

Index

ABORIGINAL

- Band council as employer, **23:8**
- Bands and band councils as employees, **3:22**
- Employment contracts with band councils, **6:80**
- Jurisdiction re, **2:13**

ABSENTEEISM

- Just dismissal, as cause for, **23:94**
- Termination for, **11:34**

ACCOMMODATE, DUTY TO

- Adverse effect discrimination and, **35:19**
- BFORQ, distinguished from, **35:38**
- Common law development of, **35:37**
- COVID-19 (See PANDEMICS)
- Described generally, **35:35**
- Disability discrimination and, **35:59, 35:61.50**
- Employee's obligations, **35:44**
- Family status, **35:138**
- Legislative provisions re, **35:36**
- Mask-wearing policy, **35:138**
- Pandemics, **35:138**
- Religious or creed discrimination, **35:76**
- Safety considerations, **35:42**
- Undue hardship limitation, **35:41**
- Unified approach, under, **35:39**
- Vaccination policy, **35:138**
- When duty ends, **35:44.50, 35:61.50**

ADJUDICATORS

- Canada Labour Code, under, see CAN-ADA LABOUR CODE

ADVERSE EFFECT DISCRIMINATION

- See DISCRIMINATION

AGE DISCRIMINATION

- Application forms, **35:49**
- BFORQ defence
 - generally, **35:50**
 - benefit plans, **35:51**
- Charter challenges to maximum age limits, **35:47**
- Legislation re, **35:45**

AGE DISCRIMINATION—Cont'd

- Young persons, **35:48**

AGENTS

- Employee status of, **3:13, 3:16**

ASSAULT

- See VIOLENCE

BAD FAITH, TORT OF

- See TORTS

BAD FAITH DISCHARGE

- See TORTS

BFORQ

- Generally, see DISCRIMINATION
- Age discrimination and, see AGE DISCRIMINATION
- Disability discrimination and, **35:58**
- Duty to accommodate distinguished from, **35:38**
- Religious or creed discrimination and, **35:47**
- Sex discrimination and, **35:84**

BIAS

- See also DISCRIMINATION
- Allegation against adjudicator, **23:47 to 23:52**

BONUSES

- See REMUNERATION

BREACH OF CONFIDENCE

- See EQUITABLE BREACH OF CONFIDENCE; FIDUCIARY OBLIGATIONS

BREACH OF CONTRACT

- Anticipatory breach, **10:4, 10:7**
 - employee's election, **10:5, 10:11**
- Inducement of, see TORTS
- Restraint of trade and, **7:28**

BREACH OF TRUST

- Just dismissal, cause for, **23:84, 23:91**

CANADA LABOUR CODE

Adjudicators
 appointment of, **23:46**
 arbitral jurisprudence, reliance on, **23:1, 23:70**
 authority to make awards, **23:129**
 bias, allegation of, **23:47 to 23:52**
 effect of award, **23:175**
 evidence
 witness, failing to call, **23:61.30**
 jurisdiction of
 abandonment by employee, **23:51**
 amounts of awards, **23:47 to 23:52**
 just dismissal finding of, **23:47 to 23:52**
 mediation, **23:49**
 no consent conferral of adjudication, **23:53.50**
 orders, modification of, **23:47 to 23:52**
 withdrawal of complaint, **23:49**
 withdrawal of employer from proceeding, **23:50**
 open court principle, **23:70.10**
 remedial jurisdiction of, **23:1**
 stay of award pending judicial review, **23:176**
 Board decision based on written submissions, **23:70.50**
 Contracts and policies of employer, **23:71.20**
 Duty of good faith under, **23:84**
 Inspection, jurisdiction of, **23:45**
 by employer, **23:76**
 Investigations under, **23:44**
 Judicial review under, **24:256**
 application of standard on appeal, **24:259.50**
 Jurisdiction, **2:1, 2:17**
 Just cause, **23:71.20**
 Just dismissal, see JUST DISMISSAL
 Manager, **23:20, 23:20.15**
 banking “exceptionalism,” **23:29.50**
 interpretation of statutory exclusion, **23:29.50**
 Mitigation, duty of, **23:20.15, 23:174**
 Occupational health and safety provisions, **25:2**
 Policy behind, **23:2**
 Qualifying conditions, **23:6 to 23:43**
 Remedial legislation, as, **23:2**

