Table of Contents

Acknowledgements / iii Introduction / v

CHAPTER 1 CULTURE AND POLICY CONSIDERATIONS

1.1	INTRODUCTIO		
1.2	AUDITING TERMINATION PRACTICES / 1-2		
		Five W s of Root Cause Analysis / 1-2	
		omes, Risks and Consequences / 1-5	
		lit Deliverables / 1-6	
		hmarking Termination Policies and Practices / 1-7	
1.3		DOCTRINE / 1-8	
1.4		POLICIES / 1-9	
1.5		SUS PROCEDURES / 1-10	
1.6		LICIES WITHIN THE ORGANIZATION / 1-10	
1.7		Y OF EMPLOYMENT POLICIES AND PROCEDURES / 1-10	
1.8		CTUAL FORCE OF POLICIES / 1-11	
1.9		O SPECIFIC LEGAL REQUIREMENTS / 1-13	
1.10	DECIDING WH	AT POLICIES YOU NEED / 1-13	
1.11		FOR POLICIES / 1-14	
1.12	WORK STAND	ARDS / 1-14	
1.13	PROBATION /	1-15	
1.14	ANALYZING TERMINATION TRENDS / 1-16		
	(1) Exit In	terviews / 1-16	
	(2) Conduc	eting the Exit Interview / 1-17	
	(3) Review	ring the Employment Cycle / 1-18	
	(4) Perforn	nance Improvement Plan Guidelines / 1-19	
	(a) I	ntroduction / 1-19	
	(b) (Goals/Objectives / 1-20	
	(c) I	Duration / 1-21	
	(d) S	Steps / 1-21	
		Analysing Termination Trends — The Expected Results / 1-23	
1.15		ONSIDERATIONS RELATING TO TERMINATION OF	
	EMPLOYMENT / 1-23		
	Terminating Em	ployees for Lack of Fit / 1-25	
	References / 1-2	6	
FORMS			
	Form 1.01	Sample Termination Policy / 1-27	
	Form 1.02	Voluntary Termination of Employment Policy / 1-31	
	Form 1.03	Sample Policy on Gifts and Parties for Departing Employees / 1-32	

CHAPTER 2 TERMINATION PROCEDURES

2.1	INTRO	ODUCTION / 2-1		
2.2	CREA'	TING A TERMINATION PROCESS / 2-2		
	(1)	Just Cause / 2-2		
	(2)	Termination Clause / 2-3		
	(3)	Other Process Requirements / 2-4		
	(4)	Sample Termination Scripts / 2-5		
	(5)	Process for Terminating an Employee / 2-10		
2.3		MUNICATIONS ISSUES SURROUNDING TERMINATIONS / 2-11		
	(1)	Documentation / 2-11		
	(2)	Seeking the Authority to Terminate / 2-13		
	(3)	Considering Alternatives / 2-15		
	(4)	The Termination Interview / 2-16		
		(a) Timing / 2-16		
		(b) Location / 2-16.1		
		(c) Interruptions / 2-16.1		
		(d) Inviting the Employee / 2-16.1		
		(e) The Letter / 2-16.2		
		(f) Participants / 2-16.2		
		(g) The Opening / 2-16.2		
		(h) The Closing / 2-16.3		
		(i) Escorting the Employee off the Premises / 2-16.3		
	(5)	Extreme Taboos / 2-16.4		
	(6)	The Need to Know / 2-16.5		
	(7)	Informing Coworkers / 2-16.6		
	(8)	Informing External Clients and Vendors / 2-16.7		
	(9)	Defamation, Libel and Slander / 2-16.7		
	(10)	Social Media and Related Concerns / 2-16.9		
2.4	COMN	MUNICATION SAMPLES / 2-16.12		
2.5	NON-0	COMPETITION AND NON-SOLICITATION AGREEMENTS		
	(REST	RICTIVE COVENANTS) / 2-16.13		
	(1)	Enforcing a Restrictive Covenant / 2-16.14		
	(2)	Legislative Changes in Ontario Relating to Non-Competition Agreements / 2-16.15		
2.6	REFEI	RENCES / 2-16.15		
	(1)	Policies on References / 2-16.20		
2.7	MANA	AGING SENIOR EXECUTIVE TERMINATIONS / 2-16.23		
2.8	TERM	INATION: INSIGHTS WE CAN LEARN FROM / 2-16.29		
	(1)	Increased Risk of Wrongful Dismissal Litigation / 2-16.30		
	(2)	Taking Steps to Deter Litigation / 2-16.30		
	(3)	Retaliation from the Employee / 2-16.31		
	(4)	Preventing a Violent Response / 2-16.32		
	(5)	Increased Potential of a Human Rights Claim / 2-16.34		
	(6)	Reduced Loyalty from Existing Team Members / 2-16.35		
2.9	FORM	ER EMPLOYEES / 2-16.37		
	(1)	Visits / 2-16.37		
2.10	REDE	PLOYING EMPLOYEES INTERNALLY ELSEWHERE WITHIN THE		
	ORGA	NIZATION / 2-16.38		

FORMS AND CHARTS

Form 2.01	Termination Memorandum / 2-16.11
Form 2.01(a)	Termination Procedures Checklist / 2-16.25
Form 2.02	Separation Notice / 2-16.41
Form 2.03	Termination of Employment Record / 2-16.43
Form 2.04	Exit Interview Form to be Filled out by Employees who Voluntarily
	Terminate / 2-16.44
Form 2.05	Record of Exit Interview: Voluntary Resignation / 2-16.45
Form 2.05(a)	Exit Survey / 2-16.51
Form 2.05(b)	Sample Survey — Exit Interview Questionnaire / 2-16.56
Form 2.05(c)	ABC Company — Exit Questionnaire / 2-16.58
Form 2.06	Reference Release / 2-16.61
Form 2.07	Terminations Checklist - Revised / Suggested / 2-16.62
Chart 2.08	Employment Standards Rapid Reference Chart
	(Minimum Standards) / 2-16.65
Chart 2.09	Periods of Notice Awarded / 2-16.66
Chart 2.10	Employee Record Retention Requirements / 2-149
Chart 2.11	Ending Employment Relationships / 2-151

APPENDICES

Appendix 2.1 Alternative Disupte Resolution and Termination of Employment / 2-155

