



#### Contact Info

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#### Practice Areas

Arbitration and Mediation  
Services

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Commercial and Real Property  
Litigation

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Commercial Leasing Disputes

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Employment & Human Rights

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Insurance

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Litigation & Dispute Resolution

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Shareholder and Partnership  
Disputes

#### Bar Admission

1985, British Columbia

#### Education

1984, LL.B., University of British

## H. SCOTT MACDONALD, PARTNER

Scott is a senior litigation partner with over 35 years' experience in the resolution of commercial and personal disputes through negotiation, mediation, litigation, arbitration and other forms of dispute resolution. He is the head of our Litigation and Dispute Resolution Department, and a member of the firm's Management Committee and our Commercial Leasing, Insurance, Employment & Human Rights and Advanced Education Practice Groups.

Scott is a frequent lecturer on a variety of topics including arbitration, commercial leasing, employment, insurance and real estate disputes. He has been recognized by the Continuing Legal Education Society of British Columbia (CLEBC) as one of its most prolific volunteers and contributors involved in the planning, presentation and conduct of seminars and conferences for the legal profession.

Scott's speaking experience includes presentations to professional groups and industry organizations such as the Building Owners and Managers Association, BC (BOMA, BC), the BC Shopping Centre Association, the Real Estate Board of Greater Vancouver and The Lower Mainland Group of BC Land Surveyors. He is the editor, course chair and contributing author for the Commercial Tenancy Law Course developed for BOMA, BC, and a contributing author to *Commercial Leasing: Annotated Precedents* for CLEBC.

### REPRESENTATIVE WORK

#### Arbitration Experience:

Scott's arbitration experience includes acting as sole arbitrator in domestic commercial arbitration matters involving commercial lease disputes and insurance matters.

As arbitration counsel, Scott has frequently acted for commercial landlords and tenants in the determination of market rent for prescribed rent review periods or renewal terms. Representative clients have included owners and operators of airport facilities, financial institutions, retail shopping centres and supermarkets.



Columbia  
 1981, B.A., University of British  
 Columbia

**Languages**  
 English

In 2008 he acted for a biomedical waste management company in a dispute with various Health Authorities over the adjusted fee payable for collection, sterilization and disposal services in the last 5 years of a long-term biomedical waste management agreement. The arbitral award accepted Scott's submissions on the criteria to use in setting the adjusted fee and rejected the Respondents' argument that would have limited the fee increase to the change in the Consumer Price Index since the agreement commenced.

In 2015, Scott acted as arbitration counsel for the vendor in a share purchase dispute involving the sale of a paving, asphalt manufacturing, gravel extraction and trucking business. Scott was successful in having dismissed the purchaser's indemnity claims made under a share purchase agreement.

In 2019, Scott was arbitration counsel to a post-secondary institution involved in a dispute with a drug pharmaceutical company over the payment of royalties under a licensing agreement. On behalf of his client, he obtained a multi-million dollar arbitral award for unpaid royalties.

**Commercial Leasing Cases:**

- A tenant's failure to satisfy preconditions to a renewal option is fatal. A landlord does not waive its right to require strict compliance with preconditions by accepting late payments of rent or negotiating renewal terms after expiry of option deadline.
  - *The Zone Bowling Centre (2002) Ltd. v. 14100 Entertainment Blvd. Investments Ltd.*,  
 2015 BCSC 524
- When a tenant remains in possession and a landlord continues to accept rent, the absence of a month-to-month overholding provision in an expired lease for a term of years creates a year-to-year overholding tenancy which can only be terminated on six months' clear notice coinciding with the expiry of the lease year.
  - *Van-Air Holdings Ltd. v. Delta Charters (1982) Inc.*,  
 2013 BCSC 1322
- Clear and unequivocal terms in a lease will override a conflicting statement made by a tenant in an estoppel certificate.
  - *Vancouver City Savings Credit Union v. Newtown Investments Inc.*,  
 2008 BCSC 1617