CANADA LABOUR CODE—Cont’d

Remedies under
 aggravated damages, **23:161**
 quantum of aggravated/moral/Wallace damages awarded by board, **23:162.70**
 authority to make awards, **23:129**
 bonuses, **23:156**
 business expenses, **23:155**
 career counselling, **23:173**
 compensation for loss of income, **23:143**
 conditional reinstatement, **23:140**
 costs, **23:164, 23:169.50**
 employer, to, **23:166**
 employer litigation misconduct, **23:162.50**
 judicial review, on, **23:167**
 partial indemnity costs range, **23:165.50**
 proportionality principle, **23:167.30**
 quantum of costs awards, **23:167.70**
 employment records, modification of, **23:145**
 fringe benefits, award for, **23:148**
 home equity and mortgage losses, **23:157**
 inconveniences, **23:154**
 increments during unemployment, **23:153**
 interest, **23:158**
 letter of reference, **23:170**
 loss of dignity and harm to self-esteem/reputation, **23:160**
 mental distress, **23:159**
 mitigation, **23:151, 23:174**
 mitigation credit and inferior positions, **23:175.50**
 nature of, **23:130**
 non-monetary awards, **23:169**
 oral reference, **23:171**
 pension, **23:152**
 professional assessment, **23:173**
 publicizing adjudicator’s award, **23:172**
 punitive damages, **23:162**
 quantum of awards, **23:163.50**
 re-engagement, **23:136**
 reinstatement, **23:131**
 and back pay, **23:132.50**

INDEX

CANADA LABOUR CODE—Cont'd

- Remedies under—Cont'd
 - reinstatement, **23:131**—Cont'd
 - compensation to restore employee's financial position, career track and reputation, **23:144**
 - economic loss approach, **23:144.70**
 - fixed term approach, **23:144.70**
 - fixed term/economic loss model and new unionized environment, **23:144.90**
 - make whole approach, **23:144.30**
 - conditional, **23:140**
 - different position, **23:135**
 - different venue, **23:142**
 - grounds for denying, **23:132.10**
 - new supervisor, **23:141**
 - onus on complainant to show not viable, **23:132.50**
 - passage of many years, **23:134**
 - senior/professional employees, **23:136.50**
 - with demotion, **23:137**
 - with partial back pay, **23:139**
- RRSP contributions, **23:149.50**
- substitution of penalty, **23:147**
- sunset clauses, **23:74.70**
- tax consequences, **23:163**
- training, **23:146**
- vacation pay, **23:150**
- Unjust dismissal, see UNJUST DISMISSAL

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

- Age discrimination and, **35:47**
- Discrimination challenges generally, **35:8**
 - distinguished from claims under human rights legislation, **35:4**
- Jurisdiction, **5:5**
- Presumption of innocence, **33:19**
- Remedies for breach of, **24:21, 24:169**
- Res judicata, **33:10**
- Sexual orientation discrimination, **35:95**

CANADIAN FORCES MEMBERS

- Employment status of, **3:20**

CARE, DUTY OF

- Director's, **27:7, 27:8, 27:13**
- Employee's, **22:29**

CARE, DUTY OF—Cont'd

- Employer's, **22:79**
- Implied, **14:1**
- Negligent misrepresentation, **22:37**

CARELESSNESS

- Just dismissal, cause for, **23:98**
- Termination, cause for, **11:20**

CLERGY

- Employment status of, **3:19**

COMPENSATION DISCRETION, DUTY RE

- Generally, **21:3**

COMPETENCY, IMPLIED DUTY OF

- Generally, **14:1**

COMPETITION

- After departure but during notice period, **15:3**
- After notice but before departure, **15:2**
- Against employer, **7:16**
- Dependent contractors, **7:6**
- Direct, **13:21**
- During employment, **15:1**
- Fair competition, **15:6, 15:8, 24:8**
- Independent contractors, **7:6**
- New employer's liability, **15:8**
- Non-competition agreement, **13:21**
- Non-competition covenant, **7:1 to 7:7**
- Post-employment, **15:8, 18:5**
- Solicitation, vs., **7:16**

CONDONATION

- Constructive dismissal and, **10:1, 10:11**
- Just dismissal and, **23:74**
- Termination and, **11:13, 11:14, 11:20**

CONFIDENCE, BREACH OF

- See **EQUITABLE BREACH OF CONFIDENCE**

CONFIDENTIAL INFORMATION

- See **EQUITABLE BREACH OF CONFIDENCE**

CONFIDENTIALITY

- See **GOOD FAITH, DUTY OF**

CONFLICT OF INTEREST

- Fiduciary obligations, **13:17**
- Just dismissal cause, **23:93**
- Occupational health and safety and, **28:2**

CONFLICT OF INTEREST—Cont'dTermination cause, **11:18****CONSTITUTIONAL FRAMEWORK**

