



What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT HR LAW™



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The # 1 Thing You Need Leaving Lockdown

In these uncharted times, as we all readjust our sense of normality following the (first?) COVID-19 pandemic lockdown, many doctors are calling us worried about the financial viability of their practices. They are concerned about what they will do with staff given the onerous new guidelines required. Never has it been more important as a Canadian employer to have *flexibility* in management rights.

How much flexibility you have to manage issues coming out of lockdown as an employer really depends on what is in your management toolbox (what we at MBC having been banging a drum about for almost 20 years now). The difference between businesses which will be able to get through these unprecedented challenges relatively unscathed and those which will struggle lies in the principle of management flexibility. Now more than ever before, it is crucial that you have (or transition to) high quality, enforceable, comprehensive contracts and policies with all staff. These are essential legal documents that will give you much-needed flexibility to deal with the needs of the practice during these difficult times and beyond (not to mention add value to your practice at the time of sale).



"A Practice Protection Package™ will pay for itself many times over and help you sleep 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 and Restorative Dentistry, Mount Sinai Hospital
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When we are speaking to groups of doctors across the country, we often start by asking members of the audience to put up their hands if they have contracts. Typically, a minority of attendees raise their hands. What is important to recognize, however, is that every single employer in the audience (and every single one reading this article) has employment contracts. *You* have contracts with every staff member. They may be written, or they may be oral. If they are written, they may be high quality and enforceable at law. Conversely, they may be worthless for any of myriad reasons according to law: they may be insufficiently detailed or comprehensive, may not adequately incorporate by reference essential workplace policies, may run afoul of statutory protections or otherwise render themselves unenforceable. When we are asked to provide a second opinion on the contracts a doctor already has in place, in the vast majority of cases they are literally not worth the paper they are written on. If your contracts are unenforceable or they are merely oral, then your staff have common law rights. Common law rights are dramatically more generous to employees than anything to which you would ever actually agree. Moreover, oral (common law) contracts give the employer the least amount of management flexibility.



"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 ***t load later - not to mention the aggravation."

— Dr. Eric Rouah

Do you have enforceable contracts that permit you to make significant changes in hours, duties, reporting relationships, etc.? Do you have contracts that specify that the notice (or pay in lieu) you have to give on termination is the statutory minimum and no more? Do you have contracts that permit you to lay off and discipline staff? If you answered yes to these questions, then you have a lot more flexibility to manage your practice coming out of lockdown as well as contractual ways to prevent a constructive dismissal lawsuit. If you answered no to these questions, then your rights may be constrained by the common law which will be unduly onerous to you and dramatically more expensive than need be (possibly costing hundreds of thousands of unnecessary dollars you could have saved with good contracts and policies).

Here are just four of the most essential management rights leaving lockdown that you must have (or get, ASAP), and which the common law would otherwise not permit.

1. Proper Termination Provision

A proper termination provision that rebuts the legal fiction of "common law reasonable notice" may easily save you five or six figures if you need to terminate an employee for any reason (whether it's a slowdown in business due to COVID-19, your death, your disability, the sale of your practice, or merely poor performance by the employee – which you may be surprised to learn is not sufficient for a "just cause" termination in Canada).

It is important that you understand that there are thousands of pages of case law on what precise words will, and especially those that will not, be sufficient to rebut the common law presumption of reasonable notice. So ensure that your contracts and policies are prepared by an expert. Similarly, there is extensive case law on the process by which existing employees can, and cannot, be transitioned to new, written contracts. Employment law in Canada is not a do-it-yourself project, nor is it something that should be dabbled in by a general lawyer as there are a great many traps for the unwary. At MBC, we have been doing this highly niche work and have transitioned many thousands of medical and dental office employees to high quality, enforceable contracts and comprehensive workplace policies since 2003. Over 99% of our clients are some type of doctor. The package (and process) we have perfected is what many in the industry have come to regard as the gold standard: the Practice Protection Package™ (or PPP™). We have not only won Court cases on the PPP™, the verdict was so resounding that the employees were ordered to pay our clients' legal fees (in addition to their own lawyers' bills!)