CHAPTER 3 LEGAL CONSIDERATIONS

- 3.1 INTRODUCTION / 3-1
- 3.2 UNJUST DISMISSAL PROCEDURES / 3-1
- 3.3 STATUTES LIMITING DISCHARGE / 3-4
 - (1) Statutory Rights: Discrimination and Prohibited Discharge / 3-4
 - (2) Whistleblower Laws / 3-8
 - (3) How an Employee Can Address Concerns / 3-10
- 3.4 BREACH OF CONTRACT (THE EMPLOYMENT CONTRACT) / 3-11
 - (1) What is an Employment Contract? / 3-11
 - (2) Formal Contracts / 3-11
 - (3) Purpose of the Employment / 3-12
 - (3.1) Employment Contracts and Employment Standards Minimums / 3-13
 - (a) Limiting Compensation on Termination in Employment Contract / 3-14
 - (b) Termination Clause Failed To Include All Types of Remuneration / 3-16.1
 - (c) New Employment Contract May be Offered During Tenure of Old Contract / 3-16.2
 - (4) Duration of the Employment / 3-16.3
 - (a) Termination of Temporary and Contract Workers / 3-16.4
 - (i) Temps / 3-16.4
 - (ii) Independent Contractors / 3-16.5
 - (iii) Dependent Contractors / 3-16.8
 - (iv) Recommendations / 3-16.12
 - (5) Termination / 3-16.13
 - (a) No "Rule of Thumb" for Wrongful Dismissal Damages / 3-16.14

- (b) Aggravated Damages / 3-16.15
- (c) Extended Notice for "Bad Faith" Discharge: The "Wallace Bump" / 3-16.16
- (d) Applications of the Wallace Bump / 3-16.17
 - (i) Insisting on a Release in Exchange of Employment Standards Minimum Notice / 3-16.17
 - (ii) Dismissal While on Sick Leave / 3-16.18
 - (iii) Failure to Provide a Letter of Reference / 3-16.18
 - (iv) Alleging Cause / 3-16.19
- (6) Confidentiality / 3-16.24
- (7) Non-solicitation and Non-competition / 3-16.24
- (8) Injunctions to Stop Competition or Solicitation The Legal Test / 3-16.24
 - (a) Introduction / 3-16.24
 - (b) When will Courts Grant Injunctions? / 3-16.25
 - (i) Strong Prima Facie Case / 3-16.26
 - (ii) Irreparable Harm / 3-16.28
 - (iii) Balance of Convenience / 3-16.29
- (9) Preparing Affidavits for an Injunction Motion / 3-16.30
 - (a) Introduction / 3-16.30
 - (i) There is a Non-competition or Non-solicitation Agreement in Place / 3-16 31
 - (ii) The Non-competition or Non-solicitation Agreement is Reasonable and Enforceable / 3-16.31
 - (iii) A Non-solicitation Covenant Would Not Protect the Employer / 3-16.32
 - (iv) The Employee has Breached the Non-competition or Non-solicitation Agreement / 3-16.33
 - (v) The Employer will Suffer Irreparable Harm if the Injunction is Not Granted / 3-16.34
 - (vi) The Balance of Convenience Favours Granting the Injunction / 3-16.35
- (10) Other Tips for Enforcing Non-competition and Non-solicitation Agreements / 3-16.35
 - (a) Introduction / 3-16.35
 - (b) Have the Agreement Kept in Safekeeping / 3-16.35
 - (c) Do Not Delay / 3-16.36
 - (d) Preserve the Evidence of Who Customers Are / 3-16.36
 - (e) Be Sure to Have the Employee Enter into the Non-competition Agreement and Non-solicitation Agreement Before the Employee Commences Work / 3-16.36
 - (f) Provide Consideration for Imposing a Restrictive Covenant During Employment / 3-16.36
 - (g) Conduct a Thorough Exit Interview / 3-16.37
 - (h) Be Consistent with Enforcement / 3-16.37
 - (i) Be Consistent when Drafting Non-competition and Non-solicitation Agreements for Employees Who Have Similar Positions / 3-16.37
 - (j) Pay the Employee's Wages for the Length of the Non-competition Agreement / 3-16.38
- (11) Company Rules, Policies and Procedures / 3-16.38
- (12) Employment Contracts with Long-term Employees / 3-16.38
- (13) Resolving Termination Disputes / 3-16.38

- (1) Forums / 3-16.39
 - (a) Grievance Arbitration / 3-16.39
 - (b) Constructive Dismissal Cases / 3-16.42
 - (c) Rights Versus Interest Disputes / 3-16.43
 - (d) Wrongful Dismissal Insufficient or Unjust Cause / 3-16.44
 - (e) Wrongful Dismissal Disputes over Severance and Notice / 3-16.46
- (2) Other Forums / 3-16.48
- (3) Forum Shopping / 3-16.50
- (14) Unconscionability, Duress, and Undue Influence / 3-16.50
 - (a) Riskie v. Sony of Canada Ltd. / 3-16.52
 - (b) Woollacott v. Canadian Forest Products / 3-16.52
 - (c) Manak v Workers' Compensation Board of British Columbia / 3-16.54

3.5 CONSTRUCTIVE DISMISSAL / 3-16.55

- (1) Change in Remuneration / 3-16.56
 - (a) Farber v. Royal Trust Co. / 3-16.56
 - (b) Change to Bonuses / 3-16.57
 - (i) Pathak v. Jannock Steel Fabricating Co. / 3-16.57
 - (ii) Johnston v. Household Financial Corp. / 3-16.58
 - (iii) Stea v. Kulwahy / 3-16.59
 - (iv) Hannigan v. Ikon Office Solutions Inc. / 3-16.59
 - (v) Schumacher v. Toronto Dominion Bank / 3-60
- (2) Change in Location / 3-16.61
- (3) Change in Responsibilities / 3-18
- (4) Forced Resignation / 3-18
- (5) Change in Fundamental Term or Condition of Employment / 3-18

Appendix 3.1 Significant Employment Law (Termination) Cases / 3-18.1

Bonuses / 3-18.1

Breach Of Employment Contract / 3-18.3

Clear And Cogent Evidence / 3-18.3

Conflicts Of Interest / 3-18.3

Constructive Dismissal / 3-18.4

Damages / 3-18.8

Aggravated Damages / 3-18.9

Discrimination / 3-18.19

Duty of Good Faith / 3-18.22

Employee Misrepresentations / 3-18.25

Employer Liable For Benefits / 3-18.26

Fixed-Term Contracts / 3-18.27

Health and Safety Violations / 3-18.27

Improper Use Of The Internet Or Email / 3-18.29

Independent Contractors And Employees / 3-18.30

Infliction Of Emotional Stress / 3-18.30

Issue Estoppel / 3-18.31

Just Cause / 3-18.32

Mandatory Retirement / 3-18.34

Mitigation / 3-18.35

Near Cause Doctrine / 3-18.40

Negligent Misrepresentation / 3-18.40

Non-Solicitation And Non-Competition Agreements / 3-18.42

Notice Of A Fundamental Change In The Employment Contract / 3-18.46

Onus / 3-18.47

Performance Issues / 3-18.48

Probationary Period (or Prior to Start Date) / 3-18.50

Termination Clauses / 3-18.51

Termination Under Ontario ESA / 3-18.57

Unjust Dismissal (Canada Labour Code) / 3-18.58

SAMPLE CONTRACTS

- 3.01: Formal Employment Contract / 3-19
- 3.02: Informal Employment Contract / 3-25
- 3.03: Casual Employment Contract / 3-26
- 3.04: Confidentiality Agreement / 3-27
- 3.05: Confidentiality and Non-Competition Agreement / 3-28
- 3.06: Employment Contract Precedents / 3-30
- 3.07: Termination Contract / 3-46

