

True Law
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A LEGAL LOOK AT THE HORSE WORLD



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Catherine Willson

Catherine has practised litigation for over 30 years. She was founding partner of Willson Lewis LLP, a litigation firm in the Liberty Village in Toronto. In 2022, she established True Law legal services, a successful legal practice in construction law, employment law, civil litigation, and equine law



She is a Director of the Toronto Construction Association and Chair of the Environmental Committee. She is a member of the Ontario Bar association and the Advocates Society.

She is Chair of the Risk Management Committee and an Honourary Governor of the Royal Agricultural Winter Fair. Catherine was a legal expert for the Canadian Federation of Independent Business (Member Services) and is a regular speaker at legal and business conferences, an instructor at the University of Guelph, and writes about legal issues for several national publications including extensive publications in Horse Sport Magazine. Catherine also appeared on Canada AM as a civil litigation expert.

Catherine is a rider of bikes and horses and when not in Toronto, enjoys time at her farm near Collingwood.

Tips to avoid problems for a stable owner/operator

- ▶ Run a safe barn
 - ▶ Good rules and educated staff
 - ▶ Walk-about
 - ▶ Take preventative actions
 - ▶ Educate boarders and guests
- ▶ Use written and clear agreements
 - ▶ boarding agreements
 - ▶ Waivers
 - ▶ Sale agreements
 - ▶ Etc.
- ▶ Effective follow through on receivables problems

PUT IT IN WRITING

- ▶ Waivers
- ▶ Boarding Agreements
- ▶ Purchase & Sale Agreements
- ▶ Other agreements incl.- leasing
 - co-ownership
 - breeding
- ▶ Standard forms now available in Canada
 - ▶ Self-Counsel Press and Amazon – Canadian Equine Law book and forms

Waivers

- ▶ Used to educate and provide information on the risks involved in horse riding, to discourage litigation, and finally, to defend against claims
- ▶ Who is a participant?
- ▶ Appropriate notice of waiver and execution
- ▶ Highlighting waiver terms
- ▶ Negligence
- ▶ Children

Boarding Agreement

- ▶ Identify agreement
- ▶ Description of horse
- ▶ Boarding fees and term of agreement
- ▶ Services provided
- ▶ Special instructions to stable operator
- ▶ Special rights of stable operator
- ▶ Risk of loss and injury
- ▶ Liability insurance
- ▶ Emergency care
- ▶ Rules of the barn
- ▶ Default provision
- ▶ Signatures

Responsibility of Stable Owners and Operators

- ▶ Standard of care owed to people and horses
- ▶ Reasonable care
- ▶ PEI Occupiers' Liability Act
- ▶ Horse Riding Safety Act
- ▶ Importance of walk-about
- ▶ Consider ALL traffic at your stable
 - ▶ Riders and boarders, guests, children, dogs, cars, etc.
- ▶ Rules of the barn and safety protocols
- ▶ Obstacles and hazards

PEI – Occupational Health and Safety Act (OHS)

- ▶ Includes a riding academy or the boarding or breeding of horses
- ▶ The OHS Act makes self-employed farmers, farm managers, employers, workers and contractors all responsible for safety in the farm workplace. Each person working on the farm is responsible, to the extent of their authority, for the health and safety of everyone around them. This is referred to as the Internal Responsibility System (IRS). The goal of the IRS is to reduce the incidence of workplace injury and illness. This system is effective when everyone works together.
- ▶ PEI Farm Safety Code of Practice

Accidents

- ▶ Establish an action plan and protocol
- ▶ Have emergency telephone numbers visibly posted
- ▶ First aid kits and other safety items available
- ▶ Safety and first aid training for staff
- ▶ Written accident reports
- ▶ Witness statements, photographs, videos, etc.
- ▶ Notify insurer
- ▶ Follow up

Buying and Selling Horses

- ▶ Conditions
- ▶ Warranties
- ▶ Implied conditions of sale – Sale of Goods Act
- ▶ Damages and rescission
- ▶ Payment terms
- ▶ Use of agents

Purchase and Sale Agreements

- ▶ Identify agreement
- ▶ Description of horse
- ▶ Purchase price and payment terms
- ▶ Title, registration and ownership transfers
- ▶ Representations made by seller
- ▶ Agreement conclusive
- ▶ Delivery - risk of loss
- ▶ Purchase examination
- ▶ Other terms unique to this sale
- ▶ Default
- ▶ Law of enforcement
- ▶ Signatures

Veterinarians

- ▶ Vets have obligations to their clients in contract and in tort (negligence)
- ▶ Standard of Care: a reasonable degree of learning and skill ordinarily possessed by practitioners in similar communities in similar cases



Tips to avoid problems with veterinarians

Pre-purchase Examinations

- ▶ Clear instructions
 - ▶ What tests are available?
 - ▶ What tests will be performed?
 - ▶ Communicate any known history of the horse
- ▶ Get results in writing
- ▶ Watch for conflicts

General Barn Services

- ▶ Be clear with your boarders on who is footing the bill for routine veterinary services and emergency services
- ▶ Follow up and ensure prompt payment for veterinarian

HIRING – EMPLOYMENT CONTRACTS

APPLICATIONS & RECRUITING

DO NOT:

- Ask about age, date of birth, hair or eye colour, weight or height
- Ask about religious affiliation
- Ask about Canadian citizenship
- Ask for ‘maiden name’ or greeting identification, i.e. Mr. or Miss.



