

What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT EMPLOYMENT LAW™



Greetings!

Nerds rule!

On January 14, 2021, the Supreme Court of Canada denied the employer's leave to appeal the Ontario Court of Appeal decision in *Waksdale*. As regular readers know, many in the employment law bar were surprised by (and expected the Supremes to overturn)

Continued below...

Announcing...

MBC Brokerage is delighted to welcome to our A-list team:

David Rourke!

David began helping doctors appraise and sell their practices over ten years ago at ROI Corporation (following in the footsteps of his mother, Lanee Brown Rourke, who had helped her own father to establish that company). We are honoured that, with David's in-depth and behind-the-scenes knowledge of the industry, he decided he could best serve doctors under MBC auspices.

David can be reached at
rourke@mbcbrokerage.ca

or

647-519-5775

and he would love to hear from you!



Continued from "Nerds rule!" above...

the decision of the Ontario Court of Appeal, that rendered unenforceable a *without-cause* termination provision (which was otherwise perfectly enforceable) because the *with-cause* termination provision was, according to the admission of the employer, unenforceable. So the Ontario Court of Appeal decision now stands as the law because the highest Court in the country refused to take the opportunity to review the lower Court's decision.

At MBC, we had considered the issues raised in *Waksdale* almost seven years ago. We knew that we were being over-scrupulous, somewhat nerdy even, about it; our concerns seemed unjustified given the consensus of opinion in the employment law bar at that time. We reviewed the matter extensively internally, canvassed myriad external authorities, analyzed employment-law-drafting best practices, consulted a litany of other expert sources and concluded it was not necessary to change the way we drafted termination provisions for our clients. Despite that conclusion, we *did* change the way we drafted our provisions in order to comply with a possible argument which no one seemed to feel would succeed. We decided to act out of an abundance of caution on behalf of you, our clients. You can imagine how we felt when *Waksdale* came out!

Prior to *Waksdale*, as we regularly told clients, 90% of the contracts we were asked to review for a second opinion were literally not worth the paper they were written on. After *Waksdale*, that number may rise to about 99%.

All of which goes to show that, as we used to say in the high school library, "Nerds rule!" Our mothers have never been prouder of us.

Sincerely,

**Mariana, Dirk,
and your MBC team**



A Practice Protection Package™ will pay for itself many times over, and help you sleep better at night! A must for any practice. Very professional people to work with.

Dr. Izchak Barzilay, DDS, Cert. Prosthodontics, MS, FRCD(C)

Head, Division of Prosthodontics & Restorative Dentistry, Mount Sinai Hospital

Associate in Dentistry, University of Toronto

Private Practice limited to prosthodontics and implant dentistry

Don't miss the upcoming webinar hosted by our friends at PACE
(which approximately 400 of your colleagues attended last time we presented)...



What Every Doctor Should Know About Employment Law and Practice Transition Given COVID

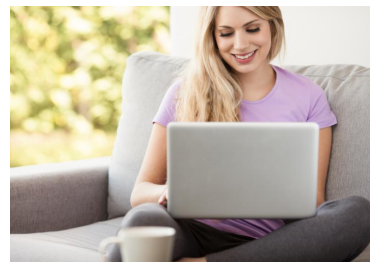
with Mariana Bracic, Dirk de Lint & Jon Walton



Details and Registration

Tuesday, April 6, 2021, 6:00pm - 9:00pm; 3 CE Credits

Watch our May 5, 2020, PACE webinar [here](#):



Spring Cleaning!

Given these unprecedented times, (and even more so given the *Waksdale* decision--see above) there has never been a better time to get your practice affairs in essential order. To help you to do just that, MBC is

offering you:

(1) a 3-month ZERO-interest payment plan for a new Practice Protection Package^{TM*}

and/or

(2) a complimentary, confidential "For Owner's Eyes Only" Practice Value Estimate^{**}

Contact your MBC team today: 905-825-2268 or email mbc@mbclegal.ca to take advantage of either or both of these offers. We're looking forward to speaking with you!

*Payments are spread equally across 3 consecutive months starting at your Intake Meeting, completely interest-free.

**This is an estimate only and based only on a review of your practice's financial statements. It will give you a good idea of your practice value. It is *not* a substitute for a comprehensive, professional practice appraisal as is required by lenders. MBC Brokerage's professional practice appraisals are accepted by every Canadian Schedule I lender for at least 100% (and sometimes considerably more!!) of our stated appraised value.

Offers expire when Spring does (June 20, 2021).

Got more questions?

Please click here to watch the **Canadian Dentist Podcast** interview of Mariana Bracic by Dr. Carlo Biasucci.



