

DSF NEWS

DEVRY SMITH FRANK *LLP* NEWSLETTER SUMMER 2016 ISSUE

DEVRY SMITH FRANK *LLP* ANNOUNCES A NEW OFFICE IN BARRIE



Devry Smith Frank *LLP* ("DSF") is proud to announce the opening of the Barrie office at 85 Bayfield Street. Similarly to the other DSF's offices, our Barrie location will provide a full range of legal services to our clients in Barrie, Simcoe County and Huronia region and will receive the legal support of a full service law firm.

We are no strangers to your community as lawyers Eric C. Taves and Michael E. Reed have decided to join DSF. Eric and Michael have been practising law in Barrie since 1972 and both of them have established many long-standing client relationships within your region. By becoming a part of DSF, we will ensure that their clients and our future clients will continue to receive the same

dedication and attention, but with a support of a full service law firm.

DSF is a full service law firm with more than 55 lawyers and has provided the highest standards of legal services to a broad range of individual and business clients for over 50 years. Its practice areas include corporate/commercial and business law, employment law, commercial litigation, immigration,

tax law and tax litigation, collections and debt recovery, family law, personal injury, insurance defence, real estate and many more. For more information regarding Devry Smith Frank *LLP* please visit our website www.devrylaw.ca

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REDUCED CAR INSURANCE LIMITS! CONSIDER OPTIONAL CAR INSURANCE

BY MARC G. SPIVAK, B.COMM., B.C.L., LL.B. | APRIL 28, 2016



All automobile insurance policies in Ontario are based on a standard policy legislated in the Insurance Act and its regulations. One such regulation is the Statutory Accident Benefits Schedule (SABS), which sets out certain benefits for car accident victims.

Few drivers know that insurance benefits can be greatly improved with the purchase of optional car insurance. For most drivers and their families this may make sense to prevent a large financial loss in the event of a car accident.

By the time you renew or purchase auto insurance after June 1, 2016, the benefits in SABS will be even lower. For example, medical rehabilitation and attendant care for catastrophic injuries are currently capped at \$1M each for a total of \$2M. After June 1st those benefit limits will be cut in half to \$1M total. Medical rehabilitation and attendant care for non-catastrophic injuries will be reduced from their current cumulative cap of \$86,000 to \$65,000 and med/rehab benefits slashed from coverage for 10 years after an accident to only 5 years.

If you are prevented from working because of a car accident, you may be eligible for income replacement benefits (IRB's). IRB's can replace 70% of your gross income, but in standard policies, the benefits are capped at \$400 per week (or \$20,800 per year).

Car insurance is already so expensive that less than five percent of people in Ontario purchase additional coverage. After being involved in an accident, it is too late to select a better insurance

policy, or pay for additional coverage.

After June 1, 2016, purchasing optional coverage will allow you to maintain Ontario's current SABS limits on medical rehabilitation and attendant care for catastrophic injuries (\$2M total). An option will also be available to double rehabilitation and attendant care for non-catastrophic injuries to \$130,000. A third option will increase the combined non-catastrophic benefit to \$1M and the combined catastrophic benefit total to \$2M. Take it from a personal injury lawyer-OBTAIN THESE OPTIONAL BENEFITS!

Other optional coverage may be available such as:

- Optional income replacement benefits may increase the weekly IRB limit from \$400 to \$600, \$800, or \$1,000 per week.
- Optional caregiver benefits may provide a weekly \$250 payment in the event that an insured

person suffers a "substantial inability to engage in the caregiving activities that he or she engaged in at the time of the accident"

- Optional dependant care benefits may provide eligible working parents a maximum \$150 weekly payment to pay for child care costs.
- Other benefits such as indexation (to ensure the benefit is increased annually as average compensation rises) or death and funeral benefits.

In the event you or your family or friends are involved in a motor vehicle accident, optional SABS benefits may pay back their cost many times over. Speak to your insurance broker/insurer today about optional benefits!

If you have had a car accident and/or are concerned about your rights under an insurance policy, call me now.

