

DSF NEWS

DEVRY SMITH FRANK *LLP* NEWSLETTER WINTER 2014 ISSUE

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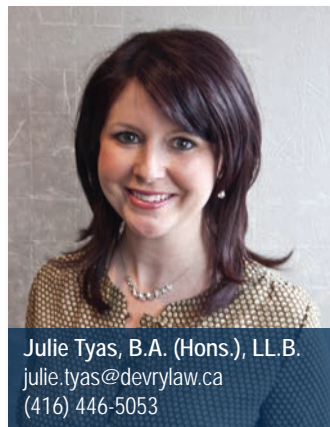
Welcome to DSF8

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"HAPPY 2014 ... I WANT A DIVORCE"

PRESS RELEASE | JANUARY 7, 2014



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Once the hustle and bustle of the holiday season has come to an end, you may, like many other Canadians, be thinking of divorce or separating from your spouse. January is usually the busiest month for family lawyers and has been coined, "Divorce Month." To that end, you may be wondering what you need to be doing in December before separating in January?

1. Consider marriage counselling. If you are unsure as to whether your relationship is irreparable, marriage counselling may be able to help you and your partner work through some of the difficult issues

you are facing. If it proves unsuccessful, you may then work with your partner and counsellor towards developing a plan to inform your children, families and support networks in a healthy and positive manner.

2. Consult with a reputable family law lawyer. You need to be aware of and understand your rights and obligations within the legal framework in order to approach the separation reasonably and without causing any harm to your partner, your children, and yourself as a result of making hasty decisions that do not accord with the law.

3. Talk the talk. If it is possible, speak with your partner about how you would like to move forward with your separation. Agreeing on a particular process in advance of any heated dispute will keep you focused on resolving the issues surrounding your separation as amicably as possible. What is even more productive and cost-effective is if you and your partner can work together to produce an

agreement on one or more of the issues resulting from your separation, subject to any advice your respective lawyers will have.

4. Begin collecting your financial disclosure. The exchange of full financial disclosure with your partner is always recommended. This financial disclosure forms the basis upon which negotiations for settling property, child and spousal support issues may reasonably and openly occur. Begin gathering your financial disclosure as soon as possible, because it often takes longer than you think it will.

5. Avoid behaving recklessly. Unless you want to enter the expensive, back-logged and arduous court system, maintain the status quo in terms of your financial responsibilities and best interests of your children. While going through a separation is often gruelling, you do not need to make it worse for yourself and your family.

DSF INTRODUCES THREE NEW PRACTICE AREAS!

We are pleased to announce that with the arrival of Asher I. Frankel and Michael P. Farace, we are able to offer three new practice areas to our clients: **Corporate Immigration Law, Regulatory Health and Safety Law, and Construction Law.**

Asher I. Frankel heads our Immigration Law team and his areas of practice are related to Canadian and U.S. business immigration law, with emphasis on cross-border temporary movement of employees under NAFTA, as well as immigration provisions of universal application. Asher is qualified in both Canada and U.S. and brings over 25 years of experience in the immigration law for both countries.

Michael P. Farace is an experienced Ontario Occupational Health & Safety Act (OHSA) and Construction Law lawyer and in his practice he helps clients navigate the complex OHSA statutory regime to ensure compliance with occupational health and safety requirements, as well as representing land owners in his Construction Law practice and providing them with expert knowledge of CCDC standard construction documents.

All of these practices will complement our already established roster of many other areas of law we offer and will help us to provide you with legal services suited to all of your needs.

SMALL BUSINESSES LEFT IN LEGAL LIMBO —DSF'S ALBERT LUK CALLS OUT BAY STREET LAW FIRMS

PRESS RELEASE | NOVEMBER 26, 2013



It's a common story for Toronto's entrepreneurial community: They seek out a big, Bay Street legal firm, a retainer is agreed upon, and the client initially gets middling to attentive service — as long as the billable hours keep coming. But what happens when legal needs change and

the hours start to decline? According to DSF lawyer Albert Luk, when billable hours decrease, smaller clients often see an increase in rates, a sharp decline in service levels, or in some cases, the small business client is actually told that they are "being fired".

"Big Bay Street firms simply are not set up to handle anything other than a Fortune 500 business. It is very difficult for a lawyer working on a \$100 million dollar file to understand the needs, mindset and realistic budget for businesses not making seven figures in profits each year."

