

What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT EMPLOYMENT LAW™



A Message From Mariana Bracic BA, (Hons), J.D.

"Thank you sincerely to all of our hundreds of fantastic doctors across the country for your valued trust over the last ten years."

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You've Come a Long Way Baby!

August of 2013 marks the tenth anniversary of MBC Legal. I hope that the reader will indulge me if I begin this edition with some personal reminiscences that are highly sentimental to me on this milestone. (Someone pass me a tissue!) Should you wish to skip to the substantive legal points, please feel free to proceed directly to the heading, "The New Normal" on P.2. (It's okay, I'm a grown-up...I can take it!)

In August of 2003, I found myself—a new mother completing the end of my parental leave with my twins—in a surprising position. As a woman who had always considered herself ambitious and career-oriented, I was amazed by how much biology seemed to be involved in having children. (I know...apparently, it's possible to graduate at the top of one's Law School class, and yet have limited life

sense!) I was thrown off-guard by an overwhelming inability to be any significant geographical distance away from my babies. I had to approach my husband and tell him that if he'd married me for my ambition, I was going to disappoint him: I just could not see returning to work in downtown Toronto, fifty kilometers away from my tiny babies every day. Fortunately, like the good man that he is, he told his wife to pursue whatever course she wished. (He said he married me for my research skills anyway.) And so I started MBC...and I do believe that, ten years later, my husband is happy that he let me do what I wanted!

It was not easy to get accustomed to relying on a start-up income, having been used to not one, but two, Bay Street salaries. I recall initially spending almost eighteen months with negligible revenue while doing



Mariana with her twins William and Holland in 2006.

10th Anniversary

PPP™ Event

25% off a PPP™
for a limited time.

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The New Normal

In the last ten years, employment law in Canada generally, and in the health-care sector specifically, has changed dramatically. Here are the significant developments:

I. Increased Litigiousness

Class action lawsuits, contingency fees¹, the proliferation of legal information on the internet, increased employee rights-orientation, and greater income disparities have all contributed in the last decade to more litigation in Canadian society. Whereas ten years ago, it was not nearly so risky to have one's terms of employment with staff completely unwritten, today that is an unacceptable risk. A Canadian employer in 2013 who has not signed comprehensive contracts with all staff has effectively signed a blank cheque!

II. Increased Regulatory Burden

If one were to arrange the jurisdictions of the world on a continuum from an employment law perspective, we would find Canada near the far left: it is very pro-labour and anti-business. That is so not merely in terms of the default presumptions that will apply to your employment agreements with your staff (i.e., if you do not have comprehensive, written contracts, you have "common law" contracts and hence these presumptions will apply to you). Canada is also very leftist in terms of the overwhelming amount of regulatory burden that confronts a business, even a relatively small business such as a dental or medical office. Among the most serious recent impositions is the requirement that every employer in most provinces have an Anti-Violence Program. What the Ministries of Labour require for compliance is, in my view, incredibly onerous and difficult for a small-business employer to meet without expert help. The fines are significant, so if you haven't already complied, please do so as soon as possible.

¹) A contingency fee arrangement is an agreement between an employee-side lawyer and their client that allows the employee to pursue the lawsuit without any payments up front (or at all if the employee loses). If the employee wins, the agreement provides the lawyer with a percentage of the amount they recovered, typically in the 25-40 per cent range.

²) See the discussion in Daniel Pink, *To Sell is Human*, of the transition from "buyer beware" to "seller beware" that arises from an equalization of information in the market.

III. For Saleable Practices, Much Savvier Buyers

For those of our doctors whose practices are saleable, we have seen an enormous shift in the effect of the employment-law issues on the dynamics of a sale transaction. In 2003, it was extremely common for a buyer to agree to a term in the Purchase and Sale Agreement that obligated them to continue to employ the vendor's staff "on substantially similar terms". From a buyer's perspective, that is highly ill-advised as it may entail inheriting hundreds of thousands of dollars in contingent liability. And we see that, today, buyers are dramatically less likely to agree to that term—unless they are getting the practice for "a steal" and therefore the contingent liability is factored into the price.

It is noteworthy that this shift in buyer attitudes has occurred even in a prolonged vendors' market. It will be interesting to see what happens when the market reverses and buyers have the upper hand. (I predict caveat venditor², seller beware.) My advice to our clients is to ensure your employment-law affairs are in order well in advance of selling or retiring from practice. Even in medical practices where the incoming doctor is simply taking over (without a "sale") the new doctors are usually worried about liability regarding the employees, and rightly so.

Like your home or any significant asset, your practice should be staged before it is listed for sale if you wish to realize its full value. The difference between what a rational buyer will be agreeable to paying for a practice with its employment-law affairs in order and one without can easily exceed a hundred thousand dollars. There is probably nothing else you can do so easily that will have such a big impact on your family's bottom line.

Market data proves that a PPP™ will increase sale price significantly.

