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EMPLOYMENT LAW MANUAL

The Honourable Mr. Justice John R. Sproat

Release No. 1, February 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.

This release includes updates to Chapter 3 (The Contract of Employment), Chapter 4 (Just Cause for Dismissal), Chapter 5 (Constructive Dismissal), Chapter 6 (Damages), Chapter 9 (Employee Obligations and Liability to Employer), Chapter 22 (General Provisions) and Chapter 24 (Termination of Employment).

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Highlights

- **Part II. Wrongful Dismissal — Chapter 3 — II. Written Contract — § 3:2. Enforceability of Written Contracts** — In *Goberdhan v. Knights of Columbus*, (2024) 88 C.C.E.L. (4th) 207 (Ont. C.A.) the plaintiff was a field agent who sold insurance products for the defendant. He had signed contracts in 2011, 2018 and 2019. He was terminated shortly after signing the final contract. The plaintiff sued for wrongful dismissal, and the defendant responded by moving to stay the action based upon the fact that the second and third contracts contained a provision requiring the arbitration of disputes. The motion judge dismissed the application for a stay on the basis that the plaintiff did not receive any fresh consideration for the second and third contracts and, as such, the contracts which included the mandatory arbitration provision were unenforceable. The Court of Appeal agreed that there was no fresh consideration and rejected the argument that the mere fact that the second and third contracts contain somewhat different provisions amounted to fresh consideration.
- **Part II. Wrongful Dismissal — III. What Constitutes Just Cause for Dismissal — I. Other Causes — § 4:48. Conflict of Interest — Breach of Confidence** — In *Chura v. Batten Industries Inc.*, (2024) 90 C.C.E.L. (4th) 138 (B.C. S.C.) the plaintiff was employed in a senior sales and management position. The plaintiff recommended that the defendant enter into two contracts with a supplier, WebStager, knowing that it would pay a commission to her husband in consideration of obtaining the contracts. Justice Lyster concluded that the defendant had just cause for the termination of the plaintiff's employment. Justice Lyster also awarded the defendant damages in the amount of the commissions paid to her husband on account of the WebStager contracts.
- **Part II. Wrongful Dismissal — Chapter 6. — VII. Mitigation of Damage — C. Mitigation by Accepting Position with Same or Successor Employer — § 6:77. Cases Finding Obligation to Accept New Position** — In *Blomme v. Princeton Standard Pellet Corporation*, (2024) 88 C.C.E.L. (4th) 286 (B.C. S.C.) the plaintiff was a 67-year-old plant supervisor with over 20 years of service. As a result of the COVID-19 pandemic, she was laid off effective April 4, 2020. Her record of employment indicated that her expected date of recall was "unknown". On October 1, 2020 the plaintiff's counsel sent a demand letter asserting that the plaintiff had been terminated, and claiming damages based upon an 18-22 month notice. The defendant responded by offering the plaintiff a return to work as early as November 3, 2020. The plaintiff did not respond. The demand letter, however, served to alert the defendant to the fact that employment standards legislation deemed the plaintiff to be terminated if a layoff extended beyond a "temporary" layoff which, in the case of the plaintiff, occurred on August 30, 2020. On October 30, 2022, the defendant acknowledged that the plaintiff was entitled to eight weeks pay in lieu of notice under employment standards legislation and repeated the offer to return her to work. The plaintiff, however, took the position that returning to work would involve returning to an atmosphere of hostility, humiliation and embarrassment.

Justice MacNaughton concluded that the plaintiff had failed to mitigate her damages.