UPCOMING EVENTS

TORONTO ARMENIAN COMMUNITY SUMMERFEST JULY 8-10, 2016



DSF is a proud Silver Sponsor of Armenian Community Centre event. Join us on July 8-10 at Armenian Youth Centre of Toronto for Armenian and Middle Eastern performers, market, carnival and that unique family atmosphere. The Summerfest is where the Armenian Community has been coming together for 20 years!

MEDIATION OPEN HOUSE SEPTEMBER 22, 2016



Mediators from DSF are organizing fifth annual Mediation Open House which will be held at Canoe located on the 54th floor of the TD Bank Tower, 66 Wellington Street West.

Please contact mediation.openhouse@devrylaw.ca for detailed information.

PARAMEDIC RIDE SEPTEMBER 16 – 19, 2016



DSF is proud to announce that we are the Provincial Platinum Sponsor for the Ontario Paramedic Ride.

Many precious lives have been saved by Paramedics. But some of the Paramedics lost their lives in the line-of-duty. To commemorate those who sacrificed their lives, Paramedic Ride fundraising initiative has been created. We hope

you can join us on this year's Paramedic bicycle ride accompanied by over 100 cyclists and emergency vehicles from all across Ontario. The Ride will conquer the 525 km distance between Toronto and Ottawa in 4 days between September 16 and 19, 2016.

FOURTH ANNUAL NRVMS/DSF THRESHOLD CONFERENCE



We are continuing our annual Threshold Conference series in partnership with New Realm Vocational & Management Services Inc.. This year's conference is on Psychological/Psychiatric Evaluations from a Threshold Perspective and is taking place on April 19, 2017 at the National Club, 303 Bay Street,

Toronto, ON, M5H 2R1. The sponsorship and registration info is coming soon. For more information, visit the official website. www.nrvmsdsfcharityevent.ca

WHY YOU NEED A TAX LAWYER

BY SABINA MEXIS, B.A.(HONS.), M.A., LL.B., TEP | JUNE 27, 2016



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The Canada Revenue Agency ("CRA") has broad powers to audit Canadian taxpayers. These powers are found in the *Income Tax Act* (the "ITA"), and the CRA relies upon these provisions in order to obtain information in the course of their audit activities from taxpayers and their professional advisors. Subsection 231.2(1) of the ITA provides that the CRA may require that a person provide any information or document to the

CRA for any purpose related to the administration or enforcement of the ITA.

The Supreme Court of Canada ("SCC") recently released two decisions significantly curtailing the ability of the CRA to obtain information from a taxpayer's legal advisors. In *Canada (Attorney General) v. Chambre des notaires du Quebec*,¹ the declared subsection 231.2(1) of the ITA to be unconstitutional and inapplicable to notaries and lawyers in their capacity as legal advisors. Specifically, the SCC held that this provision violates the fundamental right in the Charter to be secure against "unreasonable search or seizure".

In *Canada (National Revenue) v. Thompson*,² the SCC considered whether the refusal of Mr. Thompson, a practicing lawyer, to produce a listing of current accounts receivable of his law practice was protected by solicitor-client privilege. The *Thompson*

case was decided after the *Chambre des notaires* decision noted above which had already found that subsection 232(1) was unconstitutional. As such, Mr. Thompson was not required to produce his current accounts as, following *Chambre des notaires*, all records connected with the solicitor-client relationship are presumed to be privileged absent evidence to the contrary.

The *Chambre des notaires* and *Thompson* decisions uphold the principle of solicitor-client privilege as a "cornerstone of our legal system" and will make it more difficult for the CRA to obtain documents from lawyers and Quebec notaries. The presumption now is that all communications between client and lawyer and the information that is shared between them, is confidential in nature. The SCC held that even the name of a client may reveal confidential information about that person's "life or legal problems".

In these decisions, the SCC has maintained and strengthened the protections afforded by solicitor-client privilege. There will now effectively be a presumption that all documents held at the offices of lawyers and notaries are privileged. The CRA cannot rely upon a lawyer's client records and documents as constituting "archives" for it to avail itself of in the course of its audit and enforcement activities. More significantly, the SCC has not extended privilege to tax records held by an accountant and therefore the CRA may demand access to accountants' records or documents before seeking information from lawyers or notaries.