FORMS

- 3.01: Prohibited Grounds of Discrimination in Employment by Jurisdiction / 3-48
- 3.02: Letter Affirming Employment Contacts / 3-59
- 3.03: Warning Letter for Improper Conduct / 3-59
- 3.04: Warning Letter for Poor Performance / 3-60
- 3.05: Termination Letter Just Cause / 3-61
- 3.06: Termination Letter Without Cause / 3-62
- 3.07: Termination Letter No Cause / 3-63
- 3.08: Termination Letter Reserving Ground for Just Cause / 3-64
- 3.09: Releases / 3-65
- 3.10: Employee Data Checklist for Legal Counsel / 3-68

CHAPTER 4 TERMINATION FOR CAUSE

- 4.1 INTRODUCTION / 4-1
- 4.2 JUST CAUSE TERMINATION CONSIDERATIONS / 4-2
 - (1) Common Law Just Cause vs. Statutory Just Cause / 4-2
 - (2) Employer and Employee Rights / 4-2
 - (3) Constructive Dismissal and False Disciplinary Discharge Allegations / 4-3
 - (4) Progressive Discipline Processes / 4-4
 - (5) Positive Discipline and the Mixed-consequences Approach to Performance Management / 4-6
 - (a) Overview / 4-6
 - (b) Application of Progressive Discipline Under a Positive Discipline Model / 4-10
 - (c) Inaction and the Vicious Cycle / 4-11
 - (d) Fixing the Process Implementing a New Approach to Discipline / 4-12
 - (i) Management Buy-in / 4-12
 - (ii) Assessment and Determination of Readiness / 4-12
 - (iii) Program Design / 4-12.1

- (iv) Consultation with the Union / 4-12.2
- (e) Non-union Environments and Positive Discipline / 4-12.3
- (6) Justice and Dignity Clauses / 4-12.4
- (7) Sample Justice and Dignity Provision / 4-12.4
- 4.3 ESTABLISHING JUST CAUSE / 4-12.4
 - (1) Violations of a Fundamental Term of the Employment Contract / 4-12.6
 - (2) Gross Misconduct / 4-12.7
 - (3) Gross Insubordination / 4-12.7
 - (4) Dishonesty / 4-12.8
 - (5) Culminating Incident / 4-12.9
 - (6) Endangering Health and Safety / 4-12.9
 - (7) Dereliction of Duty / 4-12.9
 - (8) Human Rights Violations / 4-12.10
 - (a) Harassment Based on a Prohibited Ground of Discrimination / 4-12.10
 - (b) Sexual Harassment / 4-12.11
 - (c) Personal Harassment / 4-12.11
 - (d) Zero Tolerance / 4-12.12
 - (e) False, Frivolous and Vexatious Complaints / 4-12.14
 - (9) Conflicts of Interest / 4-12.14
 - (10) Illegal Activities / 4-12.15
 - (11) Conduct Outside of Work/Off-Duty Conduct / 4-12.16
 - (12) Automatic Termination Policies / 4-12.17
 - (13) Revelation of Character / 4-12.17
 - (14) Condonation / 4-12.18
 - (15) Near Cause / 4-12.18
 - (16) Employee Terminations and Workplace Violence / 4-12.18
 - (a) Background / 4-12.19
 - (b) Bill 168 / 4-12.20
 - (c) Conclusions / 4-12.27
 - (17) Workplace Investigations / 4-12.28
 - (a) Process Steps / 4-12.31
 - (b) Confidentiality / 4-12.34
 - (c) Retaliation / 4-12.34(1)
 - (d) The Decision / 4-12.34(1)
 - (18) Sexual Harassment and Workplace Investigations in the #MeToo Era / 4-12.34(2) Appendix 4.1 Sample Harassment Policy / 4-12.34(3)
- 4.4 DISCIPLINARY DISCHARGE IN A UNIONIZED ENVIRONMENT / 4-12.41
 - (1) Whether to Consult the Union / 4-12.42
 - (2) Recent Developments / 4-12.42
- 4.5 BEFORE THE DISCIPLINARY DISCHARGE / 4-14.20
 - (1) Alternatives to Disciplinary Discharge / 4-14.20
 - (2) Documenting Events Leading to Discharge / 4-14.21
 - (3) Gathering Supporting Records / 4-14.21
- 4.6 DISCHARGE PROCEDURES / 4-14.22
 - (1) Discharge Review Policy / 4-14.22
 - (a) Review of the Termination / 4-14.22
 - (b) Authority of the Review / 4-14.22
 - (c) Scope of the Review / 4-14.23

		(d)	Actions Pending Review / 4-14.23
		(e)	Length of Review / 4-14.23
	(2)	Discha	arge Review Points / 4-14.23
	(3)	Mitiga	ting Circumstances / 4-14.24
		(a)	Personal Factors / 4-14.25
		(b)	Company Rules / 4-14.30
	(4)	Forum	s for Appealing a Discharge for Just Cause / 4-14.36
4.7	TELLI	NG THE	EMPLOYEE / 4-14.41
	(1)	Before	Meeting with the Employee / 4-14.42
	(2)	Breaki	ng the News / 4-14.42
	(3)	Forma	lizing the Termination — the Termination Letter / 4-14.43
	(4)	Depart	ture from the Employer's Premises / 4-14.44
	(5)	Inform	ning Co-workers / 4-14.44
4.8	NON-I	DISCIPL	NARY TERMINATION FOR CAUSE / 4-14.44
	(1)	Duty t	o Accommodate / 4-14.44
	(2)	Innoce	ent Absenteeism / 4-14.45
		` '	Innocent Absenteeism as Frustration / 4-14.45
		(b)	Establishing Innocent Absenteeism as Frustration / 4-14.46
			(i) Can the Employer Demonstrate a History of Absenteeism? / 4-14.46
			(ii) Can the Employer Establish that the Poor Attendance is Not Likel to Improve in Future? / 4-14.46
			(iii) Do the Terms of the Employment Contract Include Provisions fo Sick Pay? / 4-14.47
			(iv) What was the Likely Duration of the Contract of Employment in th Absence of Sickness or Disability? / 4-14.47
			(v) Is the Employee's Job "Key" to the Organization? / 4-14.47
			(vi) What was the Length of Employment? / 4-14.47
		(c)	Frustration under Employment Standards Legislation / 4-14.48
		(0)	(i) Impossibility / 4-14.50
			(ii) Absence of Fault / 4-14.50
			(iii) The Terms of the Contract / 4-14.51
			(iv) The Provision of Sick Benefits / 4-14.51
			(v) Workers' Compensation Benefits/Rights / 4-14.51
			(vi) Miscellaneous Factors / 4-14.52
		(d)	Disability and Accommodation Requirements / 4-14.53
			What are "Essential Duties"? / 4-14.53
		` /	Accommodation and Undue Hardship / 4-14.54
	(3)		Performance / 4-14.55
FORM	(-)		
FORMS			
	Form		Handbook Statement on Dismissal / 4-15
	Form		Company Rules and Regulations / 4-15
	Form		Discipline: Verbal Correction Report / 4-18
	Form		Discipline: Written Warning Form / 4-19
	Form		Disciplinary Memo / 4-20
	Form	4.06	Discipline Record / 4-21

