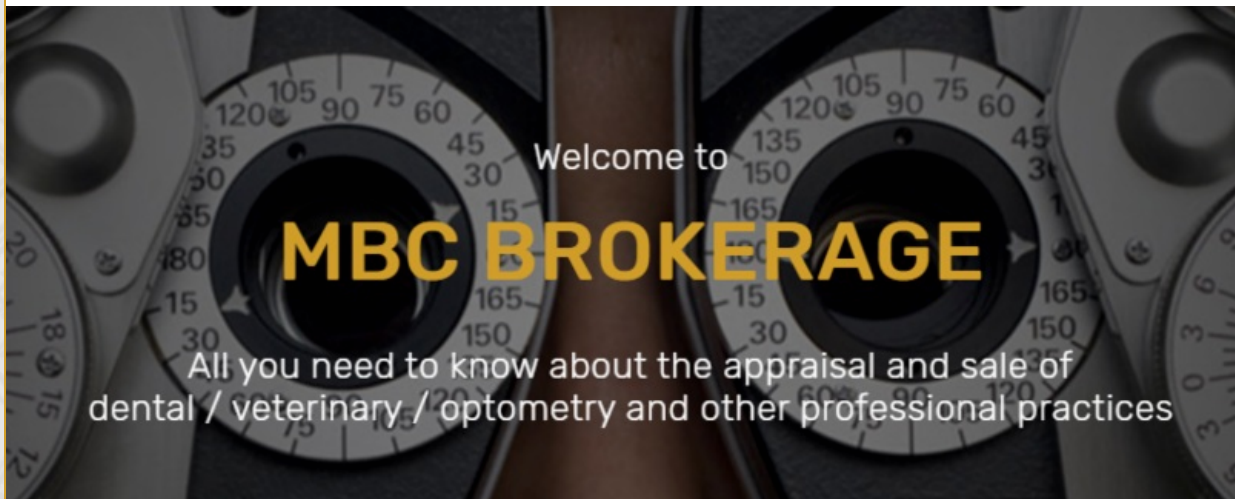
Contact Patti: 905-825-2268 or [email here](#).



and office manual (PPP TM). This turned out to be one of the best business decisions we have made as subsequently a long term employee who was terminated for just cause started a six-figure lawsuit against us... Due to MBC's expert legal representation, the employee and her lawyers dropped the lawsuit and walked away with nothing. We highly recommend the MBC Legal team!"

[Articles and Videos](#)

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We have set out as much general information as possible here for you in order to be as helpful as possible. However, please understand that nothing here constitutes legal advice, nor does it create a solicitor-client relationship. If you are an existing MBC client, or you wish to become one, please contact us so that we can address your specific situation and advise you properly.
