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DEVRY SMITH FRANK *LLP*

Lawyers & Mediators



MY EX-SPOUSE REFUSES TO AMEND THE SCHEDULE AND ALLOW ME TO TAKE OUR CHILD ON VACATION. WHAT CAN I DO?

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Taking the children away on a vacation is a frequent source of conflict after separation, and is the subject of many Family Court motions. The non-travelling parent may be jealous, or may worry that the trip could give the travelling parent the advantage of having a better relationship with the child. Judges, on the other hand, are less concerned with these factors and are instead focused on deciding whether or not the trip is in the child's best interest.

If the parents have lawfully separated or divorced, a Separation Agreement or Divorce Order is likely already in place to stipulate to the custody arrangements. A typical Separation Agreement or Divorce Order contains detailed information pertaining to the precise days and times the children are to spend with each parent. That being said, Judges will generally allow changes to the parenting schedule to allow a child to go on a vacation.

What do you do when a parent unreasonably refuses a travel request?

Unfortunately, it may be necessary to go to family court if one parent continues to unreasonably refuse to allow the other parent and child to travel. One advantage of going to court were the judge to be sufficiently dissatisfied, the resulting court order may dispense with the need to obtain travel consent in the future. Nevertheless, if the trip is looming, it is best to obtain legal advice specific to your situation. Getting proper advice will give you the best possible chance of the vacation going ahead as planned.

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MEDICAL MARIJUANA: LIMITS ON CONSUMPTION IN UNIONIZED WORKPLACES



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A recent labour arbitration decision from Saskatchewan has framed what might be the boundaries around workplace consumption of medical marijuana.

In *Kindersley (Town) v Canadian Union of Public Employees, Local 2740*, 2018 CanLII 35597 (SK LA), an employee was dismissed for vaping medical marijuana while operating the employer's vehicle. The employee had previously disclosed to his employer that he had had a prescription for medical marijuana and was allowed to vape marijuana in the workplace.

The employee was not allowed to operate his employer's vehicle for approximately 30 minutes following vaporization of marijuana. He was also not permitted to operate heavy machinery for 1 hour after vaping.

The employee was later discovered to have been vaping while driving and immediately before driving. As a result, the employer summarily dismissed the employee.

The employee's union filed a grievance challenging the summarily dismissal.

The arbitration board held that, despite the lack of proof of the employee's impairment on a balance of probabilities, the vaping of marijuana immediately prior to and while operating the vehicle entitled his employer to summarily dismiss him. The board also emphasized the fact that the employee appeared to lack respect for the limits of his employer's medical accommodation of him, and cared little for the safety of his coworkers by vaping while other employees were in the vehicle with him.

The arbitration board found the decision to summarily dismiss was not excessive discipline. The board noted that while the employee should not be deprived of using marijuana for the medical purpose intended, ultimately "there is no reason he could not have done this more discreetly rather than in the presence of his co-workers and while driving."

What does this case tell us?

While it is a Saskatchewan decision, the same principles apply in Ontario: having a prescription for medical marijuana is not a free licence to consume it whenever and wherever you like, particularly while working for an employer.

Moreover, even if your employer has expressly accommodated you by allowing you to consume marijuana in the workplace, not adhering to the terms of that accommodation could result in dismissal without notice.

It is also important to note this case applies to unionized employees, who have greater protections from dismissal than non-unionized employees. This suggests that, in a non-unionized workplace, the threshold for misconduct meriting dismissal based on the consumption of medical marijuana could be lower.

According to Ontario's human rights laws, all employers must accommodate employees with a disability to the point of undue hardship. This accommodation could include allowing employees to use medical marijuana while at work. However, employees must comply with the limits of their employer's accommodation, so as to avoid undesirable disciplinary measures.

I'VE BEEN ARRESTED - DO I HAVE THE RIGHT TO TALK TO A LAWYER?



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The answer to this question is "yes". The right to legal counsel upon arrest is a fundamental right in Canada and should you find yourself in such a situation, your first request should be to speak with a lawyer.

Under section 10(b) of the Canadian Charter of Rights and Freedoms, persons who have been arrested by the police have the right 'to retain and instruct counsel without delay and to be informed of that right'. In other words, the police are obliged to make clear to you that you can speak with a lawyer should you so desire.

Once you have exercised your right to speak with counsel, the police are duty-bound to assist you in contacting a lawyer at the earliest opportunity. You must be permitted to speak with your lawyer privately. You may also exercise your right to remain silent, whether you do so in the absence of counsel, or upon the advice of counsel.

If you do not wish to answer, politely let the officer/s know. Verbalising this makes it clear to all parties that you have chosen to exercise your right to remain silent, but it does not prevent the officer from asking you questions. However, if you have asked to speak with legal counsel, the police should wait until you have done so.