Discipline: Record of Written Warning / 4-21

Discipline: Review Following Decision-making Leave Form / 4-23

Decision-making Leave Form / 4-22

Form 4.07

Form 4.08

Form 4.09

	Form 4.	.10 Notice of Dismissal / 4-24
	Form 4.	1
	Form 4.	1
	Form 4.	Discipline Checklist: Questions to Consider before Disciplining Employees / 4-26
	Form 4.	.14 Guidelines for Reviewing a Disciplinary Action Checklist / 4-27
	Form 4.	.15 Delivering Warnings to Employees — Suggested Checklist / 4-28
	Form 4.	.16 Dismissal Checklist / 4-29
	Form 4.	.16A Investigation Checklist for the Unionized Workplace / 4-29
	Form 4.	1
	Form 4.	
	Form 4.	
	Form 4.	1 1 7
	Form 4.	1 7
	Form 4.	
	Form 4.	C
	Form 4.	Performance Improvement Plan (PIP) / 4-38
СНАРТЕ	R 5 RI	ESIGNATION AND RETIREMENT
5.1	RESIGN	NATION / 5-1
	(1)	Notice of Resignation / 5-2
		(a) Selected Case Law: Notice of Resignation / 5-3
		(i) Engineered Sound Systems Ltd. v. Klampfer / 5-3
		(ii) Systems Engineering & Automation Ltd. v. Power / 5-4
		(iii) Beninger v. Kuschmierz / 5-4
		(iv) Tree Savers International Ltd. v. Savoy / 5-4.1
		(v) Bradley v. Carleton Electric Ltd. / 5-4.1
		(vi) RBC Dominion Securities Inc. v. Merrill Lynch Canada / 5-4.1
		(vii) Bru v. AGM Enterprises Inc / 5-4.1
		(viii) GasTOPS v. Forsyth / 5-4.2
		(ix) Oliver v. Sure Grip Controls Inc. / 5-4.3
		(x) Avalon Ford Sales (1996) Limited v Evans / 5-4.3
	(2)	(xi) Consbec Inc. v. Walker / 5-4.4
	(2) (3)	Dismissing Employees who Give Notice / 5-4.6 When Employees Choose to Leave — Issues to Consider / 5-4.6
	(4)	Constructive Dismissal / 5-4.6
	(5)	Constructive Resignation / 5-4.7
	(3)	(a) Selected Case Law: Constructive Resignation / 5-4.7
		(ii) Beggs v. Westport Foods Ltd / 5-4.7
5.2	THE EX	XIT INTERVIEW / 5-4.9
	(1)	Confidentiality and Anonymity / 5-4.9
	(2)	Exit Interview Preparation / 5-4.10
	(3)	Exit Interview Techniques / 5-4.10
	(4)	After the Exit Interview / 5-4.10
5.3	RETIRE	EMENT / 5-4.11
	(1)	Early Retirement / 5-4.11
		(a) Pension Plan Provisions / 5-4.13
		(b) Communication Strategy / 5-4.14

	(2)	Mandato	ory Retirement / 5-4.14	
	(3)		de Occupational Requirement for Mandatory Retirement / 5-4.15	
	· /		ational Connection / 5-4.22	
		` /	onest and Good Faith Belief / 5-4.22	
		· /	easonably Necessary, Accommodation and Undue Hardship / 5-4.23	
5.4	PHASE		EMENT / 5-4.24	
	(1)	Gradual	Retirement (Pre-retirement) / 5-5	
	(2)	Post-Ret	irement-Age Work Options / 5-5	
5.5			NT PLANNING PROGRAMS / 5-6	
	(1)	Program	Design / 5-6	
	(2)	Retireme	ent Counsellors / 5-7	
	(3)	Financia	1 Planning / 5-7	
	(4)		of Life / 5-8	
5.6	PLANI	NING FOR	RETIREMENT / 5-8	
	(1)	Introduc	tion / 5-9	
	(2)	Commo	n Themes Surrounding Retirement / 5-9	
	(3)	Myths a	nd Misconceptions About Retirement / 5-10	
	(4)	Personal	Attitude Towards Retirement / 5-12	
	(5)	Retireme	ent Now or Later / 5-14	
	(6)	Three Tr	rial Period Options / 5-14	
	(7)	Differen	t Levels of Retirement Income / 5-15	
	(8)	Selecting	g a Financial Consultant / 5-16	
	(9)	Transitio	on to the Retirement Picture / 5-17	
	(10)	Steps to	a Successful Passage / 5-18	
	(11)	How To	Tell When Your Passage is Over / 5-19	
5.7	EMPLO	EMPLOYEE DEATH / 5-19		
5.8	REHIR	ING FOR	MER EMPLOYEES / 5-20	
FORMS				
			77.1	
	Form:	5.01	Voluntary Resignation / 5-20.1	

Form 5.01	Voluntary Resignation / 5-20.1
Form 5.01(a)	Communicating the Resignation to Others / 5-20.2
Form 5.01(b)	Communicating the Retirement to Others / 5-20.3
Form 5.02	Letter Approving Employee's Application to Retire / 5-21
Form 5.03	Voluntary Early Option Survey / 5-22
Form 5.04	General Guidelines for Conducting and Documenting an Exit Interview / 5-
	24
Chart 5.05	Provincial Statutory Notice of Resignation / 5-25
Form 5.06	Retirement Planning Checklist / 5-25
Form 5.07	Retirement Living Expense Summary / 5-27
Worksheet 5.08	Attitude Assessment/ 5-30
*** * * * * * * * * * * * * * * * * * *	Early Retirement Determination Scale / 5-31

CHAPTER 6 SEVERANCE

- 6.1 PLAN DESIGN / 6-1
 - (1) Types of Severance Plans / 6-1
 - (2) Payment Calculation Options / 6-3
 - (3) Severance Policy Provisions / 6-4
- 6.2 PAYMENT OF SEVERANCE / 6-4