If you have a tax concern and would like to protect yourself against the CRA, contact Sabina Mexis, for a consultation.

¹ 2016 SCC 20.

² 2016 SCC 21.

COURT OF APPEAL AWARDS OVER \$200,000 FOR BREACH OF FIXED-TERM EMPLOYMENT CONTRACT

BY MARTY RABINOVITCH, B.A.H., LL.B. AND IRA MARCOVITCH | MAY 13, 2016



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Employers with employees on fixed-term employment contracts should pay heed to the recent decision in *Howard v Benson Group*, where the Ontario Court of Appeal reversed a motion judge's findings with relation to a fixed-term contract and, in doing so, awarded an employee over \$200,000.00 – the balance of his contract.

The facts of the case are straightforward, but bear repeating. Mr. Howard was employed by the defendant as a manager and then sales manager in their automotive service centre in Bowmanville. His written contract was for a five-year term, commencing in September, 2012. The contract stipulated that were Mr. Howard's employment terminated without cause, "any amounts paid to the Employee shall be in accordance with the *Employment Standards Act of Ontario*."

Twenty-three months after beginning his job, Mr. Howard's employment was terminated without cause. He commenced a suit for breach of contract shortly thereafter, claiming entitlement to the balance of the salary that he would have earned had the full term of the contract been fulfilled.

As in many of these cases, the plaintiff brought a motion for summary judgment on the issue of the interpretation of the termination clause. On motion, the judge held that the termination clause was vague, and consequently unenforceable. Having made that ruling, he rejected the plaintiff's argument that he was entitled to be paid for the balance of the contract. The motions judge held that Mr. Howard was entitled to common-law damages for wrongful dismissal and that such damages were subject to the common-law duty to mitigate. The motions judge held that a mini-trial should be held to determine the quantum of reasonable notice and whether Mr. Howard fulfilled his duty to mitigate his damages. The plaintiff appealed.

On appeal, the Court did not take issue with the judge's finding as to the enforceability of the termination clause. The main issue was whether, having excised the termination clause, the judge was correct in finding that the plaintiff was only entitled to common-law damages. The Court of Appeal disagreed.

The Court held that where there is a fixed-term employment contract that clearly stipulates the term of employment and the methods of early termination, this is sufficient to oust the common-law. Such cases are to be decided by reference to the contract. In this case, having found that the applicable termination provision was unenforceable, the parties were left with a five-year contract that provided no enforceable means to terminate it early without notice.

Having made these findings, the Court turned to the issue of the duty to mitigate. The Court quickly reasoned that where parties are working within a contractual framework, there is no duty to mitigate where the contract specifies the penalty for early termination. Having found that the employment contract did specify the penalties for early termination, there was no duty to mitigate.

In a succinct summation of their reasons, the Court concluded:

*In the absence of an enforceable contractual provision stipulating a fixed term of notice, or any other provision to the contrary, a fixed term employment contract obligates an employer to pay an employee to the end of the term, and that obligation will not be subject to mitigation. Just as parties who contract for a specified period of notice (or pay in lieu) are contracting out of the common law approach in *Bardal v. Globe & Mail**

Ltd. (1960), 24 D.L.R. (3d) 140 (Ont. H.C.), so, too, are parties who contract for a fixed term without providing in an enforceable manner for any other specified period of notice (or pay in lieu).

There are a number of takeaways from this important appellate decision. The first, and potentially most important, is for employers to obtain legal advice when drafting the terms of written employment contracts. Had the applicable termination provision been drafted in an enforceable manner, the defendant could have saved itself well over a hundred thousand dollars. Considering this, the relatively modest time it would take to consult with a lawyer is negligible. The other lesson to be had is to consult with a lawyer before taking drastic steps such as terminating employment. Courts view these moves as heavy handed unless there is clear and articulable cause as to why the employment relationship was rightfully ended by the employer. In all circumstances, it is advisable to seek legal advice before taking such steps.

If you are subject to a fixed-term contract and have had your employment terminated, or would like to know how to ensure that terms of employment contracts are enforceable, contact the experienced employment law team at Devry Smith Frank LLP.

