

# YOUR GUIDE TO A HEALTHY DENTAL OFFICE



**PROVIDED BY:**



Devry Smith Frank *LLP*  
Lawyers & Mediators

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“The lawyers at Devry Smith Frank *LLP* have impressed me with their specialized knowledge of circumstances unique to dental professionals. I used them to set up my orthodontics practice and highly recommend them to my colleagues. This firm really is a firm dedicated to client satisfaction and client success!”

- Dr. Mark Nalbandian

# WHO ARE WE

Devry Smith Frank *LLP* is dedicated to providing timely, professional, and comprehensive advice to dentists and dental specialists. We are a mid-market firm with a reputation for being approachable, professional and practical. We have particular experience representing dentists and dental specialists and remain current on developments that are specific to the dental profession.

The Royal College of Dental Surgeons of Ontario ("RCDSO"), as the governing body for the profession, regulates the practice of dentistry. Failure to comply with RCDSO regulations can result in costly remediation and possibly in sanctions affecting a dentist's ability to practice. Our lawyers are well versed in the RCDSO requirements. We regularly advise our clients as they move through the process of fulfilling RCDSO requests.

As a full service firm, Devry Smith Frank *LLP* offers its clients added peace of mind. Our clients can rest assured that their matters will be handled in a complete and diligent manner. Our lawyers draw on their respective areas expertise as needed. Our comprehensive approach to providing legal services ensures the very best quality for our clients at highly competitive rates.

# COMMERCIAL LITIGATION & DEBT RECOVERY

Commercial disputes are an unfortunate reality in today's world, and the dentistry profession is not exempt. While it is generally desirable to avoid going to court, sometimes resolution can only be achieved through litigation. In order to effectively represent you, your lawyer must be provided with a thorough understanding of your concerns. To this end, it is important to document your concerns as they arise and to keep complete and organized files.

Common commercial disputes include the following:

- Collection of outstanding accounts from patients
- Contract disputes with suppliers, etc.
- Partnership/Shareholder disputes
- Landlord-tenant matters
- Disputes concerning termination of employment

Litigation must generally be initiated within two years from the day of discovery of the claim giving rise to the action. Contact your lawyer as soon as possible after discovering a claim in order to preserve your right to seek restitution.

Of course, not all matters require litigation, which can become expensive and arduous. It is important to find experienced lawyers who can help you find alternative means to resolve your dispute and to assist you in structuring a cost-effective solution.



# EMPLOYMENT LAW

## DEFINITION OF THE RELATIONSHIP

Defining a working relationship at the outset is important for any number of reasons, not the least of which is to avoid that relationship being defined for you. Whether the relationship is one of employer/employee or payor/independent contractor, each comes with its own set of rights, responsibilities and tax considerations. An associate agreement is critical to clarifying the relationship and to identifying the responsibilities of each party.

Consider the situation in which a dentist contracts with an orthodontist to provide services in the dentist's office.

The orthodontist invoices the dentist for the services provided, and the dentist does not make regular employee deductions. Many in the dentistry industry would describe this relationship as one of payor/independent contractor. But the Canada Revenue Agency ("CRA") may take a different view, arguing that the relationship is one of employer/employee because, among other things, the "employer" was responsible for scheduling patients and the orthodontist did not provide services to any other offices. Your lawyer can explain the CRA's criteria when reviewing an associate relationship and can provide you with an associate agreement that best reflects your work arrangement.

## TERMINATION OF THE ASSOCIATE RELATIONSHIP

An associate agreement is invaluable. Among other things, a typical associate agreement will establish the nature of the relationship, will clarify the parties' rights and obligations should the relationship come to an end and will include provisions regarding termination notice or pay in lieu thereof. Your lawyer's input prior to termination of the relationship is critical: issues of constructive dismissal and human rights violations may arise, to the surprise of the unwary and of the uninformed.



## RESTRICTIVE COVENANTS

A properly drafted associate agreement will also contain various restrictive covenants, or promises, made by the associate to the business owner. Typical restrictive covenants include non-compete and non-solicitation undertakings. In a non-compete clause, the associate agrees to not compete with the business within a defined territory for a defined period of time. In a non-solicitation clause, the associate agrees to refrain from soliciting patients of the business for a defined period of time. Drafting a restrictive covenant is an art: make it too onerous and a court will find it to be void; draft it too narrowly, and the business interests of the employer/payor may be at risk. A lawyer with industry-specific experience can adequately assess the needs of the business and can draft the clauses in a manner which best protects your practice.



# BUSINESS/ TAXATION LAW

Tax law guides business decisions in every industry, both in terms of high-level tax planning and in terms of day-to-day operations. Poor tax planning may result in a cannibalization of your profits and of your operating capital.

