

## **Erin Bokshowan: CDA - SK 2019 Convention: What do I Need to Know About Associateship Contracts?**

**CDA Oasis:** The CDA and College of Dental Surgeons of Saskatchewan's joint convention is fast approaching; and speakers, like our guest today, are busy preparing their talks and presentations. Ms. Erin Bokshowan is a lawyer with MLT Aikins LLP. She specializes in corporate and tax laws. Erin assists clients at all stages of the business cycle, ensuring all transactions are undertaken in a tax-efficient manner.

**CDA Oasis:** I am a new graduate and I have just found a great associateship opportunity, what is the first thing I should think about?

**Erin Bokshowan:** The first thing you should do is just do your due diligence on the practice. Make sure it's the kind of place you want to work and that the owners of the practice are the type of people that you want to be in business with. But secondly, read your contract. Seek to understand what the business deal is? What you will be getting out of the arrangement? What you will be asked to put in? And everything in the contract is important, but I would suggest that you should probably pay particular attention to the compensation and financial provisions, the termination provisions, any liability or indemnity clauses and any restrictive covenants like non-competition or non-solicitation covenants. Those things are all really important and can have a long-term impact on you once you sign the agreement. And then thirdly, seek legal advice.

**Erin Bokshowan:** There's really no substitute for having a lawyer review your contract and in many cases there is the ability to negotiate provisions of the contract that are particularly onerous. Even where the contract can't be negotiated, it's a take it or leave it kind of scenario, it still is important to have a lawyer review the contract with you so that you can understand the agreement and whether you're comfortable with what you are being asked to commit to.

**CDA Oasis:** As an associate, am I considered an employee or am I self-employed?

**Erin Bokshowan:** It really depends on the nature of your arrangement with the dental practice as the determination of whether someone is self-employed or an employee is a fact-based determination. And what I mean by that is that even if you call your agreement an associate agreement or an independent contractor agreement and even if you have an express clause in the contract that says, you know, Dr. Bokshowan will be an independent contractor and not an employee. The courts have repeatedly said that it's not determinative and you need to review the nature of the party's relationship and the particular factual context in order to determine if someone is an employee or if they're self-employed. And there are certain factors that courts look to in answering this question and they tend to

focus on the degree of control that the practice exercises over you and as well your potential for profit and risk of loss. So, the way that you structure your associate arrangement and the way you describe your arrangement in the contract are both really important in making that determination.

CDA Oasis: How can I ensure that the agreement I sign is fair to both sides: me and the principal owner?

Erin Bokshowan: Obviously legal advice is important. Typically, the owner will provide the associate with a draft contract to review and sign and that contract has typically been reviewed by the owner's lawyer and prepared by the owner's lawyer. And that lawyer would have had the owners' interests in mind and would've been drafting it in a way that protects the owner. So, there's a natural tension where it really benefits the associate to have a lawyer look at a contract from the other side to make sure that the associates' interests are protected. And the other way to ensure an agreement is fair is to talk to some of your peers, get an assessment of what seems to be standard for associates in the market. Some associates may not be able to discuss this in detail with you because they're bound by confidentiality provisions, but there is other market intelligence available. Whether that be lawyers, accountants, brokers, many of them will be able to give you a sense of what they have seen when they've been advising other dental associates.

CDA Oasis: For those who cannot attend the convention and your session, are there resources that they can check for themselves?

Erin Bokshowan: There are a lot of, there are different articles and resources that are available on the Internet that make reference to common legal issues that arise with associate agreements, but to be honest, there really is no substitute for receiving proper legal advice just because every contract is different. So, my bottom line I guess would be if you're considering signing an associate agreement, do consider having it reviewed by a lawyer.

CDA Oasis: What are the main takeaways from your session?

Erin Bokshowan: It's important to just keep in mind that at its most basic, an associate agreement is a legal contract and it has binding legal effect. And as such it's really important to have a good understanding of what you are committing to in signing such a contract. So, I think the main takeaway is to understand that there can be clauses and things embedded in the agreement that can be enforced against you and that can have a long-term impact on your ability to practice dentistry elsewhere or for another practice. And it's important to understand those things and if possible, negotiate them so that they are drafted in a way that is fair to you.