See JURISDICTION; DEFENCES TO PROSECUTION, Procedural

CONSTRUCTIVE DISMISSALAbusive/inappropriate behaviour of co-workers, **10:41**Abusive/inappropriate behaviour of employer, **10:34**Actual dismissal vs., **10:2, 10:6**Additional duties, **10:16**Additional work without compensation, **10:55**Anticipatory breach, **10:4, 10:7**employee's election, **10:5, 10:11**Atmosphere conducive to employee's well being, **10:36**Basic principles, **10:2**Bona fide business reasons for change, **10:1, 10:5**Bonus, removal of, **10:53**Breach of express or implied term, **10:3**Cause for dismissal and demotion, **10:20**Change in responsibilities, **10:23**Civility, breach of duty of, **10:35**Commencement of notice, **10:15**Common employer, **10:10**Condonation, **10:1, 10:11, 10:56**Conduct after, **11:67**Course of conduct, **10:4**Cumulative effect, **10:9**Decency, breach of duty of, **10:35**Demotion, **10:16, 10:19**Described, **10:1**Dignity, breach of duty of, **10:35**Discipline short of dismissal, **10:19, 10:52**Economic necessity, **10:16**Employer, change in, **10:31**Employer's economic circumstances, **10:13, 50**Employer's motives/intent, **10:1, 10:13, 35:13**Events ex post facto, **10:14**Forced leave of absence, **10:47**Fundamental/unilateral change in employment, as, **10:1, 10:5**Geographic transfers, **10:30**Harassment and, **31:17****CONSTRUCTIVE DISMISSAL—Cont'd**Hours of work, change to, **10:32, 10:33**Human rights, breach of, **10:37**Job title, change to, **10:16**Lack of knowledge of employer's conduct, **10:12**Lay-offs, **10:46**Lost opportunity, **10:18**Marginalization/reduction of effectiveness, **10:43**Mobility, presumption of, **10:30**Modern framework, **10:2**Negative performance reviews, **10:42**New assignments, acceptance of, **10:16**Objective approach requirement, **10:1, 10:3, 10:5, 10:12, 10:16**Onus of proving, **10:1, 10:2, 10:58**Overtime, failure to pay manager, **10:53**Perquisites, removal of, **10:53**Poisoned work environment, **10:38, 23:12**Pre-Potter, **10:5**Privacy, breach of employee's, **10:39**Probationary status, placing on, **10:51**Promotion, failure to provide, **10:21, 10:23**Promotion without employee consent, **10:22**Reassignment of duties, **10:23**Refusal to accept new terms, employee, **10:57**Remaining with employer, **12:8**Remuneration, change in, **10:53**Reporting status, change to, **10:16, 10:17**Repudiation of contract, as
constructive dismissal as, **10:1, 10:2**
timing of acceptance of, **10:56**Resignation demand, **10:45**Respect, breach of duty of, **10:35**Sale of business, **10:31, 12:31**Sales territory, change to, **10:24, 10:54**Status, changes to, **10:16**Support/infrastructure, removal of, **10:44**Suspensions, **10:48**
administrative, examples, **10:50**
administrative, general, **10:49**Temporary change of position, **10:1, 10:16**Toxic work environment, **10:38, 23:12**Transfer as discipline, **10:30**Trust, destruction of, **10:40**

INDEX

CONSTRUCTIVE DISMISSAL—Cont'd

- Unjust dismissal and, **23:11, 23:37**
- Waiver, **10:1, 10:56**
- Warnings, unwarranted, **10:42**
- Well being, atmosphere conducive to, **10:36**
- Without breach of specific term, **10:8**
- Working conditions, change in, **10:29**
- Working hours, change in, **10:26**

CONTRACTORS

- See OCCUPATIONAL HEALTH AND SAFETY

CONTRACTS

- Employment, see EMPLOYMENT CONTRACTS
- Torts and, **22:82**

COPYRIGHT

- Employer's right to, **16:1**
- Registration of, **16:1**

COSTS

- Canada Labour Code, under, **23:164, 23:169.50**
- Complex hard-fought litigation, **24:220.50**
- Importance of proceeding to employee, **24:220.40**
- Litigation misconduct, **24:188.50**
- On appeal, **24:225**
- One-week trial, for, **24:222**
- Punitive and aggravated/moral damages awarded, in relation to, **24:220.30**
- Solicitor and client, **24:220.70**
- Solicitor client/full indemnity costs, **24:220.70**
- Successful employer being denied or having to pay costs, **24:188.50**
- Summary judgment, for quantum of, **24:219**
 - successful application, **24:219**
 - unsuccessful application, **24:220**

COVID-19

- See PANDEMICS

CRIMINAL NEGLIGENCE

- See OCCUPATIONAL HEALTH AND SAFETY

CRIMINAL OFFENCE

- Cause for just dismissal, **23:83**

CRIMINAL OFFENCE—Cont'd

- Mitigation, effect on, **12:22**

CROWN

- Corporations, **2:18**
- Employer status of, **4:5**

CUSTOMER

- Confidential lists and price books, **18:3**
- Contact and fiduciary duty, **13:10**
- Information, **18:4**