This was a concern that Joanna Duong, founder and CEO of Henkaa, a Toronto-based fashion and accessories brand, experienced early on in her legal relationship with a downtown firm. She was referred by her accountant at the time, but immediately regretted not undergoing a longer selection process.

"They didn't make us feel like we were wasting their time, but we also didn't seem to have their full attention," said Henkaa of her legal firm at the time. "When we needed to discuss lowering our bill, we got the sense that they were insulted."

Andrew Jenkins, principal of Volterra Consulting, a Toronto-based company helping SME's with their social media needs, avoided Bay Street altogether in favour of a boutique legal firm catering to small businesses.

"From the beginning, we were looking for more of a partner and advisor than consultant for our legal needs," said Jenkins. "A big law firm would have seen our 10-20k in billings as small potatoes, but I think that's short-sighted. Don't forget that Mark Zuckerberg started Facebook in his dorm room. Just because we aren't there yet, doesn't mean that we won't grow."

IMMIGRATION UPDATE 2014 – CHANGES TO THE TEMPORARY FOREIGN WORKER PROGRAM

BY ASHER I. FRANKEL, B.A., M.S., J.D. | FEBRUARY 13, 2014



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For almost three years, since April 2011, the government has been loosely monitoring employers' compliance in connection with their hiring of foreign workers. Employers who participated in the Temporary Foreign Worker Program (TFWP) were expected to uphold the terms and conditions of the original job offer, including those relating to wages, working conditions and employment in substantially the same position as represented in the documentation filed in order to obtain the work permit.

In the aftermath of public scandals during 2013, on December 31, (yes, New Year's Eve) the government announced Ministerial Instructions and amendments to the Immigration and Refugee Protection

Regulations (IRPR) significantly broadening its enforcement powers and the scope of compliance reviews. Employers are now required to keep copies of any documents pertaining to compliance with conditions prescribed by the IRPR for six years, beginning on the day the work permit is issued to the foreign worker. Furthermore, also for a period of six years, the government has the authority to conduct random inspections of employers' premises without search warrants, including the ability to interview both the foreign worker and other employees of the employer. Pursuant to the changes, employers can be subject to the following harsh consequences when a determination of non-compliance is made:

- The employer may be deemed ineligible to participate in the Temporary Foreign Worker Program for a two year period.
- The employer may have its name, address, and period of ineligibility published online on a public "Ban List."
- The employer may be issued negative Labour Market Opinions (LMO) on any pending applications. A positive LMO is a required approval to obtain a work permit in most cases.
- The employer may be found to have committed an offence for employing a foreign national in a capacity in which the foreign national is not duly authorized to work. Penalties for serious offences include \$50,000 or imprisonment for a term of up to two years.
- The employer may be found to have committed an offence by misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the adjudication of an immigration application. Penalties for serious offences include \$50,000.00 or imprisonment of up to five years.
- The employer may have previously-issued Labour Market Opinions and/or

work permits suspended or revoked.

In light of the sweeping changes to the temporary foreign worker program and increased immigration enforcement environment, it is incumbent upon employers to conduct a thorough internal review of their HR policy to implement measures to insure compliance. We are seeing the government initiate employer compliance reviews with small companies as well as worldwide multinational corporations with household names.

We can assist with the setting up of systems to insure compliance so that if/when the immigration inspector comes knocking on the door, you are well prepared.

Several other changes to immigration law are expected imminently, and DSF wishes to set up a listserve to provide breaking news on changes in immigration law as they happen. If you wish to be part of this group, please e-mail the author.

2014 – A GOOD YEAR FOR ONTARIO LOW INCOME WORKER'S RIGHTS

PRESS RELEASE | DECEMBER 9, 2013



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Are Canadian retail giants at risk of walkouts by low income workers similar to their counterparts south of the border? According to Meghan Ferguson, employment and human rights lawyer with DSF, although retail employment is on the rise in Canada, workers employed by American outlets in Canada are currently better protected than their U.S. counterparts. But for how long?

"The basic difference is that Canada has many existing regulations to protect the

legal rights of workers," says Ferguson, who has spent a number of years as legal counsel in the retail sector. "A decent living is hard to achieve for any front-line workers in the retail or fast food industry. We will see more people occupy these low-paying jobs as more American retail chains open in Canada."