Continued on pg. 2



Continued from pg. 1

The bottom line is that, today, no employer in Canada should employ anyone without the benefit of a proper, contractually enforceable termination provision prepared by a lawyer who practises employment law exclusively and has extensive experience in your industry...period.

2. Right to Lay Off

Any Canadian business that is functioning optimally, even in the absence of what may be waves of varying degrees of lockdown due to a global pandemic (but *a fortiori* during these unpredictable challenges) will ensure that it has the right to lay off as necessary. Typically, employment standards legislation in your province permits lay-offs, but please appreciate that the common law does not. At common law, a lay off is a wrongful dismissal. In other words, if you do not have an enforceable, written agreement permitting you to lay off staff, then you do not have the right at law.

How Are You Sleeping?

When you get a demand letter from an employee-side lawyer for several hundred thousand dollars, you will wake up in the middle of the night and pray that your contracts are enforceable. Statistically, your prayer is unlikely to be answered. When we are asked to provide a second opinion on other "contracts", over 90% of the time they are not worth the paper they are written on. Don't wait for an HR disaster before you put your HR affairs in good order. Contact us today.

3. Right to Make Changes without Constructive Dismissal

A successful business should be able to respond to changing business needs by altering duties, hours, compensation and any other staffing elements. A proper contract should allow you to make any changes that, in your business judgment, will improve productivity, efficiency or profit, without triggering a constructive dismissal lawsuit. Having proper contracts and policies in place allows you to reorganize your practice to shift certain responsibilities among staff in an effort to be more efficient and productive and compensate for this (and any future) economic downturn. At common law, any change that is significant and adverse to an employee may trigger a "constructive dismissal" lawsuit. It is foolish to leave your business exposed to that potential liability unnecessarily.

4. Right to Discipline

The common law significantly restricts what an employer may do to discipline an employee for misconduct without triggering liability for constructive dismissal. The bottom line is that you can, and should, obtain dramatically enhanced rights to discipline staff that are essential to effective workforce management. This is an indispensable part of the comprehensive Workplace Policy Manual in our PPP™.

Bottom Line

As employers, we often cannot know in advance when exactly an expensive employment law problem will hit us. That's why it is essential to take the steps the law allows us to take to protect our practices and to do so in a timely manner. There is no reason in the world why every single doctor who employs anyone

Friends Don't Let Friends Suffer HR Disasters

For many professionals who are committed to excellence, one of the most gratifying things about practising is the number of referrals we get from happy clients. So many of our delighted Practice Protection Package™ clients are helping to spread the important information to their friends and colleagues that having Court-approved contracts and policies with all staff is life changing. If you already have a PPP™, tell a friend or colleague how it has changed your practice life today. We thank you, and once your peers learn what every doctor should know about employment law, they will thank you too!



should not have proper, written contracts (and comprehensive workplace policies) with their staff. Failing to do so is just asking for trouble. And ordinarily, you may not know when trouble will hit you. Now that we've had the first wave of COVID-19 lockdowns, we actually do know: trouble has hit us.

No one has a crystal ball to predict what will happen with COVID-19 or future pandemics. Given publication deadlines for print, months will have elapsed between the time we are writing this and the time you are reading it. Just as we were going to print with this article, the Ontario government amended the *Employment Standards Act* to give a temporary reprieve to businesses by rendering inoperative the deemed termination provision after the expiry of the layoff period. This new reprieve will expire six weeks after the end of the declared emergency. While it is a temporary help on one of the issues, it does not remotely provide the range of flexibility you need or protect you adequately.