	 (1) Release Agreements / 6-6 (2) Release Requirements / 6-6
	(3) Release Validity / 6-8
6.3	TAX ISSUES / 6-9
	(1) Taxation of Payments Made in Lieu of Notice / 6-10
6.4	SEVERANCE PRACTICES IN CANADIAN ORGANIZATIONS / 6-12
	(1) Introduction / 6-12
- -	(a) Employee Issues / 6-12
6.5	FRUSTRATION OF CONTRACT / 6-17
	(1) What is Frustration of Contract Under Employment Law? / 6-14
	(2) The "Two-Year" Rule / 6-16
	(3) Frustration and Long-Term Disability Benefits / 6-17
	(4) Application Under Workers' Compensation Statutes / 6-20
	(5) Assessing Damages for the Wrongful Dismissal of Disabled Employees / 6-24
	(6) Duty to Accommodate / 6-22
	(7) Frustration of the Employment Contract Due to COVID-19 / 6-23
FORMS	
	Form 6.01 Sample: Final Release and Indemnity / 6-24
	Form 6.02 Sample: Termination/Severance Payment Confirmation Form / 6-25
СНАРТЕ	ER 7 DOWNSIZING/OUTSOURCING
7.1	INTRODUCTION / 7-1
7.2	REASONS FOR DOWNSIZING / 7-1
	(1) Potential Concerns / 7-2
7.3	KEY PEOPLE ISSUES / 7-3
	(1) Good People May Leave / 7-3
	(2) Allocation of Work and Job Design / 7-3
	(3) Overload / 7-3
	(4) Loss of Confidence and Drive / 7-4
	(5) Disruptive Stress Levels / 7-4
	(6) Communication Breakdown / 7-4
7.4	ALTERNATIVES TO DOWNSIZING / 7-3
	(1) Supplemental Unemployment Benefit / 7-6
	(2) Work-Sharing Program / 7-7
7.5	PT 13 PT 16 POR POST PORT PORT PORT PORT PORT PORT PORT POR
	PLANNING FOR DOWNSIZING — MANAGEMENT'S ROLE / 7-8
	PLANNING FOR DOWNSIZING — MANAGEMENT'S ROLE / 7-8 (1) Planning Preparation / 7-8
7.6	
7.6	 Planning Preparation / 7-8 MANAGING DOWNSIZING / 7-11 Change Strategies / 7-11
7.6	 Planning Preparation / 7-8 MANAGING DOWNSIZING / 7-11 Change Strategies / 7-11 Workload Management / 7-11
7.6	 Planning Preparation / 7-8 MANAGING DOWNSIZING / 7-11 Change Strategies / 7-11 Workload Management / 7-11 Change Skills / 7-12
7.6	 Planning Preparation / 7-8 MANAGING DOWNSIZING / 7-11 Change Strategies / 7-11 Workload Management / 7-11

WHERE TO DOWNSIZE / 7-13

Skill-based Selection / 7-13

Retaining Full-time Staff / 7-13 Seniority-based Selection / 7-13

7.7

(1) (2)

(3)

	(4)	Merit-based Selection / 7-14
	(5)	Project- or Client-based Selection / 7-14
	(6)	Equity-based Selection / 7-14
		Combined Criteria Selection / 7-14
7.8		ENTING LAYOFFS — UNIONIZED WORKFORCES / 7-14
	(1)	Giving Notice / 7-15
		Termination Meetings / 7-15
		Motivating Survivors / 7-16
		Recall Policy / 7-16
7.9		ING PEOPLE — RETENTION BONUSES THROUGH RESTRUCTURING / 7-16.2
7.10	SAMPLE	DOWNSIZING PLAN / 7-16.3
	(1)	Communicating the Need for Restructuring / 7-16.3
	(2)	Communications Strategy / 7-16.5
	(3)	Target Audiences / 7-16.5
		(a) Management Team / 7-16.5
		(b) Bargaining Agent / 7-16.5
		(c) Affected Employees / 7-16.6
		(d) Other Employees (Survivors) / 7-16.7
		(e) The Media / 7-16.8
		(f) Customers / 7-16.8
		(g) Suppliers / 7-16.9
7.11	OUTSOU	JRCING, OFFSHORING OR DIVESTING DEPARTMENTS OR FUNCTIONS / 7-
	35	
	(1)	Introduction / 7-35
	(2)	Outsourcing / 7-35
	(3)	Offshoring / 7-42
	(4)	Divestitures / 7-44
	(5)	Termination of Employment in an Outsourcing Agreement / 7-45
	(6)	Transfer of Employment — Legal Considerations / 7-46
	(7)	Change Management in an Outsourcing Context / 7-48
	(8)	References / 7-50
7.12	MASS/G	ROUP TERMINATION LEGAL CONSIDERATIONS / 7-52
	(1)	Background / 7-52
	(2)	Court Findings / 7-53
	(3)	Key Takeaways for Employers / 7-54
Sample D	ownsizing S	trategy / 7-17
FORMS		
	Form 7.0	Policy Statement on Workforce Reductions / 7-27
	Form 7.0	•
	Form 7.0	
	Form 7.0	•
	Form 7.0	· · · · · · · · · · · · · · · · · · ·
	Form 7.0	1 1
	1.0HH /.U	70 Schoule of Chucal Activities in Gloup Reductions/ Downsizing / /-31

Statement to Employees - Closure of Plant / 7-33

Statement to Employees Personally Impacted by Downsizing – Closure

Form 7.07

Form 7.08 of Plant / 7-33

CHAPTER 8 LIFE AFTER CHANGE — SURVIVORS AND REENGINEERING

8.1	INTRODUCTION / 8-1
8.2	CHANGE MANAGEMENT / 8-2
8.2.1	RESTRUCTURING THE WORKPLACE / 8-3
	(1) The Reengineering Process / 8-3
	(2) The Employee Factor / 8-3
	(3) Staffing the Reengineering Process / 8-4
	(4) Technology / 8-4
	(5) Human Effects of Reengineering / 8-4
	(6) Transition Teams / 8-4
	(7) Self-directed Work Teams / 8-5
	(8) Training / 8-5
	(a) Skills Training / 8-5
	(b) Leadership Training / 8-5
	(c) Team Building / 8-5
	(d) Career Management Training / 8-6
	(9) Suggestion Programs / 8-6
8.2.2	COMMUNICATION / 8-6
	(1) Explaining Restructuring / 8-6
	(2) Selling the New Mission / 8-7
	(3) Job Security / 8-7
	(4) Culture of Security / 8-7
8.3	REACTIONS TO CHANGE / 8-7
8.3.1	UNDERSTANDING REACTIONS TO CHANGE / 8-7
	(1) Loss = Fear / 8-8
	(2) Letting Go / 8-9
	(a) Denial / 8-9
	(b) Resistance / 8-9
	(c) Exploration / 8-9
	(d) Recommitment / 8-9
	(3) Resistance and Change / 8-9
	(4) Personal Strategies to Change / 8-10
	(5) Strategies for Coping with Stress / 8-10
8.3.2	SURVIVORS / 8-10
	(1) Survivor Guilt / 8-11
	(2) Keeping Survivors Informed / 8-12
8.3.3	COUNSELLING AND EAPs / 8-12
	(1) Treatment and Referrals / 8-12
	(2) Hotlines / 8-12
8.3.4	RESPONSIBILITY OF LEADERS / 8-13
	(1) Leadership Strategies / 8-13
8.4	NEWS OF TERMINATIONS / 8-13
8.4.1	SOCIAL MEDIA / 8-14
8.4.2	GOING VIRAL / 8-14
8.5	THE PUBLIC PERCEPTION / 8-15
8.5.1	CORPORATE SOCIAL RESPONSIBILITY / 8-15
8.5.2	EMPLOYER BRANDING / 8-17
8.5.3	NEGATIVE PUBLICITY / 8-17

