

What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT EMPLOYMENT LAW™



Greetings!

In recent years, the courts have been chipping away and breaking through the common law, 24-month cap on reasonable notice (or pay in lieu) given to an employee who was dismissed (expressly or "constructively"). A recent case from the Ontario Superior Court of Justice has blown that ceiling wide open.



The factors that Courts assess to determine how much (pay in lieu of) reasonable notice to award an employee (commonly known as the Bardal factors) include: the age of the employee; the character or nature of the employment; the length of service to the employer; and the availability of similar employment, having regard to the experience, training and qualifications of the employee. The Courts are noting that the mandatory retirement age was removed in 2006 resulting in our working lives becoming longer. Accordingly, when there is no comparable employment available, termination can be tantamount to forced retirement.

In *Dawe v. Equitable Life Insurance Company* the Court awarded the

[continued below...](#)



**Dr. Eric Rouah, Big Bay
Dental**

"My *PPP™* saved me over **\$100,000** I would have had to pay to employees who left or got fired. It happened on two occasions and MBC destroyed their lawyers with incredible back up and case law. Guess what: we never heard back from their lawyers. Pay a little now to save a s**t load later--not to mention aggravation."

employee **30** months of reasonable notice. Mr. Dawe had worked for his employer and its predecessor for 37 years, and his latest position was senior vice president. Mr. Dawe was terminated by the employer without cause when he was 62 years old and was given 24 months of notice. He sued his employer for damages for wrongful dismissal.

In awarding him the 30 months of reasonable notice he requested, the Court

noted that it would have granted "a minimum of **36** months" had he asked for it(!) because Mr. Dawe had devoted his entire working career to his employer and its predecessor, was a member of the senior management team, and there were no similar employment opportunities for Mr. Dawe, as demonstrated by his mitigation efforts. The Court further found he would have worked for his employer until he was 65 and probably longer. Mr. Dawe was at the high end of all the Bardal factors.

The trend in the case law is now clear: there is no 24-month cap on reasonable notice periods. In certain cases (especially long-standing service or older employees--and you can be confident that employee-side lawyers will be seeking to broaden the applicability of this case to ever younger and lower seniority employees) the law may require the employer to give the employee *over two years and possibly over three years* of reasonable notice, or more likely, pay in lieu of reasonable notice.

If you are reading this and already have bullet-proof contracts and policies, we are happy to inform you that those contracts and policies now yield even more valuable protection for you and your family against exploding damage awards. If you are reading this and do not yet have high quality, enforceable contracts and policies, you have never had a better reason to stop procrastinating a single further day. Take a look around your office and try to estimate how much (3-plus years of their compensation) it would cost you if one of those long-standing employees were to walk out and claim constructive dismissal.

Another important implication of this new case law is that doctors who are contemplating transitioning out of practice will need to contact us much sooner. See [Implications of the Dawe Case](#), in our Brokerage Division discussion, below.

Both during your ownership and to prepare for the transition out, we can help with Court approved contracts and policies to protect you and your family: call 905-825-2268 or [email](#) us today.

Sincerely,

*Mariana,
Dink,
and your NBC team*



Turnkey Workplace Programs & 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 receive mandatory training.

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 and 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? And yet, statistically, will you still end up not legally compliant? MBC programs *do it all for you* (include everything you need: assessments, posters, forms, compliance checklists, comprehensive manuals and training of your staff) and ensure you are legally compliant.