One thing is certain: the pandemic will be a serious challenge to the viability of many businesses across Canada. In our professional opinion, one of the biggest differentiating characteristics of the businesses which survive will be the degree to which they have management flexibility rights to ramp up and down their workforce as required. We have been recommending and giving hundreds of doctors across the country these essential tools of the employer toolbox for almost twenty years now though our trademarked PPP™. They have never been more important.

Flexibility is key. Unwritten, common law contracts do not mean flexibility. The courts will not give you the benefit of any of these flexible management rights unless you have a very well-crafted set of contracts and policies that clearly spell those out and that are strong enough that a court will enforce them. Do you?

We want to help

We understand COVID-19 has put a financial strain on many clients. Because we have had a surge in doctors wanting a PPP™ at this time, we are able to offer you free financing for your PPP™. Offer expires December 31, 2020. (Four equal payments of 25% spread over 4 months from the Intake Meeting, with zero interest.)

How can we help you?

- Practice Protection Package™
- Litigation
- Health and Safety Programs & Training
- Consultations (Telephone, Email, or in Person)
- Optimizing your practice for sale
- Workplace Investigations
- Discipline and Terminations
- Wills, Powers of Attorney, Estate Litigation



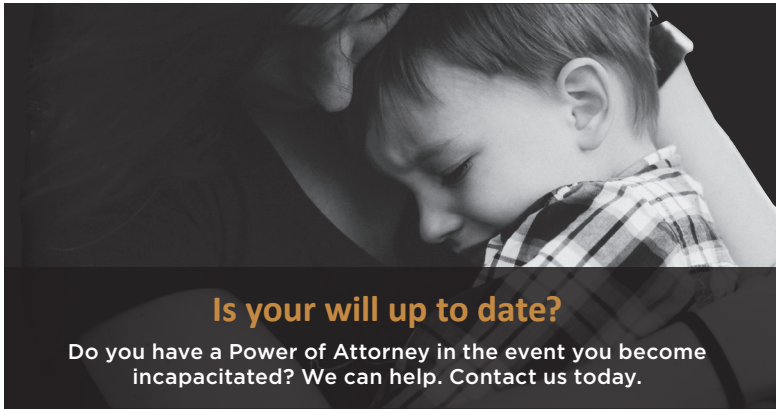
Essential tips and updates

To be included in our hugely popular monthly e-lert (with over three times the industry average readership) send an email (saying: "Add me to the MBC Legal e-lert roster") to mbc@mbclegal.ca.

IPAC & Health and Safety Programs

We are doing what we can to give some relief to our clients while we all get back on our feet. We also want to contribute to keeping our clients' offices safer for patients, doctors, staff and the public. For a limited time, MBC is reducing its fee for both our infection control (IPAC) and health & safety (H&S) programs by 30 per cent.

Please contact Maria Turner at **905-825-2268** or mct@mbclegal.ca to get further details.



Is your will up to date?

Do you have a Power of Attorney in the event you become incapacitated? We can help. Contact us today.



Love MBC Legal? Flip over for our Brokerage Division...



What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT APPRAISING AND SELLING PRACTICES™

Introducing



Jon Walton
General Manager
Sales Representative

Tom Schramm
Broker

Sandie Baillargeon
Transition Consultant
Business Analyst

Irv Handler
Sales Representative

Mariana Bracic
Founding Lawyer

Dirk de Lint
Director, Legal Affairs

Maria Turner
Sales Representative

David Schramm
Sales Representative

Eric Humes
Sales Representative

Don't let COVID-19 hurry you into the biggest mistake of your life.

Dear Jon:

With all the new COVID-19 requirements, I'm feeling overwhelmed and ready to sell much earlier than I thought. A buying corporation has approached me and indicated they may be interested in purchasing my practice. I feel flattered by their interest, and I have heard rumours that buying corporations pay significantly more for practices. I have no idea what my practice is actually worth, other than what they have told me they may be willing to offer in a Letter of Intent (LOI). What should I do?