But there was good news for low income workers last month. On December 4, 2013, the Ontario government introduced amendments to Employment Standards legislation. If passed, the legislation will remove the Ontario Ministry of Labour's \$10,000 cap on the recovery of unpaid wages and increase the time limit for an unpaid wage claim from six months to two years. "This will make it easier for low income workers, like retail employees, to recover wages without having to go to court or incurring legal costs."

"Retail workers in Canada can file complaints more easily with the provincial ministry of labour." Complaints are often resolved without formal legal action and corporations settle to avoid government investigations and/or penalties."

This fundamental difference in the retail employee experience provides a major protection for lower-income Canadians.

Under the current law, a worker who files a complaint for termination and severance pay with the Ontario Ministry of Labour can only recover a maximum of \$10,000, no matter how much their employer owes them. If the legislation is passed, a worker could recover the full amount.

The legislation would require an employer in Ontario to complete an audit of their employment records and practices to determine if the employer has complied with

part or all of the *Employment Standards Act* (ESA). An employer may have to produce a report to the Ministry of Labour about their compliance with employment standards. Companies that fail to comply with the ESA could be subject to Ministry of Labour orders and fines of up to \$100,000 (or for repeated violations up to \$500,000). Individuals such as directors and senior management could be fined up to \$50,000 or imprisoned for up to 12 months for failing to comply with the Act.

"Simply put, the rights of Canadian retail workers are protected under provincial employment standards acts," Ferguson says. "We see a lot of pay practice lawsuits and, more recently, protests in the U.S. for workers' rights, but the same trend is not necessarily crossing the border. Government regulation and hefty fines will likely be the Canadian experience."

UPCOMING EVENTS

***OHSA SEMINAR** – APRIL 11, 2014 – INTERCONTINENTAL YORKVILLE

ANNUAL SPRING MEETING (ASM) DENTAL CONFERENCE – MAY 8-10, 2014 – METRO TORONTO CONVENTION CENTRE

***HR/EMPLOYMENT SEMINAR** – MAY 29, 2014 – INTERCONTINENTAL YORKVILLE

ASSOCIATION OF FAMILY AND CONCILIATION COURTS (AFCC) CONFERENCE – MAY 28-31, 2014 – THE WESTIN HARBOUR CASTLE

*To register for these events and for more information, please contact Joanna Esposito at 416-446-5819 or joanna.esposito@devrylaw.ca.

NEW OHSA AWARENESS-TRAINING REGULATION

BY MICHAEL P. FARACE, B.A., LL.B. | DECEMBER 3, 2013



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Effective July 1, 2014, provincially regulated employers in Ontario will need to ensure that workers complete basic occupational health and safety awareness-training with the new OHSA Regulation. The new requirements are a part of the Ministry of Labour's Prevention Strategy to support healthy and safe workplaces. Under the new *Occupational Health and Safety Act* (OHSA) Regulation (O. Reg. 297/13), employers will be required to instruct workers on the following:

- the duties and rights of workers under OHSA;
- the duties of employers and supervisors under OHSA;
- the roles of health and safety representatives and joint health and safety committees under OHSA;
- the roles of the Ministry of Labour, the Workplace Safety and Insurance Board, and entities designated under OHSA (such as safe workplace associations);
- common workplace hazards in Workplace Hazardous Materials Information Systems (WHMIS); and
- occupational illness, including latency.

In addition, an employer is required to ensure that a supervisor, within one

week of taking on their job, receives basic health and safety instruction that includes the above, as well as how to recognize, assess, and control workplace hazards, and evaluate those controls. Supervisors must also be educated on the various and sources of information on occupational health and safety.

Workers are exempt from the above requirements if they have previously completed a basic occupational health and safety awareness training program and the training meets the requirements of the new regulation. A worker (or former worker within six months of being employed) may also request written proof or some sort of certificate of completion that he or she has completed the basic OHSA awareness-training. Given the potential liability for employers under OHSA

(which may include fines of up to \$500,000 per offence), employers should be careful not to rely on another employer's OHSA awareness-training. Section 25(2)(a) of OHSA – the obligation for an employer to provide information, instruction, and supervision to a worker – still applies in addition to the new regulation. Courts have held that training needs to be specific to the workplace and not general in nature. Employers also need to be aware that they may be responsible for ensuring contractors or subcontractors and their workers comply with the new training requirements. Under OHSA, a "worker" means "a person who performs work or supplies services for monetary compensation."