DAMAGES

- Aggravated, for, **22:61, 23:161, 24:79 to 24:106.50**
 - costs in relation to punitive and aggravated/moral damages awards, **24:220.30**
- Breach of confidence, for, **18:8, 24:158**
- Breach of duty of good faith, for, **24:156**
- Breach of fiduciary duty, for, **24:153**
- Breach of restrictive covenant, for, **24:157**
- Double recovery, avoidance of, **22:61**
- Employee negligence and disobedience, for, **24:161**
- Employee's failure to provide reasonable notice, for, **24:159**
- Human rights complaints, see HUMAN RIGHTS REMEDIES
- Inducement of breach of contract, see TORTS
- Injunction application undertaking, **24:6**
- Intentional and negligent infliction of mental suffering and shock, **22:60**
 - causation, principles of, **24:112.50**
- Interference with economic relations, see TORTS
- Liquidated, **6:74**
- Loss of services, for, **22:48**
- Misuse of trade secrets, for, **18:8, 24:158**
- Negligent misrepresentation, for, **22:40**
- Punitive, see REMEDIES
- Special in defamation action, **22:46**
- Wrongful dismissal, see WRONGFUL DISMISSAL
- Wrongful resignation, **24:159**

DANGER IN WORKPLACE

- See RIGHT TO REFUSE WORK

DEFAMATION

- Generally, see TORTS

DEFAMATION—Cont'd

- Defamatory statements to parties outside workplace relationship, **5:8**
- Special costs, **22:46**

DEFENCES TO PROSECUTION

Procedural

- generally, **33:3 to 33:17**
- abuse of process, **33:9**
- constitutional jurisdiction
 - aeronautics, **33:5**
 - broadcasting, **33:5**
 - chartered banks, **33:5**
 - Constitution Act, 1867 powers, **33:5**
 - declarations for general advantage of Canada, **33:5**
 - double aspect theory, **33:5**
 - federal jurisdiction, scope of, **33:5**
 - fisheries, **33:5**
 - interprovincial trucking, **33:5**
 - longshoring, **33:5**
 - mail, **33:5**
 - pith and substance analysis, **33:5**
 - provincial jurisdiction, **33:4**
 - railways, **33:5**
 - severing business or undertaking, **33:5**
 - shipping, **33:5**
 - telecommunications, **33:5**
 - territories, **33:5**
 - transportation, **33:5**
- defect in form or irregularity
 - amending application, **33:4**
 - amending particulars, **33:4**
 - particulars of offence, **33:4**
- expert witnesses, **12:43**
- inconsistent verdicts, **33:17**
- laying information, **33:3 to 33:17**
- limitation periods, **33:15**
- res judicata
 - autrefois acquit, **33:10, 33:11**
 - autrefois convict, **33:10, 33:11**
 - Charter protection, **33:10**
 - double jeopardy, **33:13**
 - issue estoppel, **33:12**
 - rule against multiple convictions, **33:14**
- trial within reasonable time
 - abuse of process and, **33:9**
 - Charter protection, **33:6**
 - corporations, **33:6**

DEFENCES TO PROSECUTION**—Cont'd**

Procedural—Cont'd

- trial within reasonable time—Cont'd
 - onus of proof, **33:7**
 - post-information period, **33:6**
 - pre-charge delay, **33:6**
 - presumption of prejudice, **33:6**
 - stay of proceedings, effect of, **33:8**
 - want of prosecution, **33:16**
- Public welfare offences, **33:18**
- Quasi-criminal offences, **33:18**
- Substantive, **33:18 to 33:20**
 - due diligence
 - Charter presumption of innocence, **33:19**
 - statutory vs. common law, **33:19**
 - mens rea, absence of, **33:18**
 - mistake of fact, **33:19**
 - officially induced error, **33:20**

DEMOTION

- Constructive dismissal, as, **10:16**
- Reinstatement with, **23:137**

DIRECTORS, CORPORATE

- Employment status, **3:10**
- Occupational health and safety context, see OCCUPATIONAL HEALTH AND SAFETY

DISABILITY

- Discrimination, see DISABILITY DISCRIMINATION
- Duty to inquire, **35:138**
- Frustration of contract, as, **6:13**
- Just dismissal and, **23:94**
- Notice period, during, **12:28, 12:29**
- Reasonable notice, effect on, **9:46**
- Wrongful dismissal claims, effect on, **24:44**

DISABILITY DISCRIMINATION

- See also HUMAN RIGHTS
- Accommodate, duty to, **35:59**
 - request and exchange medical information, **35:60**
 - when duty ends, **35:61.50**
- BFORQ defence, **35:58**
- COVID-19, **35:138**
- Duty to inquire, **35:138**
- Individual's control over disability, **35:56**

