

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

WHAT EVERY DOCTOR SHOULD KNOW ABOUT EMPLOYMENT LAW™



Greetings!

**M**BC Legal just won a very significant case,

*Lancia v. Park Dentistry*, for one of our highly valued and well-respected dentists which has important implications for all doctors across the country.

Michele Lancia was a 48-year-old, generously-paid Restorative Dental Hygienist. She worked for Park Dentistry for 8 years (after 11 prior years for the dentist from whom Allen Park bought the practice). When she quit, she was receiving \$59 per hour and 200 hours of paid vacation time annually.



After many years of having a very close relationship with both Dr. Park and his wife, Ms. Lancia quit over a fairly minor dispute about her vacation pay calculation. She sued Dr. Park for constructive dismissal and made false accusations of sexual harassment. We were not only able to persuade the judge that she was "not credible", the Court actually ordered her to pay Dr. Park over \$52,000 for *his* legal fees. (You can read more about this landmark case in the July edition of *Oral Health Journal*.) For readers familiar with our rants about how pro-employee Canadian employment law is, it will be readily evident that this is a massive coup!

*continued below...*



*"Since implementing a PPP™ in my practice a few years ago, I have obtained a **12 times** return on my investment thus far."*

**Jordan L Soll, BSc. (Hon), DDS, Dip. ABAD**

Co Chairman, Editorial Board, *Oral Health Journal*  
Principal, Central Dental Group Toronto, Ontario

For fifteen years, MBC Legal has been arguing with opposing counsel on behalf of our doctor-employers, writing articles for medical and dental publications, speaking at conferences across the country, and generally trying to tell anyone who would listen four key points:

1. Transitioning employees (no matter how long they have been employed already) to proper, written contracts can be done if done properly.

2. New contracts do not require new "consideration" (a raise, bonus, etc) if the process is done properly. *If someone tells you otherwise, they do not know what they are talking about.*

3. It is legally permissible, in fact, if the contracts are well drafted, to reduce the employee's compensation, and dramatically improve the terms for the employer.

4. Transitioning all staff to high-quality contracts and policies, if done in a legally enforceable way, will almost invariably more than pay for itself after just one termination or employee dispute.

In the early years, we could generally make an employee demand go away with one, or at most two, letters to the employee's lawyer (showing them that the process is actually based on very fundamental legal principles and black-letter law). In fact, whether and how long they contested this issue often served as a quick litmus test of how knowledgeable and specialized the employee's lawyer was. Over time, employee-side lawyers have become increasingly aggressive and litigious and, all-too-frequently, less expert (for a variety of reasons about which we have written in the past).



In the *Lancia* case, we had to go all the way to Court. The Court agreed with our submissions: the new contract that we presented to the employee, and the process by which we transitioned her, were both legally enforceable. *Consideration was not necessary.* The Court dismissed the employee's claim for constructive dismissal and what the Court called her "misrepresented" allegations of sexual harassment.

It never ceases to amaze us how much misinformation is perpetuated out there about employment law. A big reason for this is that many people who expound on employment law issues are dabbling in the area or purport to be experts in an impossibly wide variety of areas of law (real estate, corporate, wills and estates, employment, etc). In this age of what the *Harvard Business Review* calls "*hyper-specialization*", ensure that you obtain your employment law advice from a lawyer whose practice is restricted to employment law and nothing else.

We have now two Court cases:

- specifically approving MBC's Practice Protection Package<sup>TM</sup> contracts and our transitioning process, making these as far as we know *the only judicially approved contracts in the industry*; and
- confirming that we have been right about this for over fifteen years.

(We'll tell you about the second case in the next edition of both this e-lerter series and *Oral Health Journal*.) In a third case, once they saw our materials, the employee's lawyers begged us to consent to their dismissing *their own* action (i.e. the employee walked away with nothing but her legal bills).

Following bad employment law advice (which is, unfortunately, extremely pervasive) can be absolutely disastrous to your finances, practice and peace of mind. If someone tells you that you need "consideration" to transition your staff to proper, written contracts, *they are not sufficiently specialized or competent to advise you on employment law.* Call an employment law expert. To speak to us, call 905-825-2268 or **email** us.

Sincerely,

*Mariana, Dirk, and your MBC team*



## It's all about the Training



Most doctors have neither the time, nor the inclination, to train their staff on the myriad issues on which the law now requires that staff must be trained.

When doctors delegate the task to an employee, they find almost invariably that the end product is not sufficient to meet legislative requirements. Everyone is then frustrated that all that staff time and effort (and the wasted payroll) was all for naught. The regulatory requirements are complex so it is understandable that a medical or dental office employee will extremely rarely have the requisite knowledge, training or experience to produce a program and training that is legally compliant.

We can help. If your staff have not been trained on Health and Safety, IPAC, Accessibility or Anti-Violence, we have programs that will do it all for you:

### **i. Workplace Infection Control Program**

### **ii. Workplace Health and Safety Program**

Both programs are **turnkey solutions**. When shopping for programs, ensure that you are comparing apples to apples: how much of the program will you end up having to do yourself? MBC programs *do it all for you* and include everything you need: assessments, posters, forms, compliance checklists, comprehensive manuals and training of your staff.

For more information or to reserve one of the remaining spots in our roster, contact Maria at 905-464-2545 or [mct@mbclegal.ca](mailto:mct@mbclegal.ca).

## How can we help you?

- Litigation
- Health and safety training
- Practice Protection Package <sup>TM</sup>
- Consultations
- Optimizing your practice for sale

Contact us

Articles and Videos

Welcome to

# MBC BROKERAGE

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

## Fire away?

Thinking of selling your practice? Has the buyer (or someone) suggested that you fire all the staff and the buyer re-hire them? See why that would be disastrous [here](#), as well as learning how to keep a bigger piece of your pie...



**Jon Walton**  
General Manager, MBC Brokerage

[Contact Your Team](#)

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Tel: 905-825-2268

Fax: 905-825-8633

Email: [mbc@mbcbrokerage.ca](mailto:mbc@mbcbrokerage.ca)

Address: 15 Belvedere Drive, Oakville  
Ontario, Canada L6L 4B5

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**THANKS!**



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