8.6 PUBLIC RELATIONS / 8-19 REFERENCES AND ADDITIONAL READING / 8-20

CHAPTER 9 OUTPLACEMENT SERVICES

9.1	INTRODUCTION / 9-1
9.2	TYPES OF OUTPLACEMENT SERVICES / 9-2
9.3	JOB-SEARCH STRATEGIES / 9-5
9.4	CHOOSING AN OUTPLACEMENT CONSULTANT OR FIRM / 9-7
9.5	JOB SEARCH, CLAWBACK PROVISIONS AND THE DUTY TO
	MITIGATE / 9-12.2
9.6	OTHER CONSIDERATIONS / 9-12.5
	Appendix 9.1 Creating a Resume / 9-13

FORMS

Form 9.01	Resume Review Checklist / 9-23
Form 9.02	Letter Writing Tip Sheet / 9-25
Form 9.03	Telephone Communications Tip Sheet / 9-26
Form 9.04	Tip Sheet for Successful Interviews / 9-27
Form 9.05	Resume Action Words / 9-35

CHAPTER 10 CANADIAN PRACTICES

EXAMPLE POLICIES

10.1	Corrective Action / 10-3
10.2	Discipline and Investigation Procedures / 10-7
10.3	Termination/Dismissal / 10-22
10.4	Demotion / 10-29
10.5	Severance / 10-31
10.6	Turnover Analysis / 10-35
10.7	Character of the Employment Relationship / 10-41
10.8	Layoffs and Recalls; Redundancy; Workforce
	Reductions / 10-48
10.9	Probationary Termination / 10-64
10.10	Loss of Seniority, Frustration of the Contract / 10-66
10.11	Termination for Just Cause / 10-70
10.12	Termination Without Cause / 10-74
10.13	Resignation / 10-79
10.14	Retirement / 10-83
10.15	Death / 10-86
10.16	Exit Interviews / 10-96
10.17	Termination Procedure / 10-104

CHAPTER 11 PRESENTATIONS

11.1 CONDUCTING COMPASSIONATE TERMINATIONS / 11-1

CHAPTER 12 ARTICLES

12.1	ARE THE COURTS BEGINNING TO CAST DOUBT ON THE NOTION OF A "ROUGH
	UPPER LIMIT" FOR WRONGFUL DISMISSAL DAMAGES? / 12-1

- 12.2 ALBERTA DISCRIMINATION CASES YIELD INTERESTING RESULTS / 12-8
- 12.3 CONSTRUCTIVE DISMISSAL: WHAT AMOUNTS TO A FUNDAMENTAL BREACH OF THE EMPLOYMENT CONTRACT? / 12-12
- 12.4 TERMINATIONS: HR, PAYROLL BOTH PLAY ROLE / 12-17
- 12.5 "WE'RE LIVE TWEETING FROM THE HR FIRING SESSION!" / 12-19
- 12.6 MASS LAYOFFS NO EASY TASK IS BLACKBERRY DOING IT RIGHT? / 12-21
- 12.7 PRE-WORK DRINK NEVER A GOOD IDEA (LEGAL VIEW) / 12-24
- 12.8 VACATION DISPUTE NO REASON TO CHANGE RESIGNATION DATE / 12-27
- 12.9 IS THERE A DUTY TO ACCOMMODATE DISABILITIES AN EMPLOYER DOESN'T KNOW ABOUT? / 12-29
- 12.10 ARE THE COURTS RELAXING THE PRINCIPLE THAT EMPLOYMENT CONTRACTS CANNOT UNDERCUT EMPLOYMENT STANDARDS LEGISLATION / 12-35
- 12.11 ARE PENSION BENEFITS INCLUDED IN THE QUANTUM OF DAMAGES AWARDED FOR WRONGFUL DISMISSAL CLAIMS? / 12-45
- 12.12 FAILURE TO PROPERLY INVESTIGATE ALLEGED WRONGDOING CAN LEAD TO A FINDING OF WRONGFUL DISMISSAL / 12-48
- 12.13 EMPLOYEE TERMINATION BEST PRACTICES / 12-51
- 12.14 WHAT SHOULD AN ORGANIZATION DO WITH ITS LOW PERFROMERS? / 12-53
- 12.15 IS FIRING EMPLOYEES BY TEXT MESSAGE ACCEPTABLE? / 12-55
- 12.16 WHEN AN EMPLOYEE TRIES TO BUY WEED AT WORK / 12-57
- 12.17 WHAT REMEDIES ARE BEING AWARDED IN CASES OF AGE-BASED DISCRIMINATION IN EMPLOYMENT? / 12-59
- 12.18 IS THE "CHARACTER OF EMPLOYMENT" TEST LOSING ITS IMPORTANCE AS ONE OF THE <u>BARDAL</u> FACTORES IN DETERMINING REASONABLE NOTICE IN WRONGFUL DISMISSAL CASES? / 12-70
- 12.19 SIX-MONTH NOTICE OF RESIGNATION UPHELD FOR BLACKBERRY EXECUTIVE / 12-76
- 12.20 SIX-MONTH LAST CHANCE AGREEMENT MUST BE RESPECTED: ARBITRATOR / 12-78
- 12.21 SUCCESSOR COMPANY RESPONSIBLE FOR 38-YEAR EMPLOYEE'S SEVERANCE AND PENSION: COURT / 12-80
- 12.22 [REMOVED] / 12-83
- 12.23 EMPLOYERS ARE ENTITLED TO RELY ON AFTER-ACQUIRED CAUSE FOR TERMINATION / 12-91
- 12.24 AVOIDING CONSTRUCTIVE DISMISSAL AS A RESULT OF CORPORATE RESTRUCTURING / 12-93
- 12.25 WHEN WILL COURTS UPHOLD "CREATIVE" NON-COMPETITION AND NON-SOLICITATION AGREEMENTS? / 12-95
- 12.26 JUST CAUSE FOR DISMISSAL AND THE DOCTRINES OF CUMULATIVE MISCONDUCT,
 PROGRESSIVE DISCIPLINE AND CULMINATING INCIDENT/ 12-98
- 12.27 MUST AN EMPLOYEE RESIGN IN ORDER TO CLAIM CONSTRUCTIVE DISMISSAL DAMAGES?/ 12-102
- 12.28 DETERMINING AN EMPLOYER'S PAYROLL FOR THE PURPOSES OF DETERMINING ELIGIBILITY FOR STATUTORY SEVERANCE PAY IN ONTARIO/ 12-105

