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### WRONGFUL DISMISSAL

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This four-volume national work provides a comprehensive treatment on the law of wrongful dismissal in Canada. Coverage includes: the contract of employment and employee status; types of dismissal and the “just cause” defence; damages and the duty to mitigate; related actions including actions tort, injunctive relief, and statutory actions; employee protections under the *Canada Labour Code*, tax considerations; the impact of statutes on the assessment of damages; practical considerations; charts of notice awards; and relevant legislation and concordance tables.

### What's New in this Update

This release features updates to Chapter 10 (The Canada Labour Code).

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## Highlights

- **THE CANADA LABOUR CODE — CONSTRUCTIVE DISMISSAL; VOLUNTARY RESIGNATION; FEDERAL WORK, UNDERTAKING OR BUSINESS – CONSTRUCTIVE DISMISSAL** — In some instances where a complaint frames the employer’s objectionable conduct that allegedly constituted constructive dismissal as treating the complainant as a part-time rather than a full-time employee, the CIRB’s different characterization of the underlying dispute may result in the dismissal of the complaint as in *Lennox*, 2022 CarswellNat 2135 (C.I.R.B.). There, in addition to complaints about harassment, the complainant characterized himself as a full-time employee mistreated by an employer who dealt with him as a part-time employee. The Board confirmed, first, that the common law doctrine of constructive dismissal applies to its consideration of unjust dismissal claims but, second, that the employer’s policies did not include allowing the complainant to unilaterally schedule his own days on and off work. The employer’s statement that ‘full-time work was required to keep the complainant’s full-time status and benefits’ under its policies was not a change to any term of the complainant’s employment.
- **THE CANADA LABOUR CODE — CONSTRUCTIVE DISMISSAL; VOLUNTARY RESIGNATION; FEDERAL WORK, UNDERTAKING OR BUSINESS – VOLUNTARY RESIGNATION** — Will a voluntary resignation (or, conversely an unjust dismissal be found) where an employee undisputedly voluntary resigns with a period of advance notice, but the employer purports to waive that period of notice? That situation arose in *McConnell*, (2021) Decision No. 969, 2021 CIRB 969 where a dispatch planner employed by a transportation company provided 14 days’ advance notice of resignation. The employee was scheduled to work six days during that 14-day period, but missed three due to illness and was terminated upon his return to work. An inspector ordered the employer to pay termination and severance pay on the basis that the claimant was dismissed without just cause. The employer’s appeal was dismissed. The employer was not entitled to waive the resignation notice period had two choices: to terminate that employee’s employment (and to pay the employee’s entitlements under the *Code*); or to tell the employee to remain at home with pay until the end of the notice period. There was no third option to terminate the employee while truncating the notice period originally provided by that employee.
- **THE CANADA LABOUR CODE — CONSTRUCTIVE DISMISSAL; VOLUNTARY RESIGNATION; FEDERAL WORK, UNDERTAKING OR BUSINESS — VOLUNTARY**

**RESIGNATION** —Not all written and signed “releases” will preclude the bringing of an unjust dismissal claim? However, some unwritten agreements will have that very effect. In *Dahlander et CBC/Societe Radio-Canada, Re*, 2021 CarswellNat 5511 (Can. Adjud. (CLC Part III)), the employee’s position was eliminated following employer restructuring. Subsequently, the employee filed an unjust dismissal claim. The employer objected that the parties had reached a settlement — albeit an unwritten one — such that the claim was barred. The adjudicator allowed the employer’s objection. There was no particular formality required to create a settlement agreement capable of being proven and of barring a subsequent claim. There was no evidence that the parties’ mutual exchange of consents had been vitiated; the employee’s ultimate dissatisfaction did not invalidate the settlement that had been reached between the parties.

- **THE CANADA LABOUR CODE — LIMITATION ON COMPLAINT — LAID OFF BECAUSE OF LACK OF WORK OR DISCONTINUANCE OF FUNCTION —LAID OFF** — In *Graham v. Hamilton-Oshawa Port Authority*, 2022 CIRB 1021 (C.I.R.B.), the CIRB confirmed that it continues to apply the same legal framework to the lack of work or discontinuance of function exemptions at s. 242(3.1)(a) of the *Canada Labour Code* after the 2019 Bill C-44 amendments giving the board the authority to adjudicate unjust dismissal complaints filed in and after July 2019 as it had applied before those amendments. The board’s decision in *Graham* established several key principles guiding the application of the s. 242(3.1)(a) exemption.

## ProView Developments

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