Your lawyer can advise you as to your options regarding the business structure best suited to your goals. Fairly recent legislation has permitted dentists to incorporate their professional practice, giving rise to the professional corporation. A dentist with a professional corporation can enjoy the following benefits:

- Lower tax rates
- Tax deferral mechanisms
- Income splitting opportunities
- Lifetime capital gains exemption
- Protection from personal liability in areas not otherwise covered by insurance

As a general rule, incorporating and organizing the professional corporation with a view to selling your practice should begin at least two years in advance. Involve your lawyer at the outset. This will serve to better prepare your business for the ultimate transaction and to assist you in maximizing the tax benefits available to you.



Whether you are starting a dental practice from scratch, purchasing an existing practice or positioning for retirement, there are several business and legal issues to consider. Consulting a professional advisor who has the market experience and insight to guide you through the necessary steps of these processes is critical and can often save time and money.

Our business lawyers can assist with:

- Incorporation and organization
- Commercial leasing
- Financing
- Employment agreements
- Shareholder agreements
- Partnership agreements
- Succession planning
- Tax planning
- Advisory services



# COMMERCIAL LEASING

Dentists may either own or lease the space in which they operate. A lease may require your personal guarantee. A thorough understanding of your lease will allow you to understand your rights and responsibilities with respect to operating your business and to clarify *what* you may expect of your landlord. Perhaps even more important than the question of what is in any draft lease submitted to you for your review, is *what is missing*.

A typical lease will contain these important terms:

- Landlord repairs and inducements
- Accurate description of the space to be leased
- Calculation of rent
- Proper identification of all parties
- Term of the agreement and any renewal terms
- Rent-free period
- Permitted uses
- Exclusive use (to prevent the landlord from renting space to a competitor in the same plaza)
- Events of default and the consequences thereof.
- Assignment of lease
- Termination of lease

Contact a lawyer with commercial leasing experience before you sign the lease. Your lawyer will review your lease with you and will offer valuable insights and advice.

Maintaining an up-to-date estate plan is critical to the dentist/business owner. Failure to implement an estate plan may result in significant shrinkage of your estate due to unnecessary taxes and legal fees.

# WILLS AND ESTATES

A will is often described as the cornerstone of your estate plan. Your will should, at the very least, designate your estate trustee/executor and beneficiaries. On a more planned level, along with your will, you may create trusts for various beneficiaries, appoint guardians, make provisions for disabled beneficiaries, and transfer assets on a tax efficient basis. As a dental professional, you may even decide to set up “dual” wills to avoid including business assets in the main will. This serves to exclude the assets of the secondary will from the process of applying for probate, and will result in reduced fees payable by your estate.

Your estate planning lawyer will review your assets and the manner in which they are held, in order to ensure that they are allocated in the most tax-efficient manner. Review your estate plan periodically to ensure its currency. The following is a partial list of events that may require you to review your estate plan:

- Death of an estate trustee or beneficiary
- New beneficiaries you wish to include (e.g. grandchildren)
- Disability of a beneficiary
- Purchase or sale of a business
- Marriage
- Marital breakdown or divorce

# FAMILY LAW

It is difficult to appreciate the value of a marriage contract, which only comes into play should the marriage break down. A marriage contract is a planning tool and an insurance policy in one; should you ever need it, you will appreciate that you spent the time and money to have one prepared. Drawing up a marriage contract when spouses are in a rational state of mind can be less stressful than it would be in the emotionally charged, sometimes adversarial circumstances of imminent divorce.

In a situation of divorce or separation with no reasonable prospect for reconciliation, the normal course is to take an accounting of the "Net Family Property" for the purposes of making an "Equalization Payment" to the spouse in an economically disadvantaged position. Keep in mind the following:

- A dental license is not property and does not form part of this valuation.
- The valuation method is typically fair market value, or what an unrelated third party would pay for the asset.
- Property owned jointly is attributed equally to each spouse.
- Special provisions apply when dealing with the matrimonial home.

Family law is a specialized area of law that can influence many other areas. It is prudent to consult a family lawyer at the earliest stage possible.



# AREAS OF PRACTICE

Alternative Dispute Resolution  
Bankruptcy and Insolvency  
Commercial and Civil Litigation  
Commercial Lending  
Corporate and Commercial  
Criminal Law  
Employer Law  
Employee Law  
Estate Planning and Administration  
Family Law  
Financial Services  
Franchise Law  
Fraud Litigation  
Immigration  
Insurance  
Intellectual Property  
Personal Injury Claims  
Planning and Development  
Real Estate - Commercial and Residential  
Tax Litigation  
Tax Planning



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