DISABILITY DISCRIMINATION**—Cont'd**

- Mask-wearing policy, **35:138**
- Mental disability, **35:54**
- Pandemics, **35:138**
- Perceived disability, **35:57**
- Permanent or ongoing disability, **35:55**
- Physical disability, **35:52**
- Vaccination policy, **35:138**

DISCIPLINE

- Constructive dismissal, as, **10:52**
- Progressive, **23:72**
 - amount of progressive discipline required, **23:74.50**
- Reprisal action, as, **31:9**
- Sunset clauses, **24:74.70**
- Transfer as, **10:30**

DISCRIMINATION

- See also HUMAN RIGHTS
- Accommodate, duty to, see ACCOMMODATE, DUTY TO
- Adverse effect discrimination
 - BFORQ, **35:26**
 - duty to accommodate, **35:19**
 - examples of, **35:19**
 - genuine business reasons, **35:19, 35:20**
 - motive, **35:19**
- Age, see AGE DISCRIMINATION
- BFORQ (bona fide occupational requirement) defence
 - adverse effect discrimination, to, **35:26**
 - defined, **35:27**
 - direct discrimination, to, **35:25**
 - objective element in, **35:29**
 - purpose of, **35:24 to 35:34**
 - safety considerations, **35:33**
 - special employment provisions, **35:34**
 - statutory recognition of, **35:20**
 - subjective element in, **35:28**
 - unified approach
 - accommodation under, **35:39**
 - honest and good faith belief, **35:31**
 - rational connection, **35:30**
 - undue hardship, **35:32**
- Charter challenge re, **35:8**
 - distinguished from claims under human rights legislation, **35:4**
- Comparing direct and adverse effect discrimination, **35:20**

DISCRIMINATION—Cont'd

- Creed, see RELIGIOUS OR CREED DISCRIMINATION
- Criminal record or charges, **35:81**
- Defined, **35:5, 35:16**
 - adverse consequences requirement, **35:16**
 - confusion re, **35:16**
 - differential treatment within group, **35:16**
 - impact on complainant, **35:16**
 - statutory definitions, **35:16**
- Direct discrimination, **35:16, 35:18, 35:25**
- Disability, see DISABILITY DISCRIMINATION
- Employment, in, **35:7**
- Ethnic origin, **35:63**
- Family and marital status, **35:77 to 35:79, 35:138**
- Gender expression/identity, **35:96**
- Handicap, see DISABILITY DISCRIMINATION
- Harassment and, **35:9**
- Indirect discrimination, **35:21**
- Intersectional approach to, **35:10**
- Language, **35:67**
- Motives, **35:13**
- Nationality and citizenship, **35:66**
- Place of origin, **35:65**
- Political belief, **35:80**
- Pregnancy, **35:85**
- Prima facie case, **35:12**
- Prohibited grounds approach to, **35:10**
- Prohibited grounds of, **35:8**
- Racial
 - generally, **35:62**
 - customer preference, **35:71**
 - difficulty of proving, **35:68**
 - employers' obligations, **35:71**
 - "false parallelism," **35:69**
 - "white" complaints, **35:69**
- Racial harassment, **35:70**
- Religious, see RELIGIOUS OR CREED DISCRIMINATION
- Sex, see SEX DISCRIMINATION
- Sexual harassment, see SEXUAL HARASSMENT
- Sexual orientation, see SEXUAL ORIENTATION DISCRIMINATION

DISCRIMINATION—Cont'd

- Sexual orientation harassment, **35:98**
- Systemic discrimination, **35:22**
- Types of, **35:6, 35:17**
- Unified approach to, **35:23**

DISHONESTY

- Just dismissal, cause for, **23:90**
- Termination, cause for, **11:43, 11:46**

DISMISSAL

- See also TERMINATION
- Constructive, see CONSTRUCTIVE DISMISSAL
- Just, see JUST DISMISSAL
- Reasonable notice of, see REASONABLE NOTICE OF DISMISSAL
- Unjust, see UNJUST DISMISSAL
- Wrongful, see WRONGFUL DISMISSAL

EMPLOYEE

- Accommodate, duty to, **35:44**
- Bank, **11:81, 23:91**
- Borrowed, see TORTS
- Duty of care of, **22:29**
- Fiduciary, as, see FIDUCIARY OBLIGATIONS
- Jurisdiction over, see JURISDICTION
- Negligence, **24:23 to 24:146, 24:161**
- Occupational health and safety context, see OCCUPATIONAL HEALTH AND SAFETY
- Probationary, **11:65, 23:71.50**
- Termination by, see TERMINATION
- Tort obligations, see TORTS
- Vulnerable group, as, **6:61**