EMPLOYMENT CONTRACTS

CONSIDER:

- ✓ Set out compensation – salary paid weekly, hourly?
- ✓ Duties and specify ability to change duties
- ✓ Probationary nature of the position and ability to dismiss without notice
- ✓ Lay-off
- ✓ Termination
- ✓ Non-solicitation clause
- ✓ Confidential information clause
- ✓ Ensure that adequate consideration is provided for the contractual relationship – job offer, bonus

TESTS – INDEPENDENT CONTRACTOR

- Control Test
 - ✦ the degree of direction and control over a worker
- Ownership of Tools
- Chance of Profit
- Risk of Loss
- Organization Test
 - ✦ is an individual's work an integral part of business operations of the company?

DISMISSAL

Just Cause v. Without Cause

Just Cause:

- No notice or pay in lieu required
- Requires serious misconduct (i.e. theft) by employee, or gross incompetence or insubordination
- Warnings must be issued
- A reasonable opportunity to explain, or improve, must be given

Without Cause:

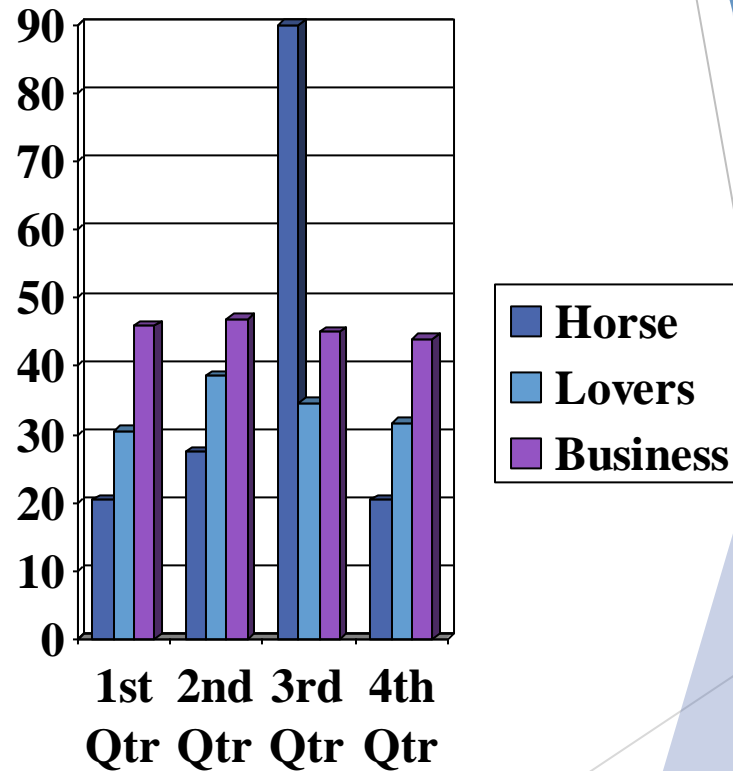
- Notice or pay in lieu required pursuant to *Employment Standards Act*, or *Canada Labour Code*; and common law

REASONABLE NOTICE

- *Employment Standards Act* is a minimum only
- Common law - Ball park/range of notice
- Factors – Age, Seniority, Length of Employment
- Month per year maxim – Right or Wrong
- Benefits & Pension & Disability

Business of Horses: Business Vehicles

- ▶ Sole proprietorship
- ▶ Partnership
- ▶ Limited partnership
- ▶ Incorporated company



Business of Horses

Legal Tips

- ▶ Put It In Writing!
- ▶ Think about the details – be specific
- ▶ Dispute Resolution Clause
- ▶ Escape Clause
- ▶ Financial Planner
- ▶ Plan Ahead
- ▶ Look like a business!

