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DAMAGES FOR BREACH OF CONTRACT

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This looseleaf service thoroughly examines the principles of law applicable to the remedy of damages for breach of contract. The authors provide a clear, comprehensive treatment of all types of damages including liquidated damages, punitive damages, damages for mental distress, aggravated damages and nominal damages. Individual chapters cover compensation for pecuniary and nonpecuniary loss, valuation of damages, measuring damages, pre-judgment interest, taxation and damages, and practice and procedure.

What's New in This Update:

This release features updates to Chapter 10 (Mitigation of Damages).

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Highlights

- **Chapter 10. Mitigation of Damages – I. Introduction: Mitigation Defined – A. General Principles – 10:3. Fact of Mitigation Is Taken into Account Even Where No Duty to Mitigate Exists** – A new section titled “Fact of Mitigation Is Taken into Account Even Where No Duty to Mitigate Exists” has been added in this release. Cases such as *Toronto Housing Co. v. Postal Promotions Ltd.*, 1982 CarswellOnt 672 are considered in this new section. In this case, the landlord elected to terminate a lease and to seek damages. The landlord rented the property in the interim. The defendant tenant repudiated a commercial lease. The plaintiff landlord elected to terminate the lease, to sue for the rent accrued and to seek damages to the date of the termination. The landlord subsequently re-let the premises at a higher rent. The trial judge held that the landlord had to take into account this increased rental income. The landlord appealed and the appeal was dismissed. The landlord’s damages included the present value of the future rent of the unexpired period of the lease but whether or not there is a duty on a landlord to mitigate his damages, actual rental income received for the same period must be taken into account. Both the landlord and the tenant have the same right to the full range of contractual remedies and defences. This case was recently cited for the principle that a landlord must give credit for its successful mitigation in *Marli Ltd. v. Pet Valu Canada Inc.*, 2017 CarswellOnt 4233.
- **Chapter 10. Mitigation of Damages – I. Introduction: Mitigation Defined – B. Exceptions – 10:11 Fixed-Term Employment Contract – the Recent Ontario Approach** – A new section titled “Fixed-Term Employment Contract – the Recent Ontario Approach” has been added in this release. The rationale for holding that a fixed term employment contract ousts the common law obligation to mitigate is considered in this section. The cases of *Lovely v. Prestige Travel Ltd.*, 2013 CarswellAlta 1575, *Howard v. Benson Group Inc.*, 2016 CarswellOnt 5382, *Mohamed v. Information Systems Architects Inc.*, 2018 CarswellOnt 7099, *Kopyl v. Losani Homes (1998) Ltd.*, 2024 CarswellOnt 3701 and *Monterosso v. Metro Freightliner Hamilton Inc.*, 2023 CarswellOnt 9036 are amongst those discussed in detail in this section.