EMPLOYEE STATUS

- See also EMPLOYMENT RELATIONSHIP
- Agents, **3:13, 3:16**
- Bands and band councils, **3:22**
- Canadian Forces members, **3:20**
- Clergy, **3:19**
- Commission sales representatives, **3:16, 23:6**
- Common law tests, **23:6**
- Dependent contractor status, **3:8**
- Directorship, **3:10**
- Family members, **3:14**
- Intermediate status, **3:8**

EMPLOYEE STATUS—Cont'd

- Invoicing payor, **3:17**
- Multiple employers, **3:23**
- Officers, **3:11**
- Owning own tools, **23:6**
- Partnerships, **3:9**
- Personal service corporations, **3:15**
- Prisoners, **3:18**
- Shareholders, **3:12**
- Statutory office holders, **3:24, 4:8**

EMPLOYER

- Abusive/inappropriate behaviour of, **10:34**
- Competition against, **7:16, 15:1**
- Crown's status as, **4:5**
- Duty of care, **22:79**
- Duty to evaluate fairly, **21:1**
- Duty to provide work, **19:1**
- Duty to use compensation discretion fairly, **21:3**
- Fiduciary duty of, **13:16**
- Human rights and, see HUMAN RIGHTS REMEDIES
- Indemnification of, **22:24**
- Multi-undertaking, **2:2**
- Occupational health and safety context, see OCCUPATIONAL HEALTH AND SAFETY
- Professional, **7:10**
- Right to copyright, **16:1**
- Tort obligations, see TORTS
- Trade unions, **4:14**

EMPLOYER STATUS

- See also EMPLOYMENT RELATIONSHIP
- Amalgamation, **4:4**
- Corporate group, **4:1**
- Corporate veil, **4:1, 4:2**
- Crown
 - agency, **4:5**
 - appointments at pleasure, **4:5**
 - contractual qualification, **4:5**
 - duty to act fairly, **4:5**
 - collective agreements, **4:5**
- Employment contract transfer, **3:6, 4:1**
- Individual liability, **4:2**
- Multiple employers, **3:23**
- Municipalities, **4:6**
 - duty to act fairly, **4:6**

INDEX

EMPLOYER STATUS—Cont'd

- Parent corporation, **4:1**
- Receiver, **4:3**
- Sovereign state immunity, **4:12**

EMPLOYMENT APPLICATION

- Age discrimination and, **35:49**
- Misleading, **23:99**

EMPLOYMENT CONTRACTS

See also EMPLOYMENT RELATIONSHIP

- Ad idem, **6:4**
- Ambiguity, **6:70**
- Appellate review
 - generally, **24:234 to 24:255**
 - abandonment/resignation, **24:253**
 - bonus, stock and RSU plans, **24:243**
 - breach of confidentiality agreement, **24:244**
 - cause for dismissal, **24:235**
 - commissions, **24:242**
 - common employer, **24:257.50**
 - condonation, **24:251**
 - constructive dismissal, **24:250**
 - employment contracts, interpretation of, **24:239**
 - enforceability of restrictive covenant, **24:240**
 - fiduciary status, **24:237**
 - frustration, **24:236**
 - interlocutory injunctions, **24:252**
 - jury instructions, **24:254**
 - mitigation, **24:248**
 - notice periods, **24:234**
 - punitive damages, **24:245**
 - aggravated and moral damages, **24:246**
 - unconscionability, **6:52.50, 24:249**
- Assignment
 - implied consent, **3:6, 4:1**
- Benefits package, **6:66**
- Certainty of terms, **6:3**
- Collateral warranty, **6:24**
- Commercial agreements, compared to, **6:1**
- Consideration, **6:22**
 - variation, for, **6:23**
- Constituent elements of, **6:1**
- Contra proferentum doctrine, **6:70**
- Duress, **6:65**