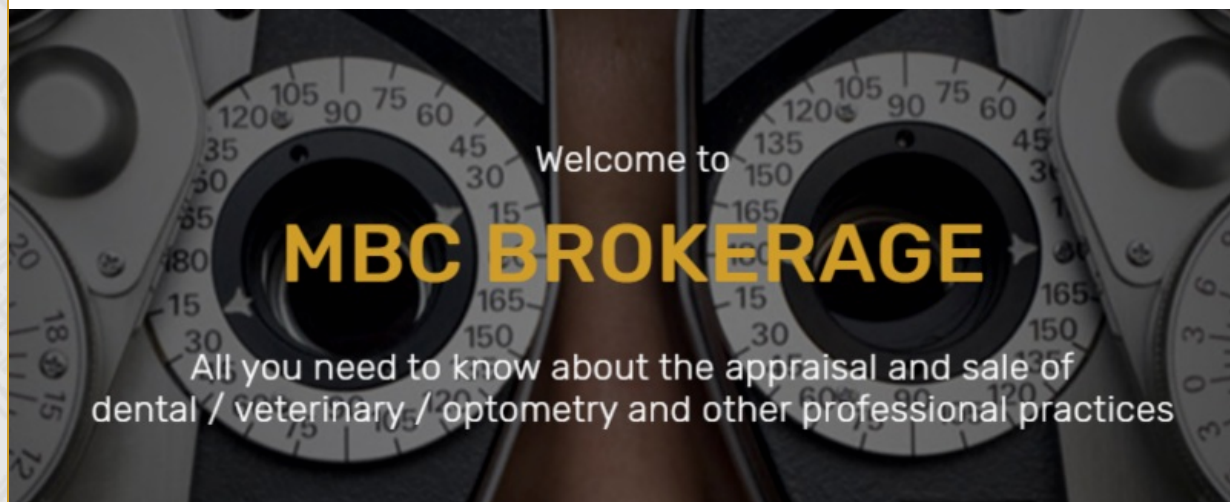
For more information or to reserve one of the remaining spots in our roster, contact Maria at 905-464-2545 or mct@mbclegal.ca.

How can we help you?

- Litigation
- Health and safety training
- Practice Protection Package™
- 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

[Contact Your Team](#)

[Listings](#)

[Request Appraisal](#)



Implications of Dawe Case (above) on Practice Sales

Historically, we advised doctors to come to us at least three years before a potential transition or sale out of their practice. Given the Courts' extending dramatically the

reasonable notice periods to which employees are entitled, we now need more time in order to protect you with best HR practices.

Ideally, you should come to us at least five years in advance of a transition. Realistically, however, you should implement bullet-proof staff contracts and policies for your own protection during your ownership (even if your transition out of practice is 20+ years away.) But at the very least, you should ensure your HR affairs are in good order in time to maximize your value on appraisal and sale. For the latter purpose, our advice is now to contact us **at least five years** before sale. As so often in life, it's a choice between time and money. The sooner you contact us, the less it will likely cost you.

Dear Colleague,

It is with great pleasure and sincerity that I write this letter of recommendation for Jon Walton, because we have just finalized the sale of my practice and he was instrumental in the success of the whole process.

He has been working with us from prior to his valuation of the clinic, throughout the sale and even after the closing to help make sure all the loose ends were tied up to my satisfaction.

Jon explained all fees and processes upfront so there were no surprises. He was always punctual, got things done in a timely manner and adapted to our schedule.

He was invariably highly professional, very friendly, personable and willing to go the extra mile to keep our minds at rest through thick and thin, being able to make good decisions at stressful moments and keep us calm in the process.

I found him to be very easy to talk to and he explains things in clear, simple English.

He put together a first-class sale package, held a busy open house and introduced a number of prospective buyers from his contacts list, one of which subsequently bought the practice. I was very please with how fast things proceeded and would have had a less successful and more stressful time doing things on my own despite previously having attended seminars and lectures on selling a practice.

Having had lots of experience selling clinics, Jon has a comprehensive knowledge base and a large network of independent professionals available to choose from to make up your team. We chose a lawyer and an accountant that we were comfortable with, and Jon worked to make sure everyone was always on the same page.

He did a great job of telling us what to do and when to do it (and what not to do). His whole service was thorough, effective and efficient and I would have no reservations using his service again and recommend him highly.

-Dr. Jeff Hurd



Tel: 905-825-2268

Fax: 905-825-8633

Email: mbc@mbcbrokerage.ca

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

[Click here to give us any other feedback](#)

THANKS!



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. We would love to hear from you.