

PAUL BROOKS

Commercial Litigation

PARTNER

"I am grateful for every sunrise...and for advocating on behalf of clients for over 32 years."

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PROFESSIONAL HISTORY

- ◆ Partner, Lernalers LLP (1993 to present)
- ◆ Associate lawyer, Lernalers LLP (1987-1993)
- ◆ Instructor, Civil Litigation, Public Law/Charter of Rights, and other sections of the Law Society of Upper Canada, Bar Admission Course (1989 to 2005)
- ◆ Lecturer in Law, Politics and the Judicial Process, and other courses at Western University, London (1989-2003)

ACHIEVEMENTS

- ◆ In addition to private practice, Paul's academic contributions include being a past Instructor in Civil Litigation, Public Law/Charter of Rights, and other sections of the Law Society of Upper Canada, Bar Admission Course. He also lectured in Law, Politics and the Judicial Process, and other courses at Western University.

NOTEWORTHY CASES

Statutory Accident Benefits

- ◆ *Urquhart and Zurich Insurance Company* [OIC A96-00368, June 4, 1997] [Whether an insured person who continues to perform an activity, is continuously prevented from engaging in that activity]
- ◆ *Morley and National Frontier Insurance Company* [OIC A-006595, May 15, 1995] [Whether payment of a death benefit to surviving spouse precludes payment of death benefit to that spouse as a dependant]

Torts

- ◆ *Nespolon v. Alford* (1998), 40 O.R. (3d) 355 (Ont. C.A.) (Application for leave to appeal to Supreme Court of Canada dismissed January 21, 1999) [Teenagers transporting intoxicated friend in car, could not foresee risk to driver who suffered nervous shock after hitting and killing their friend]

Municipal, Land Use Planning and Administrative Law

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- ◆ *Elston v. Morris Township*, [2001] O.M.B. No. 408 (QL) (J.R. Boxma) [Claimant not entitled to damages for injurious affection under Expropriations Act for damage caused by adjacent road improvement]
- ◆ *Robinson v. Caradoc Township* (1998), 40 O.R. (3d) 684 (Ont. Div. Ct.) [Municipality having authority to remove and demolish vehicles and material under property standards by-law]
- ◆ *Howay v. Caradoc Township* (1991), 6 M.L.P.R. (2d) 70 (Ont. Gen. Div) [Municipal residents were users required to pay water rates even if not connected to water system]

Employment and Labour

- ◆ *Chen v. UWO Faculty Association*, 2017 CanLII 29307 (O.L.R.B.) [UWOFA properly turned its mind to whether it had a duty to represent Dr. Chen and did not breach s.74]
- ◆ *Boucher v. Black & McDonald Ltd.* (2016) ONSC 7220 (Ont. Div. Ct.) [Employment was not frustrated, and employee entitled to human rights award and wrongful dismissal damages]
- ◆ *Caskanette v. Bong-Keun Choi Dentistry* (2016) ONSC 5641 (Ont. Div. Ct.) [Employee's insubordination warranted discipline not dismissal]
- ◆ *Baldor Electric Canada Inc. v. Baldor Electric Canada Inc. Employees' Association* (October 10, 2014) [Employee's gross insubordination warranted discipline not dismissal]
- ◆ *Chang v. Busvek* (2014) ONSC 1790 (Ont. S.J.C.) [Associate dentist's decision to work for senior dentist while he organized his future practice was not cause for dismissal]
- ◆ *Payne v. Bank of Montreal* (2013) FCA 33 [Appellate counsel at Federal Court of Appeal for dismissed employee. The Court of Appeal restored an adjudicator's decision, finding that the adjudicator's reasons relating to unjust dismissal satisfied the Dunsmuir criteria.]
- ◆ *UWO Staff Association v. UWO, LHSC et al* 2013 CanLII 2133 (O.L.R.B.) [Board declined to grant application for a declaration that the responding parties were one employer for the purposes of the Act]
- ◆ *DeBoer v. CPC Logistics Canada Limited* (2010) C.L.A.D. No. 282 (R. Verity) [Employee failure to provide information about health status during absence warranted discipline not dismissal]
- ◆ *Payne v. Bank of Montreal* (2009) C.L.A.D. No. 374 (R.H. McLaren) [Bank manager not excluded from making unjust dismissal claim]
- ◆ *McLaughlin v. Looby Construction Ltd.*, (2006) 47 C.C.E.L. (3d) 289 (Ont. S.C.J.) [Employee and employer conducted themselves in accordance with employee retiring and employment was not terminated by employer]
- ◆ *Oliver v. S.M. Freight* (2005) O.J. No. 42695 (Ont. S.J.) [Employee's unauthorized four-week absence from work warranted discipline, not dismissal]
- ◆ *Fox v. Bank of Nova Scotia* (2002), 21 C.C.E.L. (3d) 172 (R. Verity) [Bank manager excluded from making unjust dismissal claim]
- ◆ *W. Van Erp Masonry Inc. et. al* 2000 CanLII 1749 (O.L.R.B.) [Responding contractors were not associated or related nor was there a sale of a business within the meaning of the Act]
- ◆ *Keeler v. Bank of Nova Scotia* (1997), 29 C.C.E.L. (2d) 282 (R.H. McLaren) [Bank manager excluded from making unjust dismissal claim]
- ◆ *694643 Ontario Limited c.o.b. as O'Connor Electric*, [1995] O.L.R.B. No. 4180 (QL) [Experienced contractor becoming employee of inexperienced, non-union contractor, insufficient to make companies associated for labour relations purposes]
- ◆ *Novosel v. Riegl* (1993) 46 C.C.E.L. 245 (Ont. Gen. Div.) [Plaintiff constructively dismissed by employer conduct and actions]