EMPLOYMENT CONTRACTS—Cont'd

- Duty of honest performance, **6:8**
- Duty of mutual trust, **6:9**
- Employee policy manuals, **6:66**
- Enforcement of
 - power inequities, **6:1**
- Fail safe clause, **6:51**
- Fairness, **6:62**
- Fixed term contracts, **6:10**
- Fraud and fraudulent misrepresentation, **6:78**
- Frustration of
 - confinement in prison, **6:16**
 - death of employee, **6:14**
 - fire, **6:19**
 - illness and disability, **6:13, 23:96**
 - loss of professional qualifications, **6:15**
 - onus of proof, **23:72.50**
 - pandemics and epidemics, **6:20**
 - poor economic conditions, **6:18**
 - principles, **6:12**
 - strikes and labour unrest, **6:17**
 - time of dismissal, **6:13**
- Golden parachutes, **6:75**
- Illegal
 - generally, **6:25**
 - bonus, failure to provide, **6:39**
 - contractual arbitration clause, **6:40**
 - cure, **6:29**
 - interpreting, **6:26**
 - just cause, **6:43**
 - legislative requirements, **6:30, 6:33 to 6:39**
 - making employee work for statutory severance, **6:37.50**
 - notice, **6:27**
 - pension benefits, failure to provide, **6:42**
 - release, **6:44**
 - shareholders' agreements, **6:52.50**
 - sophisticated employees and employees with counsel, **6:26.50**
 - statutory violation, **6:28**
 - successor employer requirements, **6:35**
 - termination and severance provisions, **6:46**
 - effect of single instance of illegality, **6:47**

EMPLOYMENT CONTRACTS—Cont'd

Illegal—Cont'd
 termination and severance provisions, **6:46**—Cont'd
 sophisticated employees and employees with counsel, **6:26.50**
 unclear or ambiguous language, **6:31**
 vacation pay, failure to provide, **6:41**
 variable compensation, failure to provide, **6:39**

Indian bands and councils, **6:80**

Interpretation
 appellate review, **24:239**
 contra proferentum doctrine, **6:7**
 discretionary powers, **6:7**
 good faith and fair dealing obligation, **6:7**
 reasonable expectations of parties, **6:6**

Just cause, **23:71.20**

Mistake, **6:71**

Nature of, **6:1**

Non-contractual expectations and statements, **6:5**

Non est factum principle, **6:73**

Offer and acceptance, **6:2**

Oppression remedy, **6:76**

Parol evidence rule, **6:21**

Part performance doctrine, **6:77**

Penalty clauses, **6:74**

Public policy, **6:64**

Reasonableness, **6:62**

Reasonable notice, displacement of, see **REASONABLE NOTICE OF DISMISSAL**

Releases, see **RELEASES**

Repudiation of, **8:8, 10:1, 11:82**

Restrictive covenants, see **RESTRAINT OF TRADE**

Seasonal employees, **6:11**

Statute of Frauds, **6:77**

Strict construction of, **6:68**

Substratum of, **6:67**

Task employment, **6:10**

Termination clause, failure to comply with, **6:69**

Termination provision unconscionable, **6:52.50**

Transfer of, **3:6, 4:1**

Unconscionability, doctrine of generally, **6:57**

EMPLOYMENT CONTRACTS—Cont'd

Unconscionability, doctrine of—Cont'd
 bargaining power inequality, **6:59, 6:61**
 commercial morality, **6:61**
 fairness and reasonableness, **6:62**
 freedom of contract, vs., **6:61**
 modern and traditional approach, **6:58**
 improvident bargain, **6:60**
 inequality of bargaining power, **6:59**
 reasonable notice displacement, **6:53**
 role of, **6:62**
 standard form, adhesion and boiler plate contracts, **6:63**
 termination provision unconscionable, **6:52.50**
 undue influence, vs., **6:65**

Undue influence, **6:65**

Uniqueness of, **6:1**

Variation, **6:23**

EMPLOYMENT LAW

Origins considered, **1:1**

Purposes of, **1:1**

EMPLOYMENT RELATIONSHIP

Actual conduct as determining factor, **3:1**

Collective agreement
 disability benefits, **5:9**
 effect of, **5:5**
 no meaningful remedy under, **5:6**
 termination after certification, but prior to collective agreement, **5:13**
 torts and, **5:7**

Defamatory statements to parties outside workplace relationship, **5:8**

Ecclesiastical relationship, **3:1**

Employer favoured, **1:2**

Freedom of contract and, **1:2**

Historical antecedents to, **1:2**

Master and servant relationship, **1:2, 3:1**

Origins of, **1:2**

Public service grievance procedure, **5:10**

Reasonable notice, calculation of, **9:7**

Remedial statutes and, **3:1**

Slavery, **1:2**

Status basis of, **1:2**

Termination of, see **TERMINATION**

Terms of
 business efficacy, **5:2**
 duty to pay for work, **5:2**
 duty to provide work, **5:2**

INDEX

EMPLOYMENT RELATIONSHIP

—Cont'd

- Terms of—Cont'd
 - employee duties and status, changes to, **5:2**
 - express, **5:1**
 - implied, **5:2**
 - implied by law, **5:3**
 - Statute of Frauds, **5:1**
 - statutory, **5:4**
- Tests to determine control, **3:2**
 - entrepreneur test, **3:4**
 - fourfold test, **3:3**
 - organization test, **3:5**
- Tort obligations, see TORTS
- Unfair labour practice jurisdiction, **5:11**
- Unfair representation claims jurisdiction, **5:12**
- Vicarious liability test and, **3:1**