DSF IN THE COMMUNITY

GIRO D'ITALIA FUNDRAISER



Devry Smith Frank *LLP* was a title sponsor for the 10th Anniversary of The Giro di Toronto in support of The Villa Charities Foundation. This great cycling event consisted of 207 riders.

COLLABORATIVE PRACTICE



Devry Smith Frank *LLP* was a Silver Sponsor for Collaborative Practice Toronto in support of Sick Kids.

Todd Slonim, Marc Spivak, and Eldad Gerb received a plaque in appreciation of their support.

MEDICO-LEGAL



DSF's Personal Injury Lawyer Marc Spivak and licenced paralegals Dejan Ristic and Carlos Ortiz at Medico-Legal Society of Toronto Gala at Arcadian Court.

ANNUAL THRESHOLD CONFERENCE



Another full house at the third annual Threshold Conference Acquired Brain Injury, hosted and organized by NRVMS and DSF. All proceeds were donated to the Ontario Brain Injury Association. Many thanks to our gracious sponsors and speakers.

MOCK TRIAL



For their fourth year in a row, lawyers Marty Rabinovitch and Maya Krishnaratne participated in a mock trial with the fifth grade students at Cedarwood Public School. The trial, organized and run by the Ontario Justice Education Network, centres around the story of Hansel and Gretel and the witch's defamation lawsuit commenced against them after she learns of a scathing blog Hansel has written following his escape from the gingerbread house.

ROPE FOR HOPE



Our family lawyer Rachel G. Healey is facing a personal fear of heights by rappelling off of the top of Toronto City Hall to honour those children who face their fears everyday by battling life threatening illnesses.

CAN I GET A DIVORCE WITHOUT MY SPOUSE'S CONSENT?

BY JOHN SCHUMAN, B.A.(HONS.), LL.B., LL.M., C.S. AND IRA MARCOVITCH | MAY 24, 2016



For many spouses, the prospect of a divorce is an unwelcome reality. Some refuse to accept that their relationship is over, while others view it as an affront to their religious beliefs. In such cases, it may be difficult to get that spouse's consent to a divorce. However, under Canadian law, you do not need your spouse's consent to get a divorce (although it usually makes it a lot simpler). There are also very few ways your spouse can block you getting a divorce.

For much of Canada's history, there was no codified law of divorce. If a spouse wanted to get divorced, they would have to petition Parliament, who could grant a divorce by passing a special piece of legislation. In 1968, Canada introduced the *Divorce Act*, a uniform scheme for divorce across the country that continues to govern today.

Under *section 8(2) of the Divorce Act*, there are three grounds for divorce:

- Living separate and apart for at least one year;
- Cruelty, and;
- Adultery.

While any one of these grounds will entitle a spouse to a divorce, living separate and apart for one year is the most common. Once one of these events has occurred, either spouse may apply for a divorce. If you are eligible for a divorce, there are three types in Canada:

1. The first, and most uncommon, option is a *joint divorce*, where one spouse files the Application for divorce with the other spouse.

2. The second type is an *uncontested divorce*. This is where one spouse files the Application for divorce, and the other spouse does not respond to it in court within the 30 day time limit. When the time limit expires, the Applicant can ask the court to grant the divorce order on the basis that the other spouse had the opportunity to oppose it and has not. The court is then allowed to assume that the spouse either agrees with the divorce, or at least does not care about it.

3. The final type of divorce is a *contested divorce*. This is where one spouse applies for a divorce and the other spouse does not consent to the terms of the divorce, such as property division or spousal support. It can also occur where the spouse denies that the couple is eligible for a divorce.

Where a divorce is contested, it will proceed through the family court process like any other case. If the parties agree to the divorce, but disagree about corollary issues such as spousal support or custody of children, a court can 'sever the divorce'. This means that the divorce can proceed immediately pending the resolution of the corollary issues. Given that it can

take many years for some spouses to finalize property and support arrangements, severing the divorce can be practically much more expeditious.

