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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 updates Chapter 6. Damages.

- **Chapter 6 — II. Theory of the Notice Assessment — § 6:7. Does a 'Rule of Thumb' Exist? —** It has pointedly been observed that this "rule of thumb" approach has fallen out of favour with courts generally, and has been outright criticized or rejected by them for many years. Instead, some courts express their clear preference to consider all the factors, rather than formulaic rules, and to rely on case precedent: *McDonald v. Sproule Management GP Limited*, 2023 ABKB 587, 2023 CarswellAlta 2651.

- **Chapter 6 — V. Inducement — § 6:23. Inducement Factor: Miscellaneous —** In *Adams v. Thinkific Labs Inc.*, the dispute hinged on the interplay between two competing offer letters, and the core question of which of them governed the employee's wrongful dismissal entitlements. The first offer, an email from the company, detailed compensation and benefits but lacked termination or non-competition clauses. The employee accepted this offer. Later that day, the employer sent a second document imposing new termination and non-competition terms without fresh consideration. This document mainly benefited the employer and added burdens on the employee without her consultation. The employee signed it but later argued it was unenforceable due to the lack of fresh consideration. The court agreed, ruling that her rights were governed by the initial offer, and her dismissal damages should be assessed based on common law principles.

- **Chapter 6 — XI. Other Factors and Considerations — § 6:54. Share Purchase Options —** The date of termination was among the central issues in *Milwid v. IBM Canada Ltd.*, 2023 ONSC 490, where the court considered how to treat the employee's entitlement to Equity Plan benefits as part of wrongful dismissal damages. That entitlement hinged on when the employee was considered "terminated" under the Equity Award Agreement, and whether the termination date extended to the end of the common law notice period, thus affecting the employee's right to equity-based compensation, such as Restricted Stock Units (RSUs), during the notice period. The court analyzed the language of the Equity Award Agreement, particularly a provision stating that the employee was considered terminated on the date they "cease to provide services" – which was defined arise regardless of whether the employee continued to receive compensation or termination pay as required under common law. After finding this

wording ambiguous, the court ruled that it did not expressly exclude the common law notice period, for the purposes of determining the employee's termination date for benefit purposes. With this in mind, the court ruled that the Equity Plan benefits were a form of compensation tied to the plaintiff's employment. They were to be included in the calculation of his wrongful dismissal damages, since the agreement did not clearly extinguish the employee's common law entitlement to them.