- A notice of termination must specify the correct legal basis for termination and forfeiture of a lease. A landlord's remedies of rent distress and lease termination cannot be pursued at the same time.
  - *677815 B.C. Ltd. v. Mega Wraps B.C. Restaurants Inc. et al*,  
2005 BCSC 503
- One month's clear notice is required to terminate a monthly tenancy. Delivery of notice to an adult person at the leased premises is sufficient notice to the tenant.
  - *The University of British Columbia v. Mirsayah*,  
2005 BCSC 452
- It is an implied term of a commercial lease that a tenant is required to return premises uncontaminated at the end of the lease term.
  - *O'Connor v. Fleck*,  
(2000), 79 B.C.L.R. (3d) 280, 2000 BCSC 1147
- Relief from forfeiture is not available to excuse a tenant's failure to satisfy a condition precedent to a renewal option.
  - *Intra Land Corporation v. Northwood Food Corporation*,  
[1999] BCJ No. 1352 (QL) (SC)
- Rent distress is not illegal if some rent is owed when goods are seized. A promissory estoppel, preventing landlord from enforcing terms of a lease, will end on reasonable notice to tenant.
  - *The International Knitwear Architects Inc. v. Kabob Investments Ltd.*,  
(1995), 49 R.P.R. (2d) 268 (BCCA)
- A letter of intent setting out the parties, premises, term, commencement date and rent, creates a valid and enforceable lease.
  - *Dolphin Transport Ltd. v. Weather B Transport Co.*,  
(1993), 30 R.P.R. (2d) 111 (BCSC)
- A letter agreement can create a valid and enforceable lease. Simply describing the lease rate as "triple net" will not create a triple net lease.
  - *B.C. Egg Marketing Board v. Jansen Industries Ltd.*,  
(1992), 24 R.P.R. (2d) 36 (BCSC)

#### **Employment Cases:**

- Damages for wrongful dismissal (reasonable notice) reduced by the amount of a

lump sum termination payment stipulated by the employment contract.

- *Martel v. Ewos Canada Ltd.*,

2005 BCCA 554

- Constructive dismissal requires the employee to prove a fundamental breach. An employer's duty to accommodate an employee's disability does not require an employer to delete significant managerial job duties from an employee's job description.

- *McAlpine v Econotech Services Ltd.*,

(2004), 25 BCLR (4<sup>th</sup>) 102 (CA), 2004 BCCA 111

- Constructive dismissal is not established when a reduction of an employee's remuneration is not significant

- *Humphreys v. Murphy Stationary Co.*,

C., Harvey J., Doc. Vancouver A932852, April 22, 1996

#### **Environmental Cases:**

- The statutory cost recovery action under the *BC Environmental Management Act* (formerly the *Waste Management Act*) permits a property owner to recover costs of remediation incurred to clean up a site contaminated by the operators of a brass and aluminum foundry.

- *O'Connor v. Fleck*,

(2000), 79 BCLR (3d) 280, 2000 BCSC 1147

#### **HONOURS AND AWARDS**

Scott was recognized as one of CLE BC's Most Prolific Volunteers from 1996 through to 2016.

He has also been recognized by *Best Lawyers*® in the area of Commercial Leasing Law for the 2020 and 2021 editions. Inclusion in this publication is based entirely on peer-review.



## COMMUNITY INVOLVEMENT

Cypress Park Little League, Coach (1996-2006)

BC Boys' Chair, Board of Directors (2002-2005)

## PROFESSIONAL AFFILIATIONS

Member, Law Society of British Columbia

Member, Canadian Bar Association, (CBA)

Member, Civil Litigation Subsection, BC Branch, CBA

Member, Employment Law Subsection, BC Branch, CBA

Member, Insurance Law Subsection, BC Branch, CBA

Member, Real Property Law Subsection, BC Branch, CBA

Member, British Columbia Shopping Centre Association

Member, Building Owners and Managers Association of British Columbia (BOMA, BC)

## NEWS

August 27, 2020

10 Lawyers Recognized in *The Best Lawyers™ in Canada 2021* Publication

March 19, 2020

FAQs About COVID-19 for Employers as of March 19, 2020

March 17, 2020

FAQs about COVID-19 for Employers

August 21, 2019

9 Partners Recognized in *The Best Lawyers™ in Canada 2020*

March 21, 2017

Scott MacDonald presents at the Pacific Business & Law Institute (PBLI) program

July 22, 2016

Four RBS lawyers top CLEBC's list of most prolific volunteers.

August 10, 2015

RBS is a proud sponsor of the British Columbia Shopping Centre Association Charity Golf Tournament

May 28, 2015

Scott MacDonald presents to the Lower Mainland Group of BC Land Surveyors

May 22, 2015

Scott MacDonald will be presenting at the Commercial Leasing Conference hosted by

the Continuing Legal Education Society of British Columbia on June 10, 2015

May 11, 2015

CLEBC 2015: Commercial Leasing Conference

May 1, 2014

CLEBC 2014, Employment Law Conference: “Wrongful Dismissal Damages for Loss of Salary Increases, Bonuses, Commissions, Fringe Benefits and Stock Options”

August 6, 2013

RBS partner, Scott MacDonald, wins important commercial leasing case

May 3, 2013

CLEBC 2013: Priorities Conference

## EVENTS

March 23, 2021

Employment & Human Rights Virtual Seminar - 2020 A Year to Remember and Beyond ...