Obtaining legal counsel ensures you are given the best opportunity to understand not just your own rights, but also the rights the police can legally exercise. You have the right to continuously advise the police of your right to legal counsel and to provide suggestions on how you may be assisted with your request.



MY UBER WAS INVOLVED IN A COLLISION AND I WAS INJURED - CAN I BE COMPENSATED FOR MY INJURIES?



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In recent years, ride-hailing services have become increasingly popular and the demand appears to continue to rise. In densely populated cities such as Toronto and in the GTA in general, owning a car can be prohibitively expensive, making the ride-sharing concept a great convenience. Toronto's licensing department has issued almost 70,000 private transportation company licenses to drivers for ride-hailing companies such as Uber. With such congestion, it is almost inevitable that you or a loved one may be involved in a collision or accident with an Uber car at some point. Should this happen, legal issues often arise and contacting an experienced personal injury lawyer will help improve your odds of getting the treatment and compensation you deserve.

Can I Claim Compensation from Uber Directly, After a Crash?

The difference between calling a conventional taxi and an Uber, is that an Uber driver uses their personal vehicle to pick you up, as opposed to a taxi service which uses commercial vehicles for the sole purpose of carrying passengers. Essentially, Uber drivers are considered independent contractors. That being said, insurance claims involving an Uber vehicle are typically treated in the same way as other car accident claims.

Any driver has the legal obligation in an accident is to remain at the scene of the accident, and where the property damages are more than trivial or someone is injured, to call the police and any emergency medical services, in instances where required. As an Uber passenger, there is little legal obligation on you in an accident. If you witnessed the accident, you may give your name and number to the people involved in the accident and speak to the police if they are called to the scene. If you are injured, you should be taking steps to help yourself right away. Seeking medical help for your injuries and contacting a personal injury lawyer will help protect the integrity of your claim and ensure your claim is successful.

In the midst of the chaos surrounding the aftermath of an accident, it is difficult to keep information straight. If you have a cell phone and can physically and safely move around, take video footage of the scene of the accident. Include the licence plates of the cars involved, the positioning of the cars, the damages to the vehicles and the street signs or addresses. You can describe what you see. Keep in mind that other people may end up seeing this video so keep it as accurate as possible. Your recollection of how the accident occurred may also be described. If you can't record a video, take photos of the accident scene including the cars and make notes as soon as possible. Take photos of the Uber driver's licence and insurance pink slip and licence plate. Take the same photos of the licences and insurance of all of the other vehicles involved.

If you don't have a camera phone, write down all the details you can get: the driver's licence numbers from all drivers involved; the licence plates of the Uber and other car(s) involved; the name and policy number from each of the drivers; and the contact details for any witnesses to the incident. In the event that you do not have your own car insurance, you may claim benefits from the insurer of the Uber vehicle. These benefits may include your medical and rehabilitation treatment, possible attendant care assistance and weekly income replacement benefits.

In July 2016, the Ontario government approved a regulatory change under the Insurance Act to allow commercial fleet insurance to be offered to vehicles that can be hired through an online application. For Uber drivers with appropriate ride sharing insurance, the insurance policy applies from the moment the driver logs into the ride sharing app and is available to accept passengers, until the last passenger exits the vehicle and the app is closed. At all other times, the driver's personal insurance policy may respond, usually with a denial as most personal auto policies have specific exclusions for ride sharing use. There are presently only two auto insurers offering ride sharing insurance. Unfortunately, not all Uber drivers have the appropriate insurance.

While it is almost impossible to know the exact outcome of a claim, an experienced personal injury lawyer will always be able to guide you through this difficult and often confusing time.

PERSONAL INJURY FAQ'S

[What is my claim worth?](#)

[What are "Accident Benefits"?](#)

[Should I sue?](#)

[How long does a claim take to get resolved?](#)

[Can the insurance company access my Facebook?](#)

DSF IS GROWING



Peter Harrison, B.A., LL.B.

Family Law

Peter was called to the Ontario Bar in 2005. He obtained his Bachelor of Arts degree from University of Natal in 1989 and his LL.B. from University of Natal in 1992. In addition to practicing as a lawyer, he acted as a Commissioner of the Small Claims Court in South Africa. Peter practices Family Law out of DSF's Barrie office.

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Eric Gossin, B.Sc., B.Ed., LL.B.

Corporate Law & Mediation

Eric was called to the Ontario Bar in 1977. He has incorporated into his practice a broad range of experiences including Corporate and Commercial Law, Estate Planning and Administration, Family Law and Real Estate. He advises his clients in all aspects of their lives. Eric is currently expanding his mediation practice and practices out of our Toronto office.

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Ashley Doidge, B.A., J.D., TEP.

Wills & Estates Law

Ashley was called to the Ontario Bar in 2015. Her practice focuses on Estate Planning and Estate Administration. Ashley obtained her Bachelor of Arts degree in Psychology from York University in 2010. She received her Juris Doctor from Osgoode Hall Law School in 2014. Ashley recently joined DSF's Wills and Estates Group and practices out of our Toronto office.