However, there are only three reasons why a judge cannot grant a divorce alone (leaving support, property and other claims to separate orders that can be made later). Neither of those three reasons relates to whether both spouses want the divorce. Those two reasons are:

1. Any children are not being adequately supported financially. If there are children involved, section 11(1) of the *Divorce Act* mandates that there be adequate provision for them in place before a divorce will be granted. What that means, in the light of the Child Support Guidelines, is that the support must be either in accordance with the Child Support Guidelines or must be more than under the *Guidelines*, although the arrangements can be different. No matter the grounds for divorce or the method used to get a divorce, there must be satisfactory child support arrangements in place before a judge will grant the divorce.

2. The spouse requesting the divorce is not removing religious barriers to remarriage. All a divorce order means is that the spouses are legally able to re-marry. But, the law does not mean the spouses can re-marry in their religion. A judge can deny a divorce to someone who is effectively preventing his or her ex spouse from remarrying by using his or her religion. *Section 21.1* of the *Divorce Act* requires that a spouse who wants a divorce must file an affidavit saying that spouse has

removed any religious barrier to remarriage that are within that spouse's control. If the other spouse files an affidavit saying that is not true, that blocks the divorce. Obviously, there would be trouble for a spouse who files a false affidavit for any purpose.

3. At least one of the spouses must have lived in the jurisdiction for at least a year to get a divorce in Canada. People cannot just come to Canada for their divorce. However, if neither party has lived in the jurisdiction of the Court for at least one year, then the Court probably will not even accept the Divorce Application.

Judges can also refuse to grant a divorce if the judge believes there has been "collusion" or "connivance" by the spouses – essentially the spouses are working together to get a divorce improperly. However, these are not things a spouse could raise to block a divorce.

If a judge is satisfied that the grounds for divorce exist and adequate provision for any children has been made, they will grant a divorce judgment. Once thirty days has elapsed from the date of judgment, the spouses will be legally divorced.

While you do not need a family lawyer to apply for a divorce, it is always advisable that you speak with a family lawyer before proceeding. A family lawyer can help you arrange your affairs so that a divorce can be granted more expeditiously and avoid the many pitfalls and obstacles that can slow the process.

DSF IS GROWING AGAIN!

**ADAM GROSSI: LAWYER**

Adam practices in many different aspects of commercial litigation with a focus on the construction industry.

**ROSEMARY GALLO: LAWYER**

Rosemary practices in all areas of family law and has particular expertise working on complex matters involving child protection, custody and access.

**JENNIFER HOWARD: LAWYER**

Jennifer joined the DSF Family Law team in 2016 after practising at a large full service law firm in downtown Toronto.

**FRANK SHOSTACK: LAWYER**

We are happy to announce that Frank has decided to move his practice to work with the corporate, tax and estate planning teams at DSF.

**PAT BEDFORD: LAW CLERK**

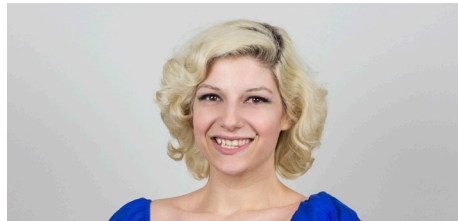
Pat Bedford, Frank Shostack's law clerk, who has worked with him since 1976, joined him in his move to DSF.

**KAREN BEVERIDGE: LAW CLERK**

Karen has several years of experience as a corporate clerk and has joined our Corporate Team in March 2016.

**KONRAD GRZYMSKI: LAW CLERK**

Konrad has joined the Corporate team as a Tax/Corporate law clerk. He obtained his Paralegal Diploma from Sheridan College.

**REMMY FUNTOS: ASSISTANT**

Remmy Funtos joined the ever growing Insurance Defence team in May and will assist Lianne Sharvit.

**LEISA HEATH: LAW CLERK**

Leisa joined our Family Law department in June. She has many years of experience in Family and Real Estate law.

**MARIA VASSERMAN: MARKETING**

We are happy to announce that Maria has joined our Marketing team. She assists with e-marketing and co-ordination.

**KENDALL LONGELY: IT SUPPORT**

Kendall joined DSF in May as an IT System & Application Specialist within our Information Technology team.

**JONATHAN DAINES: IT SUPPORT**

Jonathan joined DSF in May of 2016 as an Junior IT support administrator. He is one of the friendly voices on our Help Desk.

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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