12.29	PROBLEMS RELATING TO ROMANTIC RELATIONSHIPS IN THE WORKPLACE/ 12-108
12.30	REQUIRING AN EMPLOYEE TO PURCHASE SHARES IN THE ORGANIZATION COULD LEAD TO INDUCEMENT DAMAGES/ 12-114
12.31	FAILURE TO PROPERLY INVESTIGATE ALLEGED WRONGDOING CAN LEAD TO A FINDING OR WRONGFUL DISMISSAL/ 12-117
12.32	ARE EMPLOYERS ENTITLED TO PAY DEVELOPMENTALLY DISABLED WORKERS LESS THAN THE MINIMUM WAGE?/ 12-120
12.33	IS AN EMPLOYEE REQUIRED TO PROVIDE NOTICE OF RESIGNATION/ 12-123
12.34	COURT AWARDS BASE SALARY INCREASES DURING THE COMMON LAW NOTICE PERIOD/ 12-126
12.35	RESCINDING AN OFFER OF EMPLOYMENT BEFORE AN EMPLOYEE STARTS WORK/ 12-129
12.36	SUPREME COURT OF CANADA INTRODUCES THE GENERAL DUTY OF HONESTY AND GOOD FAITH IN THE PERFORMANCE OF CONTRACTUAL OBLIGATIONS/ 12-132
12.37	APPEAL COURT UPHOLDS THE RIGHT OF FEDERALLY REGULATED EMPLOYERS TO TERMINATE NON-UNION EMPLOYEES WITHOUT CAUSE/ 12-136
12.38	CAN INAPPROPRIATE OFF-DUTY COMMENTS ON SOCIAL MEDIA GIVE RISE TO EMPLOYEE DISCIPLINE?/ 12-139
12.39	WHAT ARE FIDUCIARY DUTIES IN AN EMPLOYMENT CONTEXT?/ 12-143
12.40	IS IT REALLY IMPOSSIBLE TO FIRE A UNIONIZED EMPLOYEE?/ 12-146
12.41	DEALING WITH A BAD APPLE (TOUGHEST HR QUESTION)/ 12-148
12.42	EMPLOYERS HAVE THE RIGHT TO REQUEST MORE SPECIFIC MEDICAL NOTES FROM EMPLOYEES/ 12-150
12.43	SUPREME COURT OF CANADA CLARIFIES THE LAW ON CONSTRUCTIVE DISMISSAL/ 12-155
12.44	BRITISH COLUMBIA COURT OF APPEAL REVERSES DECISION OF TRIAL COURT ON CUMULATIVE MISCONDUCT AND CULMINATING INCIDENT/ 12-164
12.44A	THE MEANING OF "SEVERANCE PAY" AND THE ONTARIO <i>EMPLOYMENT STANDARDS ACT</i> , 2000 / 12-166
12.44B	CHIPOTLE LAWSUIT SHOWCASES TRIALS OF SOCIAL MEDIA POLICIES / 12-166.3
12.44C	DESPITE ASSAULTING HIS MANAGER, EMPLOYEE GIVEN \$25,000, REINSTATEMENT / 12-166.6
12.44D	MANAGER'S DRINK AT LUNCH NOT A BREACH OF VAGUE ZERO TOLERANCE POLICY: COURT / 12-166.10
12.44E	ALBERTA SALESPERSON'S POCKET DIAL REVEALS MOONLIGHTING ON COMPANY TIME (LEGAL VIEW) / 12-166.13
12.44F	ENFORCING EMPLOYEE HANDBOOKS (TOUGHEST HR QUESTION) / 12-166.16
12.44G	IS CAUSE REQUIRED TO DISMISS FEDERALLY REGULATED NON-UNIONIZED EMPLOYEES? / 12-166.18
12.44H	DAMAGES FOR DEPENDENT CONTRACTORS ON TERMINATION / 12-166.23
12.44I	TERMINATION NOTICE FOR PROBATIONARY EMPLOYEES / 12-166.26
12.44J	REINSTATEMENT AS A REMEDY UNDER HUMAN RIGHTS LEGISLATION / 12-166.29
12.44K	TERMINATION SHOULD NEVER BE A FOREGONE CONCLUSION / 12-166.33
12.44L	OVERWORKED, SICK EMPLOYEE IN ALBERTA WRONGFULLY DISMISSED FOR NOT DOING JOB / 12-166.35
12.44M	DISMISSAL OF INJURED EMPLOYEE NOT DISCRIMINATORY: ONTARIO TRIBUNAL / 12-166.38