Employment Law During the COVID-19 Pandemic



Poking required?

Now that the vaccines are finally being rolled out, one of the most frequent questions we are getting at MBC Legal is whether mandatory COVID vaccination policies for employees are legal. While the answer is complicated and this should not be taken as legal advice for your particular situation, we can make the following general comments.

Mandatory vaccination policies for COVID are obviously untested because there is currently no legislation or caselaw on the issue. By analogy with flu vaccination policies, the law is fairly mixed. Among the relevant criteria are:

- whether the workplace is governed by a collective agreement
- the efficacy rates for the vaccine
- the nature of the workplace (including how closely the staff work together and what the risk is to the public)
- whether the policy is reasonable
- whether it is consistently enforced

Generally speaking, assuming a non-unionized environment (which is the case for the vast majority of our readers) our expectation is that it is more likely than not that mandatory vaccination policies will be upheld. Even if not, however, if your office is covered by a Practice Protection Package™, then our expectation is that, subject to human rights considerations, you would be able to terminate the employee just by providing the minimal contractual notice. *We are trying to set out helpful general principles to educate and empower our employer clients, but please do not ever terminate or discipline an employee without the benefit of legal advice from an expert employment lawyer to whom you have told all of the relevant facts. Your specific facts may change your and your employees' respective rights and obligations from the general principles set out here. **Contact us** if you have questions specific to your situation well before you take any action.*

It is important to understand, however, that even if the law considers mandatory vaccination policies acceptable, they will still be subject to the employer's duty to accommodate individual employee needs based on human rights grounds. So, for example, if one of your employees objected to being vaccinated on the basis of a disability or a religious ground, you would be required to go through the accommodation process to see if their needs could be accommodated to the point of undue hardship. And documenting accommodation is very important.

Like so much in employment law in Canada, the answer on mandatory vaccination policies too is, "It depends!" To analyze your particular situation on mandatory vaccination or anything else, **contact us**.

IPAC & Health and Safety Programs



If you're like most of the doctors calling us in these uncertain times, one of your biggest questions is: "What health and safety protocols does my practice need to follow now?"

We are here to help you to navigate the myriad changes and requirements for patient risk assessments and IPAC (infection prevention and control) as we all try to get back to some semblance of normality.

Contact Maria Turner at 905-464-2545 or mct@mbclegal.ca for help.

How can we help you?

- Employment Litigation
- Health and safety training
- Practice Protection Package™
- Consultations
- Optimizing your practice for sale
- Wills and powers of attorney
- Estate litigation



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

Dirk de Lint
Director of Legal Affairs



Irv Handler
Sales Representative



Introducing



Jon Walton
General Manager
Sales Representative



David Schramm
Sales Representative



Eric Humes
Sales Representative



Sandie Baillargeon
Transition Consultant
Business Analyst



David Rourke
Sales Representative
Formerly of ROI Corp



Tom Schramm
Broker



Maria Turner
Sales Representative



Mariana Bracic
Founding Lawyer



Pandemic and Practice Values

When it comes to practice values, we are hearing from many doctors that they are confused and worried. Our advice to you during these times is to keep calm, and use this time to your advantage to prepare.

While no one has a crystal ball, we anticipate an increase in listings in the medium term. We have tabulated the results of the poll (see below if you haven't yet responded; we still want to hear from you!) from our last three e-letters. Here are the results to date:

- **73.3%** of you responded you will sell sooner because of COVID!
- **10%** of you responded you will sell later because of COVID; and
- **16.7%** of you responded your plans for transition are unchanged.

At MBC Brokerage, we are working with the major Schedule I banks to account for the COVID-19 anomaly to mitigate major losses in practice value attributable to this past, highly irregular, year in practice revenue. It is reasonable to expect an adjustment in these circumstances because all medical and dental practices are generally in the same situation. It is not as if your patients were

going elsewhere for treatment, they simply were not allowed to come in to see you, and they need(ed) to return when the lockdown lifted. It is not lost revenue, but merely deferred revenue.

So, when it comes to worrying about what the pandemic may have done to your practice value, keep calm and carry on. And if you can use this time advantageously to put your affairs in good order (such as by getting or updating your professional practice appraisal) even better. To discuss your practice value in this unusual time, **contact us**.



WHAT ABOUT *YOUR* PLANS?

Has COVID-19 changed the date you plan to exit practice ownership?

Yes, I now plan to sell sooner

Select

Yes, I now plan to sell later

Select

No, I expect to sell as originally planned

Select



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Ontario, Canada L6L 1H5

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



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.