Yours truly, Harried (and Hurried) in Halton

Dear Harried and Hurried:

Buying corporations or groups ("BC"s) are certainly out there in record numbers these days approaching practice owners across Canada to see if their practice(s) are the right fit for their business model. We have helped many business owners sell their practices successfully to BCs over our many years of service, and we can certainly say that selling to a BC might be the best option for you as it is for some owners. However, there are many circumstances where selling to a BC may not be the best option. As far as a BC paying more than the open market buyer for a practice, this could absolutely be the case in certain instances as most BCs have access to large amounts of funds. However, it is important to remember that BCs are in the business of acquiring practices. Accordingly, their business model requires that they purchase any practice at the best (lowest) possible price that they can, without insulting the owner, to maximize their EBITDA (Cash-flow) from day one, just as any other buyer would.

Our advice on this is the same pre- and post-COVID-19. When approached by a BC, you should always, at the very least, do your homework to ensure you fully understand the offer and commitment you will be bound to. This will allow you to speak

"apples to apples" with a BC. Remember, purchasing practices is part of the raison d'être of these highly specialized corporations; they are very good at what they do.

Step 1: Get (or update) a professional appraisal

Your question posits that you have not yet considered sale and therefore have not begun the planning process in any way at this point. An absolutely essential first step is to ascertain the market value of your practice. We cannot stress strongly enough how vital it is that you contact a professional practice appraiser to understand the sale price your practice could obtain in the open market before you sign any offer or letter of intent with which the BC presents you.

Have your practice independently appraised or your appraisal updated to ensure the general offer amount being made by the BC is within the ballpark of what your practice is actually worth. Folks, we know this sounds like common sense, but we are frequently surprised at how many people allow this buyer (a sophisticated corporation) to come in and tell them what their practice is worth, and not question the BC's value

continued on pg. 2

We are delighted to welcome Sandie Baillargeon to our team as a Transition Consultant and Business Analyst. Sandie's decades of experience in the dental industry and exceptional credentials (including authorship of a textbook used by dental schools across the country) are an outstanding fit with the relentless pursuit of excellence for which MBC has come to be known.

To obtain Sandie's help with your transition or maximizing your practice value contact her: 905-825-2268 or sandie@mbcbrokerage.ca.



Finding a good professional appraiser specializing in a specific health care industry is not easy, and optometry is certainly no exception. Jon Walton at MBC Brokerage has a tremendous experience in appraisals, specifically in the optometric field. Him and his team at MBC are professional, courteous and thorough. I have personally reviewed many of his appraisals over the years and I can say with confidence that their quality of work and attention to details are second to none.

Dr. Sam Baraam, H.B.Sc., O.D.

360 Eyecare, President and Owner
Metro Eye Care, President and Principal Partner
OLIB Marketing and Consulting, Practice Management Consultant

I was introduced to Irv Handler in 2009 by my trusted accountant/advisor and friend when I was looking for financing for a practice I was opening. I met with several bankers from various institutions during the process. Irv was better prepared, more knowledgeable about my profession/industry and more willing to work to understand my particular unique situation to get me the best deal he could. He was honest and did not just tell me what I wanted to hear, it was also genuine. I don't think there are too many people in the financial world with as good an understanding of optometry as Irv. Most tend to compare us to other professions like dentistry, which is not an equal profession in terms of revenue streams with respect to balance of services and products.

Integrity, knowledge and reliability would be the three words I would use to characterize him. Not to mention he is a nice guy and a pleasure to deal with.