-- Timothy A. Brown,
CEO of ROI Corporation

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research and carefully developing the powerful and comprehensive documents that constitute our Practice Protection Package™. I then had to ask my husband (with considerable trepidation!) if I could spend \$10,000 of the family's money on launch initiatives, including this very publication series which has since grown to be so enormously popular among doctors across the country.

"I wanted to be near my children in their early years so that I could teach them to read."

So when I am speaking with doctors who are starting up, or have taken over a practice, I completely empathize with their situations. I know first-hand all of the sacrifices that are required to succeed: financial, personal, and even physical. And I am so proud to help Canadian doctors start off (or get) on the right foot with otherwise dangerous employment-law issues and to protect their valuable practices and their families' assets. I always want our clients to know that we are absolutely rooting for them!

Looking back, I believe that when I left Bay Street, I expected to compromise enjoying a fulfilling career because of family life. I have learned tremendously from my experience. I try to share those lessons with young people whom I mentor. Here's what I now know to be true:

1 Do What You Love!

I thought that when I left Bay Street, I would have to settle in my conception of success. What I learned is that when you do what you love, success is dramatic. Thomas Edison said "I never worked a day in my life. It was all fun."

While it's true that I have never yet been able to confine my work hours to the part-time goal I initially set, it is also true that I generally love my work so much that it doesn't matter. I return from vacations genuinely impatient to get back to work.

2 Build Your Dream Team

Running a small business (a medical, dental or law office) is not easy and you need a great team. From friends and family to professional advisors, surround yourself with people who share your vision of success. We are the average of the five people with whom we most closely associate. When it comes to advisors, I always ensure that ours are as specialized as is possible in whatever area we need help with. We see in our work at MBC on a daily basis that having both a legal specialization (employment law is all we do) and an industry specialization (over 90% of our clients are doctors) generates overwhelming advantages to our clients. When I'm hiring an advisor, I want someone who works in the relevant area day in day out, not merely dabbles in it, or knows the area but not my industry. In the information age, proper specialization makes an incredible difference.

3 Be the Boss

I mean this in two senses:

(i) Self-employment is one of the most significant advantages of being a professional such as a doctor or lawyer. We professionals are fortunate to be self-employed, and we should ensure that we derive all of the advantages that are available to us, in exchange for the significant responsibilities it entails.

(ii) Too many of our clients are actually afraid of their staff. That, in my view, is intolerable and needs to be remedied. As the boss, you need to have the tools

in your employer toolbox to ensure that the practice is run fully effectively and in accordance with *your* vision.

4 Keep Your Perspective

When it comes to both raising children, and starting businesses, the best advice I ever received is, "The days are long, but the years are short." Savour them all. One of the many important reasons I wanted to be near my children in their early years was so that I could teach them to read, which I did by the time they were twelve months old. (There is more information about that on our web site (mbclegal.ca; see my bio page) and I expect to finish a book I am writing on how to teach babies to read within the next few months.) Teaching babies to read was a good analogy for starting a business: you have to deconstruct a large goal into a series of small, daily tasks.



Thank you!

Thank you sincerely to all of our hundreds of fantastic doctors across the country for your valued trust over the last ten years. It has been a privilege to serve you, and I personally have thoroughly enjoyed it. All of us at MBC very much look forward to helping you with all your employment-law protections in the next decade. Whether you are an existing client, or we have not yet met you, please call on us any time that you need our help. We are always on your side!

WHAT YOU DON'T KNOW CAN REALLY HURT YOU™ What Every Doctor Should Know About Employment Law™

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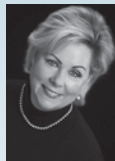


Mariana Bracic

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Sandie Baillargeon

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with Sandie Baillargeon of DOCS and Mariana Bracic of MBC
February 16-23, 2014 aboard Allure of the Seas®

Who's Talking About Us?

With the complexities of employment law and the significant potential liabilities to employers, it is critically important that specialized, employment-law advice be obtained. Whether it be for new practice start-ups, acquisitions, or growing practices, MBC Legal's expertise and guidance has proven to be invaluable to my clients.

– John McMillan, LL.B., Corporate Lawyer

"I think MBC provides a fantastic service for physicians and dentists, and address a chink in the armour most of them have."

– David Harris, President, Prosperident

"I want to thank you and your team for everything you have done for us. It has been a very positive experience and I feel I am well positioned with respect to the mountain of legislation and regulations we have to deal with....I was expecting fear or resistance but everybody was relaxed and accepting. I think the signing bonus helps a lot to take the sting out of it. ...Thanks again. It was much smoother than I expected.

– Dr. Fiona Hodgkinson

From the start of our business relationship, and continuing to this day, the MBC team's professional, caring and friendly approach always reassured me that they really do care and they are on our side to guide us, help us grow and protect our businesses.

– Dr. Lucia Ambrochi

Out of all the lawyers that I've dealt with (and I've dealt with quite a few), I am the most impressed with Mariana Bracic. She is so knowledgeable, quick to reply and professional. I am so grateful because she made a very difficult situation for me much easier.

– Dr. Jones Chan, Acton

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Mariana Bracic

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Mariana Bracic

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