SELECTED PRESENTATIONS/PUBLICATIONS

- ◆ (and Leitch) "Recent Cases on Whether Employment Contracts Are Enforceable; Progressive Discipline; and,

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Mitigation Income" (London: Middlesex Law Association Annual Business Breakfast, 2017)

- ◆ "What Employers Need to Know About Cause for Dismissal, Reasonable Notice; and Frustration of Contract/Disability Accommodation" (London: Middlesex Law Association Annual Business Breakfast, 2016)
- ◆ "Update on Workplace Misconduct & Punitive Damages" (London: Middlesex Law Association Annual Business Breakfast, 2015)
- ◆ "Sex and Lies in the Workplace" (London: Middlesex Law Association Annual Business Breakfast, 2014)
- ◆ "Zoning and Land Use Planning in Ontario" (London: Lorman Education Services, 2003)
- ◆ (and Lambe) "Security for Costs Motions", Judging Motions: Advanced Interlocutory Strategies (Toronto: Ontario Bar Association Continuing Legal Education, 2002)
- ◆ "The Employment Standards Act" (London: Lorman Education Services, 2001)
- ◆ (and Nickle) "Employee Dishonesty and Termination (London: Southwestern Human Resources Professionals Conference, 2000)
- ◆ (and Kirkness) "Planning Act - Zoning Dilemmas" (London: Municipal Law Enforcement Officers' Association 20th Annual Training Seminar, 1999)
- ◆ (and Otten) "Walking the Line: Termination in the Unionized Workplace – Steps to Avoiding Grievances and Arbitrations" (London: The Human Resources Professionals of London and District, 1998)
- ◆ (and Downs and Hopkins) "Long Term Disability, The Employment Relationship and Termination of Employment" (London: The Human Resources Professionals of London and District, 1997)
- ◆ (and Judson) "Expropriations: From Initial Client Contact to O.M.B. Hearing", The O.M.B. For The Non-Specialist Keeping It In-House (Toronto: The Law Society of Upper Canada, 1989)
- ◆ (and Judson) "New Frontiers in Law and Practice" (Toronto: Ontario Expropriation Association Annual Fall Seminar, 1988)

MEMBERSHIPS

- ◆ The Law Society of Upper Canada
- ◆ The Advocates' Society
- ◆ The Middlesex Law Association
- ◆ The Canadian Bar Association (Municipal Law, Labour and Employment Law Sections)
- ◆ The London Chamber of Commerce
- ◆ The London Squash Racquets Club

EDUCATION

- ◆ Master of Arts (Political Science), The Western University (1988)
- ◆ Admitted to Ontario Bar (1985)
- ◆ Bachelor of Laws, University of Windsor (1983)
- ◆ Bachelor of Arts, (Honours), (Political Science and Geography), Queen's University (1978)

PERSONAL INFORMATION

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- ◆ Paul plays a lot of squash and tennis, and has participated in other sports including biathlons, and marathons in Punta Cana, Detroit, London and Toronto. He has bicycled in Great Britain, Italy, and from Paris to the outskirts of Lisbon.
- ◆ In terms of community involvement, he has served on the Boards of numerous charitable organizations. He has also been manager of several competitive minor hockey and baseball teams.