Mike Rotholz

View Eye Care



Continued from pg. 1

or (just as importantly) the conditions of their offer. One thing we commonly see is some BCs presenting an owner with a mere Letter of Intent (“LOI”) which is non-binding such that all the terms, including price, can change. However, some BCs commonly include in their LOI a 6-month exclusivity period meaning the owner is tied up for half a year and cannot discuss the sale of the practice with anyone but this BC. The poor owner is then trapped and bound to the BC exclusively (without the benefit of a

market and what they could actually achieve regarding not only the sale price, but also the conditions within the offer that could impact the net amount a seller would keep, as well as level of transition they would be required to offer. In our experience, when a sale is performed properly on the open market, it is not uncommon for a quality practice (which is what all the corporations are typically looking to purchase) to sell for above appraised value due to supply and demand, particularly in a desirable area and even to a non-corporate buyer. Allowing one buyer to be the “only game in town” allows for that buyer to have the upper hand in negotiations. This often allows for certain terms and conditions to be dictated to you that may have potentially been avoided in a true open market sale, even if the eventual sale is to a BC. Remember that there are typically multiple groups or corporations wanting to purchase your practice and you can make your practice available to the best offer available to you through an open market sale. Each corporation or group has their own preferred structure for a sale: some want you to maintain a percentage ownership, while others offer different fee structures, as examples.

continue to succeed; otherwise they would not be purchasing it. It is up to you to decide if you would like to pass your legacy off to a corporate model or transfer your legacy to an independent owner/operator doctor. For some, this not only comes down to the dollar amount offered, but also the conditions in place, a holdback period of funds tied to certain targets after the closing of the sale, etc.

Buying corporations are here to stay, and there seem to be more and more emerging every day. The decision to sell to a BC has certainly been the best option for some doctors over the years. From our experience, those who do their homework and proceed properly with the sale process, even when dealing with a BC, achieve the absolute best results when it come to the sale of their practice and transfer of their hard-earned legacy. Those who get flattered into dancing with just one partner (in business as in life) have often made one of the most costly mistakes of their lives.

You have many different options out there, whether it is a BC, a group of doctors, or private sale to an individual doctor. Educate yourself before making a decision that will impact the rest of your life.

Knowledge is power. We are here to increase your knowledge. Contact us today.

In a recent poll, 24% of doctors told us that they will be selling sooner than planned because of COVID-19. If you feel the same way, the first step is to get (or update) your professional practice appraisal. Contact us today because we'd be happy to help you.

free and open competitive market) during this potentially long and costly negotiation period. Meanwhile, the BC has the freedom and leisure to change whatever terms they would like in their eventual offer (including price) over this long commitment period, while you are unable to explore any other options that may be out there with respect to the sale of your practice.

Step 2: Consider the market and what practices are actually selling for today

The major corporations do have a reputation to maintain, so we generally see that these specific corps do not typically insult the owner with the amount “appraised and offered”. However many owners fail to take into account the open

Step 3 – Decide if the corporate option is right for you.

This point is fairly self-explanatory. A corporation certainly wants your business to

Have your cake and eat it too

Enhance your practice value while solidifying the transfer of your legacy with the help of our expert team. Contact us for an appraisal now.

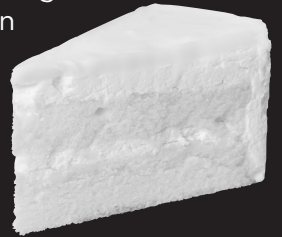
MBC Brokerage, the progressive, full service appraisal, legacy preservation and brokerage team is dedicated to standing by you, every step of the way.

Our many years of experience in finance, management, on-site professional practice consultation and business-system management allow our team to provide expert advice and

guidance during the performance of professional practice appraisals and custom brokerage services tailored to your specific practice and goals.

We pride ourselves on providing an invaluable service, every step of the way, to professionals looking to improve, plan and prepare their legacy for an eventual transition from ownership for any reason.

Call us to learn why so many of your colleagues love and trust us.



How can we help you?

- Professional practice appraisal
- Professional practice sales and legacy preservation and transfer
- Practice purchasing preparation and advice
- Business, financial and day-to-day practice consulting

Want to get the latest news and new practice purchase opportunities?

Visit www.mcbrokerage.ca and click on the “register now” button.



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