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Laura Rosati, B.A., LL.B.

Real Estate Law

Laura was called to the Ontario Bar in 2001. She graduated with merit from York University in 1997, majoring in Psychology and earned her law degree at Osgoode Hall Law School in 1999. Laura's practice focuses on all aspects of real estate law, including residential and commercial transactions, mortgages, refinances and transfers. Laura practices out of our Barrie office.

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Robert McShane, B.A., J.D.

Corporate Law

Robert was called to the Ontario Bar in 2018. Robert obtained his Bachelor of Arts degree from Wilfrid Laurier University in 2012. He received his Juris Doctor (Honours) from Bond University in 2017. Robert is a part of our Business and Corporate Law group. He practices out of our Toronto office.

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DSF IS GROWING



George Messih, B.A., LL.B.

Real Estate Law

George was called to the Ontario Bar in 2018. He obtained his Bachelor of Arts degree in economics from McMaster University 2011. He received his LL.B. at the University of Wales UK in 2014. George has worked closely with lawyers from leading UK law firms in assisting members of the community with contract, tenancy and various advisory matters. George joined our Real Estate, Corporate and Estates groups. He practices out of our Barrie office.

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Stephanie Turnham, B.A. (Hons.), LL.B.

Commercial Litigation

Stephanie was called to the Ontario Bar in 2007. She obtained her Honours Bachelor of Arts degree, with distinction in Psychology and Philosophy from Queen's University in 2003 and her LL.B. Osgoode Hall Law School in 2007. Stephanie practices out of our Whitby office.

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Justin Cooper, B.A., LL.B.

Commercial Real Estate Law

Justin was called to the Ontario Bar in 2009. He regularly drafts and negotiates a wide range of real estate related agreements and documents on behalf of purchasers, vendors, lenders, and borrowers, including agreements of purchase and sale, and loan and security documents. Justin practices Commercial Real Estate out of our Toronto office.

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Michelle Cook, B.A. (Hons.), J.D.

Collections & Mortgage Recovery, Commercial Litigation, Employment Law

Michelle was called to the Ontario Bar in 2019. Michelle obtained her Honours Bachelor of Arts degree, with distinction from University of Toronto in 2016. She received her Juris Doctor from the University of Ottawa in 2016. Michelle joined DSF as an articling student in 2018 and returned as an associate in 2019. Michelle practices out of our Toronto office.

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Katelyn Bell, B.ASc., J.D.

Family Law, Education Law

Katelyn was called to the Ontario Bar in 2019. She obtained an Honours Bachelor of Applied Science degree from the University of Guelph in 2014. She received her Juris Doctor from the University of Ottawa in 2018. Her legal career has focused exclusively in family law and education law. Katelyn joined DSF as an articling student in 2018 and returned as an associate in 2019. Katelyn practices out of our Toronto office.

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LETTER FROM OUR MANAGING PARTNER

Larry W. Keown, B.A., LL.B.



Devry Smith Frank *LLP* (DSF) has undergone exponential growth over the last decade. Our areas of practice have expanded and our team of lawyers has evolved accordingly. Our broader law groups have increased their depth and expertise in particular legal sub-specialties to better serve our clients' growing legal needs. We have also expanded to include growing office locations in Barrie and in Whitby so as to be more accessible to our clients.

Recently, we added several talented new lawyers to the firm. We have added to our large family law group by hiring experienced family law lawyers in both our Whitby and Barrie offices. We have also added depth in our corporate, commercial litigation and real estate groups in Toronto and Barrie. We also 'hired back' our two talented 2018-2019 articling students as lawyers at DSF.

We also recently welcomed to the firm, Mr. Eric Gossin and Ms. Ashley Doidge (formerly of Stancer, Gossin, Rose *LLP*) who proudly bring decades of experience in the fields of corporate/commercial, wills and estates and mediation. These additions serve our goals of bolstering our collective talent and experience levels to service our clients, and further our commitment to provide top expertise in many legal fields.

Our entrepreneurial spirit continues to drive us. We continue to work on many exciting new opportunities. You can expect additional announcements from DSF in the future. In the meantime, we encourage you to follow our progress and stay informed as we change and grow.

We are grateful to all of our clients, with whom we have worked closely over the years and with whom we have built long-standing relationships. We look forward to continuing to foster, grow and strengthen these relationships. We also look forward to meeting and building relationships with new clients, as DSF's practices grow.

A handwritten signature in black ink, appearing to read 'L. Keown', written in a cursive style.

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CASE STUDIES

Reilly v. Zacharuk 2017

Appellant v. TDSB

Martinez v. Basail

D.S. v. Children's Aid Society of Toronto

Livingston v. Williamson at al

Martin v. Gibson

*Massa v. Allstate Insurance Company of
Canada*