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REMEDIES IN LABOUR EMPLOYMENT AND HUMAN RIGHTS LAW

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Remedies in Labour, Employment and Human Rights Law is a unique resource which provides a comprehensive analysis of the remedial jurisdiction of adjudicators, tribunals and courts to enforce human rights and employment rights. The authors examine remedies arising from labour arbitration, from wrongful dismissal litigation, and from unjust dismissal cases under the *Canada Labour Code*, following labour relations board hearings and in the human rights context. In each instance the authors discuss the purpose and scope of the available remedial orders as well as the source of the remedial authority, then each type of remedial order is detailed and explored.

This release updates Appendix A (Case Digests) and Appendix IF (Issues in Focus).

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Highlights:

Appendix A — Case Digests — New categories were added for Frustration of Employment Contract, Illegal Strikes, Limitation Periods, Res Judicata and Workers' Compensation Legislation. Over 70 recent case digests were added covering a multitude of issues including digests of the following Court of Appeal decisions:

- **Labour and employment law — Labour law — Labour relations boards — Powers — Miscellaneous —** Canada Industrial Relations Board ordered fragmentation of bargaining unit and representation vote — Union stated it would seek judicial review, and board ordered vote to be held with ballots sealed — Union brought motion for stay of orders pending judicial review — Motion granted — Representation vote had been held and could not be stayed, but further orders could — Serious question existed — Fragmentation of bargaining units is rare, and application for review was not frivolous — Union could suffer irreparable harm if stay not granted — Union who had represented all workers for years would suffer greater harm if stay not granted: *International Association of Machinists and Aerospace Workers v. Aircraft Mechanics Fraternal Association*, 2025 FCA 135, 2025 CarswellNat 2822.
- **Labour and employment law — Labour law — Bargaining rights — Certification — Jurisdiction of board — Judicial review — Grounds for review —** Union applied pursuant to s. 24(1) of Canada Labour Code for certification concerning group of longshoring workers — Canada Industrial Relations Board issued order granting certification — Employer sought to quash order on jurisdictional grounds asserting labour relations of longshoring employees falls within provincial jurisdiction — Employer applied for judicial review — Application granted — Neither party raised jurisdiction issue before board nor was it discussed in certification order — Jurisprudence indicates labour relations in longshoring industry is not always within federal jurisdiction; only when work is integral to federal undertaking — Accordingly, board erred by taking jurisdiction without considering relevant legal framework — Inadequate factual record before board precluded court from undertaking complex analysis required to determine jurisdiction question — Certification order set aside and matter remitted back to board for redetermination: *East Coast Hydraulics & Machinery (2009) Limited v. International Longshoremen's Association, Local 1976*, 2025 CarswellNat 898, 2025 FCA 64.
- **Labour and employment law — Employment law — Termination and dismissal — Remedies — Damages — Reduction for failure to mitigate —** Employee sued after employment relationship ended — Trial judge rejected employer's position that employee resigned and found employer wrongfully dismissed him — Trial judge awarded employee $70,604.08 in damages — Trial judge arrived at amount by multiplying monthly income amount by 18.5 months, to account for 24 months' notice of termination employee should have received reduced by 3 months for failure to mitigate and 2.5 months for actual notice of termination — Employer appealed; employee cross-appealed — Appeal dismissed; cross-appeal allowed — There was no basis for deduction of more than 3 months from notice period based on failure to mitigate — Since employer did not meet its burden to show that reasonable efforts would have resulted in mitigating employment, there was no basis for 3 months deduction — Finding that there was no concrete offer of part-

time employment was sufficient to support conclusion that failure to take up such work was not breach of duty to mitigate: *Pateman v. Koolatron Corporation*, 2025 ONCA 224, 2025 CarswellOnt 3983.