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EMPLOYMENT LAW MANUAL
The Honourable Mr. Justice John R. Sproat
Release No. 9, November 2025

In addition to an extensive treatment of wrongful dismissal law in Canada, the *Employment Law Manual: Wrongful Dismissal, Human Rights and Employment Standards* features an examination of discriminatory practices under the *Ontario Human Rights Code* and offences under the *Employment Standards Act, 2000*. A section offering practical advice on hiring and firing is supplemented by a collection of helpful precedents, featuring forms of employment contracts, warning letters, termination letters, and more.

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What's New in this Update

This release updates the caselaw and commentary in Chapters 3 (The Contract of Employment), 4 (Just Cause for Dismissal), 6 (Damages) and 9 (Employee Obligations and Liability to Employer).

Highlights

WRONGFUL DISMISSAL — THE CONTRACT OF EMPLOYMENT — WRITTEN CONTRACTS — *EMPLOYMENT STANDARDS ACT* INVALIDATION OF TERMS OF AN EMPLOYMENT CONTRACT — GENERAL PRINCIPLES — In *Bertsch v. Datastealth Inc.*, 2025 ONCA 379, 2025 CarswellOnt 7556 (Ont. C.A.), it had been argued that the termination provision was invalid because an average person might mistakenly interpret it as contravening the *ESA*. The court rejected this argument stating:

> 11 In any event, the issue is not whether an ordinary person might arrive at an incorrect interpretation of the termination provisions of the employment agreement, but how the agreement can be reasonably interpreted. The termination provision specifically states that an employee who is terminated "with or without cause" will receive the minimum payments and entitlements under the ESA and its regulations. We see no error in the motion judge's conclusion that the termination provision in the employment agreement is unambiguous, and that, when reasonably interpreted, it does not depart from the minimum standards guaranteed by the ESA. As such, the termination provision is enforceable and precludes the appellant's claim for common law damages for wrongful dismissal.

WRONGFUL DISMISSAL — JUST CAUSE FOR DISMISSAL — WHAT CONSTITUTES JUST CAUSE FOR DISMISSAL — OTHER CAUSES — CONFLICT OF INTEREST— BREACH OF CONFIDENCE — In *Boaden Catering Limited v. Earl Haig Community Day Care*, (2025) 96 C.C.E.L. (4th) 15, 2024 CarswellOnt 14589 (Ont. S.C.J.), the plaintiff was in the business of providing catering services and the defendant was a customer that paid it approximately $175,000 per year. Christopher Green, who had been employed by the plaintiff as its executive chef, resigned his employment to accept employment with the defendant. In essence he provided the same food services previously supplied by the plaintiff. The plaintiff alleged that Green had disclosed its confidential information to the defendant. Justice Agarwal rejected this allegation and provided a helpful discussion of what is, and is not, confidential information

WRONGFUL DISMISSAL — DAMAGES — PRINCIPAL FACTORS RELEVANT TO DETERMINING THE PERIOD OF REASONABLE NOTICE — ECONOMIC CIRCUMSTANCES — In *Escobar v. Ocean Pacific Hotels Ltd.*, (2024) 96 C.C.E.L. (4th) 73, 2024 CarswellBC 2542 (B.C. S.C.), the class action plaintiff was the senior concierge at the Pan Pacific hotel in Vancouver. At the beginning of the pandemic, the defendant stopped assigning shifts to employees given that it had virtually no occupants. The plaintiff received a termination letter on August 28, 2020. The defendant filed an expert report which indicated that the labour market in Vancouver rebounded very quickly after March 2020 and argued that the pandemic should not be considered as a factor that increased what would otherwise be the appropriate notice period. While the plaintiffs did not cross-examine the defence expert, Justice Matthews nevertheless concluded that the poor labour market conditions did justify an increase in the reasonable notice period.

WRONGFUL DISMISSAL — DAMAGES — MITIGATION OF DAMAGE — GENERAL PRINCIPLES — GENERALLY — In *Williamson v. Brandt Tractor Inc.*, 2025 CarswellOnt 7219, 2025 ONSC 2571 (Ont. S.C.J.), the plaintiff was terminated at age 56 after 18 years of service as a salesperson. Following termination, the plaintiff took a job driving a parts vehicle at lower pay because he wanted to get out of sales and work in a less stressful position. Justice Akazaki applied the *Brake* decision to hold that the damages should not be reduced by the earnings from this lower paid position (see *Brake v. PJ-M2R Restaurant Inc.* (2017), 2017 ONCA 402, 2017 CarswellOnt 7619, 39 C.C.E.L. (4th) 181, 135 O.R. (3d) 561, 2017 C.L.L.C. 210-047, 413 D.L.R. (4th) 284). It should be noted, however, that it was the dissenting opinion in *Brake* which held that earnings from a lesser position are not deductible from damages.

WRONGFUL DISMISSAL — DAMAGES — MITIGATION OF DAMAGE — MITIGATION BY ACCEPTING POSITION WITH SAME OR SUCCESSOR EMPLOYER — CASES FINDING OBLIGATION TO ACCEPT NEW POSITION — In *Brown v. General Electric Canada*, (2025) 96 C.C.E.L. (4th) 1, 2025 CarswellMan 138 (Man. C.A.), Justice Mainella reviewed the chronology of events leading up to the decision of the plaintiff to reject an offer of employment from a successor employer. The trial judge concluded that the plaintiff had been constructively dismissed in that the defendant had terminated his employment. The damages that resulted from this termination exceeded $700,000 and included the loss of the retention bonus and damages for failure to provide reasonable notice of termination. The trial judge, however, concluded that the plaintiff could have avoided suffering any damage if he had accepted the offer of employment with the successor and that, therefore, he had failed to act reasonably to mitigate his damages.

WRONGFUL DISMISSAL — EMPLOYEE OBLIGATIONS AND LIABILITY TO EMPLOYER — NON-COMPETITION — RESTRICTIVE COVENANT CONNECTED TO THE SALE OF A BUSINESS — In *Dentalcorp Health Services Ltd. v. Dr. J.S. Minhas Dental Corp.*, (2024) 95 C.C.E.L. (4th) 308, 2024 CarswellBC 3247 (B.C. S.C.), the plaintiff had purchased several dental clinics from the defendant for approximately $11 million. The purchase agreements included restrictive covenants prohibiting the defendant from competing with the plaintiff for three-years within a 10-kilometre radius around each of the clinics purchased by the plaintiff. There was a falling out between the parties and the defendant went into competition in breach of the restrictive covenants. Justice Branch concluded that the restrictive covenants were valid and enforceable. Justice Branch also concluded that it was appropriate to grant an injunction to restrain the defendants from breaching the covenants because the plaintiff had demonstrated a strong *prima facie* case, that it would suffer irreparable harm if the injunction was not granted and that the balance of convenience favoured the granting of the injunction.