May 6, 2019

RBS is a Platinum Sponsor of the Canadian Association of University Solicitors (CAUS) Conference

February 8, 2018

Join Our Employment & Human Rights Breakfast Seminar on April 5th

April 5, 2017

Commercial Leasing Seminar on “Options to Renew and Extend Commercial Leases” taking place on May 4th

January 5, 2017

Scott MacDonald to present on “Ethical Considerations for Counsel Advising Departing Employees, Former Employers and New Employers” on January 26

May 10, 2016

CLEBC Seminar: Real Estate Litigation

March 4, 2016

Seminar: 2015 – A Hot Year for Employment Cases

June 18, 2015

Employment Law Seminar – Lessons in Crisis Management for Employers

June 11, 2015

2015 University Counsel CLE Seminar

October 2, 2014

Employment Law Seminar – Basics for Business

June 26, 2014

2014 University Counsel CLE Seminar

May 1, 2014

CLEBC, Employment Law 2014 Conference: "Wrongful Dismissal Damages for Loss of Salary Increases, Bonuses, Commissions, Fringe Benefits and Stock Options"

November 15, 2013

CLEBC: Priorities 2013 Conference

November 8, 2013

Seminar: Landlord's Secrets Revealed: Tenant's Best Defences to Landlord's Remedies

May 9, 2013

CLEBC 2013, Employment Law Conference: "Potential Claims Against Departing Employees Without Written Agreements"

May 3, 2013

CLEBC 2013: Commercial Leasing Conference

March 12, 2013

Avoiding Pitfalls - Important Lease Covenants Part II

November 28, 2012

Avoiding Pitfalls - Important Lease Covenants

November 8, 2012

BOMA BC: Commercial Tenancy Law Course, Fall 2012

July 19, 2012

Wrongful Termination, Consequences for Departing Employee Obligations

June 6, 2012

Considerations When Creating a Commercial Lease

April 27, 2012

CLEBC 2012, Employment Law Conference: "Wrongful Dismissal: Employer Repudiation and Consequences for Restrictive Covenants, Fiduciary and Common Law Duties"

June 8, 2011

Rights and Obligations of Landlords, Property Managers and Management Staff as related to a "Tenant in Commercial Rent Distress" Seminar

May 12, 2011

CLEBC 2011, Employment Law Conference: "Settlement and the Effective Use of Releases"

May 6, 2011

CLEBC 2011: Advising the Insolvent Tenant: Ethical Issues

May 1, 2010

CLEBC 2010, Employment Law Conference: "Tools and Strategies for the Negotiation of Employment Contracts"

## **PUBLICATIONS**

May 10, 2016

CLEBC Papers On Real Estate Litigation

June 23, 2015

Can Misconduct from an Employee's Private Life be Cause for Termination of Employment?

April 27, 2015

Tenant's Failure to Satisfy Preconditions to a Renewal Option is Fatal

May 29, 2014

Alternatives to Traditional Non-Competition Provisions in Employment Agreements

November 1, 2013

RBS Insurance Law Group featured in 2013 Litigation Forum of Insurancewest Magazine

October 1, 2013

Protect Your Business Purchase With Non-Competition and Non-Solicitation Promises from the Vendor

September 24, 2013

Overholding Tenancies

September 5, 2013

Relief from Forfeiture For Breach of Statutory Condition

January 18, 2013

Commercial Leases: The Return to the GST/PST System in British Columbia

January 16, 2013

Employee's Right to Privacy Extends to Information Stored on Employer's Computer

October 5, 2012

Release and Waiver of Liability Upheld in Zip-Line Accident Case

March 20, 2012

Does a Wrongful Dismissal Relieve an Employee from Restrictive Covenants?

March 8, 2012

Ten Default Remedies Every Landlord Needs in a Commercial Lease

October 5, 2011



When Does An Insurance Policy Not Mean What It Says?

May 12, 2011

Settlement and the Effective Use of Releases

May 6, 2011

Advising the Insolvent Tenant: Ethical Issues

June 1, 2010

When Does an Insurer's Right of Subrogation Arise under a Standard Mortgage Clause?

April 1, 2010

Papering the Settlement of a Cost Recovery Action under the BC Environmental Management Act

March 1, 2010

Duties Owed by Departing Employees

August 1, 2009

Chinese Drywall: The Next Wave of Claims?

June 1, 2009

Existing Tenants: Negotiated Solutions

May 1, 2009

Employer's Duty to Accommodate an Employee's Disability: When Does It End?

May 1, 2008

Insurance Covenants in a Commercial Lease

May 1, 2007

Non-Payment of Rent: A Defaulting Tenant Under a Commercial Lease

May 1, 2007

Repair, Restoration and Remediation Issues in Commercial Tenancy