12.44N	B.C. CASE HIGHLIGHTS DOWNSIDES OF PROBATION / 12-166.41
12.44O	What Constitutes Just Cause / 12-166.45
12.44P	Terminating a Probationary Employee / 12-166.57
12.44Q	Recruiting 'Boomerang' Employees / 12-166.59
12.44R	Terminating Termination Clauses / 12-166.61
12.44S	Supreme Court Confirms Employers Can Terminate Workers with Disabilities / 12-166.63
12.44T	The Importance of Careful Drafting of Termination Provisions in Employment
	Contracts / 166.67
12.44U	The #METOO Movement / 166.77
12.44V	Firefighter's Off-Duty Driving Suspension Doesn't Warrant Termination
	Contracts / 166.86
12.44W	Fighting the Final Act / 166.88
12.44X	Act with Class, Decency When Firing a Worker / 166.90
12.44Y	Working Notice of Termination No Good if Employee Unable to Work: Court / 166.92
12.44Z	Terminating a Probationary Employee / 166.95
12.45	Assessing the Effect of a Final Release After Termination on the Ability to Bring a Human
12.43	Rights Complaint/ 12-166.97
12.45A	Privacy in the Workplace — Part 1/ 12-166.104
12.45A 12.45B	Job Abandonment/ 12-166.113
12.45C	Duty to Accommodate and Frustration of Contract/ 12-166.116
12.45D	Termination/Hiring a Replacement During Long-Term Disability/ 12-166.120
12.45E	Ontario Court of Appeal Overturns Motion Judge's Decision Regarding Employee's Rescission
10.450	of Notice of Resignation/ 12-166.124
12.45F	Court Holds Employer Liable for Nine Years' Salary for Constructive Dismissal After One Year
10 150	of a Ten Year Contract/ 12-166.127
12.45G	Court of Appeal Upholds Decision that Refusal of Offer of a Non-Comparable Position Does
	Not Constitute a Failure to Mitigate/ 12-166.128
12.45H	Ontario Court of Appeal Holds That the Rights of an Employee Who is a Shareholder
	Regarding His or Her Shares are Distinct from His or Her Rights as an Employee and are
	Determined According to the Provisions of the Shareholders' Agreement/ 12-166.130
12.45I	Ontario Court of Appeal Clarifies the Requirements for Dependent Contractor Status/ 12-
	166.133
12.45J	Alberta Court of Queen's Bench Holds that a Dismissed Employee Receiving Disability
	Benefits During the Notice Period is Not Entitled to Damages for Lost Wages/ 12-166.135
12.45K	Ontario Court of Appeal Rules on Another Termination Provision/ 12-166.137
12.45L	Nova Scotia Court of Appeal Overturns Finding that Employee was Constructively Dismissed
	12-166.142
12.45M	Ontario Court Includes Length of Service with Predecessor Company When Assessing
	Reasonable Notice for Terminated Employee/ 12-166.145
12.45N	Motion Judge Finds "Termination with Notice" Provision in Employment Agreement Distinct
	from and Not Affected by Invalid "Termination for Cause" Provision/ 12-166.147
12.45O	Probationary Employees/ 12-166.149
12.45P	Termination of Employment Relating to COVID-19/ 12-167
12.45Q	Employer's Failure to Bring Contractual Provisions to Employee's Notice Terminating Stock
- (Option Vesting Rights During Notice Period Leaves Employer Liable for Damages/ 12-172
12.45R	Who Should Conduct Workplace Investigations?/ 12-174
12.45S	The Supreme Court of Canada Speaks Up for Workers in the Gig Economy/ 12-176
12.45T	Termination of Probationary Employees/ 12-185

12.45U	Ontario Court Holds That Infectious Disease Emergency Leave Regulation under the
	Employment Standards Act, 2000 Does Not Affect an Employee's Right to Bring a Claim for
	Constructive Dismissal at Common Law/ 12-193
12.45V	Ontario Court Finds Employer's Attempt to Impose an Additional Requirement for Employee to
	Receive Her Contractual Entitlements on Termination Constitutes Repudiation of the
	Employment Contract/ 12-196
12.45W	Ontario Court Refuses Injunctive Relief to Employer Alleging Breach of Fiduciary Duty and a
	Restrictive Covenant/ 12-198
12.45X	Ontario Court Sets Reasonable Notice Period at 26 Months in Wrongful Dismissal Case/ 12-201
12.46	Should I Rehire My Boomerang Employee?/ 12-203
12.47	Could My Off-Duty Behaviour Impact My Employment?/ 12-205
12.48	Important Employment Law Decisions from 2021/ 12-211
12.49	Reorg 101 — What You Need to Know Before Your Next Reorganization/ 12-224
12.50	The Impact of the COVID-19 Pandemic on Determining Reasonable Notice Periods in
	Wrongful or Constructive Dismissal Cases/ 12-226
12.51	The Role of Human Resources in Terminations/ 12-231
12.52	Retention Strategies During the Great Resignation/ 12-234
12.53	Top Termination Cases of 2022/ 12-237
12.54	Ontario's IDEL and Constructive Dismissal/ 12-252
12.55	Alberta Court of Appeal Overturns Finding that Sole Director and Shareholder of a Corporation
	was an Employee of Another Contracting Party/ 12-259
12.56	Alberta Court of Queen's Bench Finds Wrongfully Terminated Employee Can Sue Employer
	and Company Directors Personally Under the Alberta Business Corporations Act/ 12-262
12.57	Ontario Court of Appeal Upholds Decision on 26 Month Reasonable Notice Period and No
	Break in Service for Employee Who Joined the Company Pension Plan Prior to
	Retirement/ 12-264
12.58	Ontario Court Finds Termination Provision in Employment Agreement Unenforceable/ 12-266
12.59	Ontario Court Voids Termination Clause that Gave Employer "Sole Discretion" to Terminate
	Employment at "Any Time"/ 12-269
12.60	Aggravated and Punitive Damages in Wrongful Dismissal Cases/ 12-273
12.61	Ontario Appeal Court Confirms Frustration of Employment Contract After Employee Refuses to
	Comply With Mandatory Vaccination Policy/ 12-278
12.62	Ontario Court Finds Termination Provision in Employment Agreement Unenforceable/ 12-282

LEGAL MEMORANDA

12.125	9896 — When will a Court or Human Rights Tribunal Decline to Enforce a Release Executed
	by a Dismissed Employee?/ 12-501
12.126	Can Public Criticism of his or her Employer by a Private Sector Employee Justify his or her
	Summary Dismissal by the Employer?/ 12-511
12.127	What are the General Principles Regarding Insubordination as "Just Cause" in the Context of
	Wrongful Dismissal?/ 12-515
12.128	Can an Employee's Refusal to do Something in the Course of Employment that is Contrary to
	Law Amount to a Valid Resignation? And Can Coercion of the Employee by
	the Employer to Participate in an Illegal Act Amount to Constructive Dismissal?/ 12-521
12.129	Does an employee's failure to attend a meeting or event scheduled or requested by his or her
	employer constitute just cause for dismissal?/ 12-525

ARTICLES

12.130	Is the existence of a consensual sexual relationship with a co-worker sufficient grounds for the termination of an employee's employment?/ 12-532
12.131	Is a prior warning required where an employer dismisses an employee for just cause?/ 12-537
12.132	Is it wrongful dismissal when an employer summarily dismisses an employee who proves
	unable to adapt to substantial changes in the workplace, such as, e.g., the introduction of a new computer system?/ 12-542
12.133	When does poor performance constitute just cause for termination of
	employment?/ 12-549
12.134	When may After-acquired Cause be Used in a Wrongful Dismissal Case?/ 12-573
12.135	What are the general principles pertaining to condonation by an employee where the employee
	has fundamentally breached the contract of employment? / 12-583
12.136	Does just cause for dismissal nullify a termination provision in an employment contract, which provides that the employee will receive a very substantial payout upon termination?/ 12-590
12.137	Can an employee be justifiably dismissed because he is seriously ill and unable to work?/ 12-595
12.138	Does an employer have to state what the grounds for termination are in case of employee dismissal? / 12-607
12.139	What are the distinguishing characteristics of management employees for the purpose of
	defining the type of employment in a wrongful dismissal action? And is the character of
	a job declining in importance when assessing the appropriate reasonable notice to be awarded?/ 12-612
12.140	Whether taking a vacation immediately after termination amounts to a failure to mitigate in a wrongful dismissal action / 12-621

INDEX / I-1