ANTI-SPAM LEGISLATION



Are you in compliance? New legislation comes into effect on July 1, 2014, that regulates the distribution of commercial electronic messages. In order to continue sending electronic communications to your contact lists, including emails, newsletter, publications, and announcements, you will need to obtain explicit consent from your contacts. There are certain exceptions to these requirements, and Cory Schneider from Devry Smith Frank *LLP* can help you with all your questions. Regardless of any relevant exceptions, you should strive to have every entity on your mailing list opt-in to the list to avoid the possibility of falling afoul of the legislation. In the event of a dispute, the onus will be on your organization to prove that the recipient falls under an exemption, or that consent was received. Violating these new rules could result in hefty fines: Administrative monetary penalties of up to \$1 million for individuals and \$10 million for businesses.

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CLEVER TAX SCAM COSTING CANADIANS THOUSANDS!

PRESS RELEASE | FEBRUARY 3, 2014



Just as many Canadians may be struggling to pay their 2013 taxes or are expecting tax refunds in the mail, DSF is warning consumers about a tax fraud that inflicts serious financial consequences on its prey. DSF is currently defending victims of a classic business losses scheme where perpetrators take a lump sum of cash from taxpayers up front, promising to pay it back – with dividends – after investing it. Then they claim an inflated sum as a business loss on the victims' tax returns, supposedly until the business is "profitable." This business loss scheme is called "Partners in Research," run by a web of corporations. Approximately 300 Canadians are casualties to the contrivance. Partners In Research has

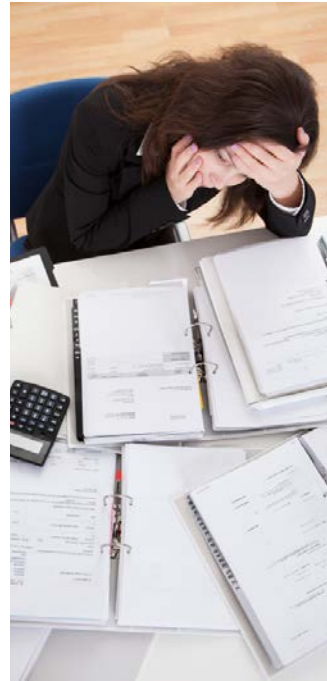
taken as much as \$3 million dollars from investors and left them holding the bag, owing huge penalties and interest.

Schemes like these count on the idea that people don't understand how scientific research funding works. They convince their victims that because they can get them a so-called tax refund before the research commercializes, they're running a legitimate business.

Dianne Hudson, a GTA mother of five, was looking for a way to help make ends meet for her large family. With the best of intentions, she invested borrowed funds in the scheme, and fell victim to the PIR scam:

"My husband and I are a blended family with five children and the bills are endless. To me, this seemed like a chance to give my family a little more than the 'practical' life we have always led. I firmly trusted that this investment was true and my agent was very knowledgeable and educated on the investment."

But now Hudson is facing potential fines and interest of up to \$60,000 for her part in the investment. "We'd hoped this was a means to help us, and it's burying us."



The scam works like this: the company claims they've taken out a seven-year loan on your behalf to invest upwards of \$350,000 in scientific research. They ask for you to pay interest and a warranty fee on the loan, plus a membership fee totalling about \$10,000. Then, PIR claims the full loan amount will be spent on research projects that create jobs for Canadians. You'll

get your investment back this year (and then some) through a tax deduction, and earn profits later.