Taxation of Horses: Horse Racing is ‘Farming’

- ▶ Section 248 of the Income Tax Act
- ▶ “maintaining of horses for racing”
- ▶ What about other horse industries?
- ▶ “livestock raising and exhibiting”
 - ▶ May not include sport horses
 - ▶ Breeding of sport horses?
 - ▶ Does not include stable operators

Hobby or Business

- ▶ Reasonable expectation of profit
 - ▶ Prepare a business plan
 - ▶ Prepare projections on income and expenses for at least a year in advance
 - ▶ Maintain proper books and records
 - ▶ Continuously oversee your horse operations and make changes as necessary
 - ▶ Join your industry groups – get involved
 - ▶ Subscribe to horse journals and publications

Hobby or Business

- Stewart v. R. , 2002, S.C.C.
 - Recognized the unfairness of the reasonable expectation of profit test
 - Tossed it out as vague and arbitrary
 - Tax collectors ought first to decide whether a taxpayer's activity is undertaken in pursuit of profit or as a personal or hobby venture. If it is the first, it is a source of income (a business) and the inquiry stops there. If it is the second (personal or hobby), then look at whether the taxpayer has an "intention to profit" meaning whether the business is carried on in a "sufficiently commercial manner" or in a way that shows "business like behaviour"

Section 31 of the Income Tax Act

► **Restricted farm loss**

- **31 (1)** If a taxpayer's chief source of income for a taxation year is neither farming nor a combination of farming and some other source of income that is a subordinate source of income for the taxpayer, then for the purposes of sections 3 and 111 the taxpayer's loss, if any, for the year from all farming businesses carried on by the taxpayer is deemed to be the total of

(a) the lesser of

(i) the amount by which the total of the taxpayer's losses for the year, determined without reference to this section and before making any deduction under section 37, from all farming businesses carried on by the taxpayer exceeds the total of the taxpayer's incomes for the year, so determined from all such businesses, and

Section 31 of the Income Tax Act

(ii) \$2,500 plus the lesser of

(A) 1/2 of the amount by which the amount determined under subparagraph 31(1)(a)(i) exceeds \$2,500, and

(B) \$15,000, and

(b) the amount, if any, by which

(i) the amount that would be determined under subparagraph (a)(i) if it were read without reference to “and before making any deduction under section 37”,

exceeds

(ii) the amount determined under subparagraph 31(1)(a)(i).

- ▶ Total maximum deduction of business losses of \$17,500 per year

Moldowan v. The Queen, 1977 (S.C.C.).

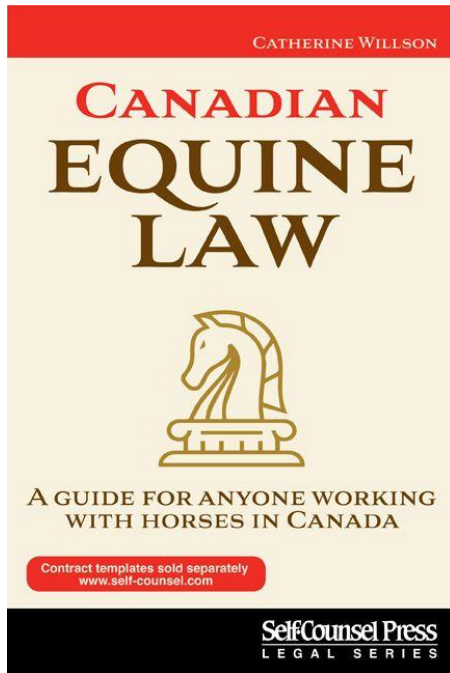
- ▶ Section 31 contemplates three classes of farmers, as follows:
- ▶ Full-time Farmer:
- ▶ Those for whom farming may reasonably be expected to provide the bulk of income or the centre of work routine. This category of farmer can deduct farm losses without reference to the section 31 restrictions.
- ▶ Part-time Farmer:
- ▶ Those who carry on farming as a business, but for whom farming, or farming and some subordinate source of income, does not constitute his or her livelihood, but rather a sideline business. This category of farmer can only deduct farm losses subject to the section 31 restrictions.
- ▶ Hobby Farmer:
- ▶ Those who carry on farming activities as a hobby and not a business, and for whom farming, or farming and some subordinate source of income, does not constitute his or her livelihood. This category gets no deduction whatsoever as no business is being carried on.

Legislative Efforts

- ▶ Horse Racing Tax Alliance – lobbying efforts
- ▶ Since the 60's, commission papers recommended the repeal of section 31
- ▶ Federal Standing Committee on Finance repeatedly endorsed the repeal of section 31
- ▶ R. v. Craig, S.C.C. decision – adopted a flexible approach, looked at the farming business and other businesses of the taxpayer in combination
- ▶ Stephen Harper's government – shut down the flexible approach – if farming is not your primary income, your loss deductions are limited

Canadian Equine Law

By: Catherine Willson, B.A., LL.B.



Published by both Self-Counsel Press (www.self-counsel.com) and Amazon.

A concise guide that includes legal information written specifically for people in the horse industry.

Learn about the legalities of purchasing, selling, stabling, breeding, and caring for horses and how to use contracts and other agreements to protect your interests.

Legal agreements, including equine leasing, boarding, co-ownership, syndicates, waver/release, purchase/sale contracts, breeding & management and breeding (live cover or AI) also available and can be downloaded with helpful, easy to use instructions and information.

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