

# What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT EMPLOYMENT LAW™



Greetings!

Many of our doctors have part-time and casual staff.

Those of whom are in Ontario are now (rightly!) concerned about getting complaints based on pay equity under the new provisions of the *Employment Standards Act*.

Whichever province you are in, there are many good reasons to do performance reviews. Some have to do with documenting poor performance (playing *offence*, if you will). But for Ontario employers, there is a new and extremely important reason to do them: as a *defence* against pay equity complaints.

We have had pay equity legislation for decades to protect against wage disparity on the basis of gender (for example, a male and female receptionist could not be paid differently if they did substantially the same job). However, now employees in Ontario also cannot be paid a different “rate of pay” based on *employment status* (full time vs. part time, permanent vs. temporary, seasonal or casual).

The new rule does *not* apply if the difference is because of these:

- (a) a seniority system;
- (b) a merit system;
- (c) a system that measures earnings by quantity or quality of production; or
- (d) any other factor other than sex or employment status

Once an employee makes a complaint, the employer must increase their wage to match (it is prohibited to reduce the higher wage) or provide *written* reasons to justify the disparity. If an employment standards officer finds that an employer has contravened the *Act*, the officer may determine the amount owing to an employee as a result of the contravention and that amount will then be deemed to be unpaid wages for that employee.

In that regard, a simple performance review template, regularly completed, can be invaluable. We have provided an easy-to-use sample below for your assistance. This can be modified for your use. The idea is that you should have at least something in place to document a “merit system”.

We do not believe the “overall rating” category must necessarily be an average of the other ratings, as the importance of the different categories may not be equally weighted to you as an employer. Or perhaps the total rating might reflect an employee’s failure to comply with your Workplace Policy Manual. (For readers who are already Practice Protection Package™ clients, the Discipline Notice form we provided in your Workplace Policy Manual can be similarly invaluable.)

When completing the Performance Review form, we are of the view that you would be well advised to use the written comments section, especially if the employee has sub-par ratings. In any event, it is important to have external, legitimate criteria for differential pay rates documented.

It goes without saying (as regular readers will know) that we think this is a ridiculously cumbersome incursion into the management of a small business for already harried owners. These laws are written by people who, with all due respect, almost invariably have never run a successful business or provided good jobs for anyone. When the author was an undergraduate student at the University of Toronto, there was a food-vending truck regularly parked on St. George. Did anyone else see this? The truck had a brilliant sign emblazoned on the side: “Eat...or we both starve!” If a business is not profitable, it fails, and the jobs are gone with it.

Click here for the sample **Performance Review template** and good luck! We have tried to set out helpful information here, but be sure to recognize when you need legal advice specific to you situation. And then **email** us or call us: 905-825-2268. We are extremely proud of our outstanding and continually growing track record both in Court and in negotiations. But generally speaking, the longer you wait to contact us, the less we can improve your position.

Until next month, be careful out there!

Sincerely,

*Mariana (Dirk, and your team)*

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## #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 only joined MBC Brokerage as an

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

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](mailto: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 and office manual (PPP TM). This*

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.

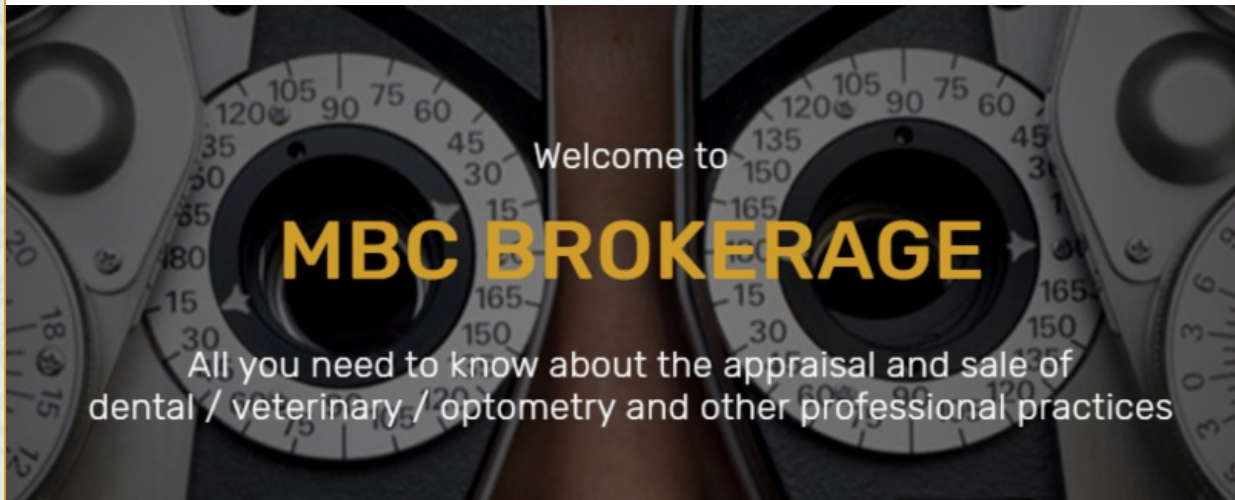
Contact Patti: 905-825-2268 or [email here](#).



*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!"*

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Welcome to  
**MBC BROKERAGE**  
All you need to know about the appraisal and sale of  
dental / veterinary / optometry and other professional practices



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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.

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