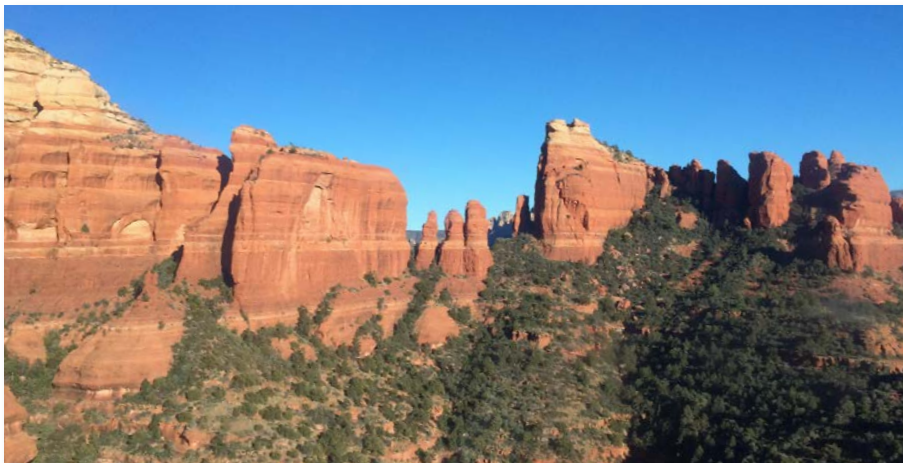
While this all sounds good, the refund received is based upon a claim that your investment took a loss in the amount of one-seventh of the loan each year, usually \$50,000 or more. The Canada Revenue Agency (CRA) later tracks down the fake deduction and the refund must be repaid. In addition, the victim owes a 50% penalty on the income tax owed, plus interest on both the refund and penalty. So not only does your investment disappear overnight, but the payback to CRA is serious money, usually as much as \$30,000 or more.

DSF recommends taking a sceptical view of anyone proposing a business deal that sounds too good to be true. When it involves up-front tax refunds, it usually is.

DSF IN THE COMMUNITY

TORONTO FIREFIGHTER CHRISTMAS TOY DRIVE

This past holiday season, DSF was busy collecting brand new toys to donate to the Toronto Firefighter Toy Drive. This great annual cause guaranteed that all toys donated went to under-privileged children in our communities for Christmas. DSF donated boxes of toys, and raised over \$500 towards the cause, which helped the toy drive come to a total of 25,000 toys.



ALLIOTT GROUP FORUM

DSF recently attended the 2014 North America Leadership Forum and Tax Group held by Alliot Group. This event was held in Scottsdale, Phoenix, Arizona, at the Westin Kierland Resort & Spa from January 14 - 17, 2014.

ALBERT LUK RE-APPOINTED



Albert C. Luk was reappointed as chair of the Board of Directors for Bellwoods Centres for Community Living Inc. This is his second term as chair and sixth year on the board. Bellwoods Centres is committed to enabling adults and seniors with physical support needs to live as independently as possible and to direct their own services.

PRO-BONO GENEROUSITY



Cory A. Schneider has graciously donated pro-bono work to the School for Social Entrepreneurs – Ontario. This organization contributes to transformational social change by providing action-based and practical learning for social entrepreneurs in Canada.

DSF WELCOMES FOUR NEW LAWYERS!

F. TIMOTHY DEETH
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Areas of Practice:
Business Law and
Commercial Lending

MORE JOIN THE TEAM!

CHERYL HILL
Law Clerk

Cheryl has brought 20 years of invaluable experience primarily in the areas of Family Law, Estate Administration, Wills and Real Estate. She was also responsible for the day-to-day running of the law office, including bookkeeping, administration, reporting to the Law Society, and payroll.

ELENA PIPEROPOULOS
Law Clerk

Elena graduated from the Law Clerk program at Centennial College in 2002. Prior to joining DSF, Elena gained experience as an assistant in Personal Injuries Law and Estates and Corporate Law, and she office-managed two import/exporting companies.

MEGAN DEY
AB/Tort Clerk

Megan obtained her Law Clerk diploma from Centennial College in 2010. Megan has four years experience at a well-known Personal Injury law firm and is experienced in all aspects of Personal Injury Law including office administration, client interviews, and management of Personal Injury files.

WENDY HO
Legal Assistant

Wendy joined Devry Smith Frank LLP in 2014, bringing over 24 years of Canadian and U.S. Immigration Law experience. She has been a legal assistant/paralegal at Asher Frankel since 1994, gaining expertise in all areas and levels of administrative support.

This newsletter is intended to inform and to entertain our clients and friends. Its content does not constitute legal advice and should not be relied on by readers. If you need legal assistance, please see a lawyer. Each case is unique and a lawyer with good training and sound judgment can provide you with advice tailored to your specific situation and needs. If you would like to receive future newsletters but are not yet on our mailing list, please send your name and e-mail address to: info@devrylaw.ca



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