EQUITABLE BREACH OF CONFIDENCE

- Action for
 - constituent elements of, **18:2**
 - requirements of, **18:1**
- Confidential information
 - circumstances of communication, **18:3**
 - customer lists and price books, **18:3**
 - public information, **18:3**
- Customer information, **18:4**
- Fiduciary requirement, **18:1**
- Inevitable disclosure theory, **15:7**
- Jurisdictional foundation of, **18:1**
- Know-how, **18:4**
- Modification of post-employment obligations, **18:7**
- Post-employment competition, **18:5**
- Remedy for, **18:8, 24:158**
- Springboard principle, **18:5 to 18:5.30**
 - springboard period, commencement of, **18:5.30**
 - springboard period, duration of, **18:5.70**
- Trade secrets, **18:4**

ESTOPPEL

- Issue, **24:178, 33:12**

EVALUATION OF EMPLOYEES, DUTY RE

- Generally, **21:1**

FAIR DEALING, DUTY OF

- See GOOD FAITH, DUTY OF

FAIRNESS, DUTY OF

- Compensation discretion, **21:3**
- Crown appointments at pleasure, **4:5**
- Employment contracts, **6:6, 6:62**
- Evaluation, **21:1**
- Municipalities, **4:6**
- Procedural, **22:71, 23:75**
- Restrictive covenants, **7:25**
- Statutory office holders, **4:7**

FIDUCIARY OBLIGATIONS

- Breach of
 - actionability, **13:17**
 - co-venturers of faithless employee, **13:26**
 - remedies for, **13:27, 24:153, 24:238**
 - summary dismissal, as cause for, **13:3 to 13:16**
- Breach of confidence, see EQUITABLE BREACH OF CONFIDENCE
- Damages for breach, **24:153**
- Director's, **27:13**
- During employment relationship
 - Canaero case approach, **13:17**
 - competing
 - plans to compete, **13:19**
 - conflict of interest test, **13:17**
 - disclosure of information, **13:17**
 - mala fides, **13:17**
 - profit through execution of office test, **13:17**
 - scope of liability, **13:17**
 - secret profits, **13:17**
 - strict ethic, **13:17**
- Employee as fiduciary
 - Canaero case, application of
 - generally, **13:7, 13:14**
 - agency, **13:12**
 - corporate group, **13:13**
 - key employee/senior employee, **13:9**
 - key management/senior management, **13:8**
 - vulnerability through customer contact, **13:10**
- examples
 - account executive, **13:5**
 - mixed managerial/sales responsibilities, **13:5**

FIDUCIARY OBLIGATIONS—Cont'd

- Employee as fiduciary—Cont'd
 - examples—Cont'd
 - national sales and marketing manager, **13:5**
 - regional sales manager, **13:5**
 - exercise of control and discretion, **13:4, 13:5**
 - narrow approach to, **13:5**
 - professionals, **13:6**
 - special protection situation, **13:5**
 - top management test, **13:4**
- Employer as fiduciary, **13:16**
- Equitable origins of, **13:2**
- Fiduciary defined, **13:2**
- Importance of, **13:1**
- Injunctions re, **24:3**
- Inventions and, **17:1**
- Post-employment
 - coat-tail employees, **13:21**
 - confidential information/trade secrets, **13:21**
 - corporate opportunities, **13:21**
 - corporate vehicle, avoidance through, **13:26**
 - damages, irrelevance of, **13:21**
 - direct competition, **13:21**
 - improper solicitation, **13:23**
 - length of obligations, **13:25**
 - non-competition agreement, **13:21**
 - professionals, **13:21**
 - proper contact, **13:23**
 - rejected business opportunities, **13:21**
- Pre-employment, **13:15**
- Professional employees, **13:22**
- Remedies for breach, see REMEDIES
- Termination of employment, effect of resignation, **13:24**
 - wrongful dismissal, **13:24**
- Third party liability, **13:26**
- Vulnerability concept, **13:2, 13:10**
- Wrongful resignation, **13:20**

FRAUD

- Just dismissal, ground for, **23:84**
- Termination, ground for, **11:47**
- Termination of contract, ground for, **6:78**
- Vicarious liability for, **22:3, 22:10**

GENDER EXPRESSION AND IDENTITY

- Discrimination on the basis of, **35:96**

GOOD FAITH, DUTY OF

- After departure but during notice period, **15:3**
- After notice but before departure, **15:2**
- Canada Labour Code, under, **23:84**
- During employment relationship
 - competing against employer, **11:83, 15:1**
 - on employee's own time, **15:1**
 - protected information, **15:9**
 - surrender of documents prepared, **15:1**
- Interpretation of employment contract, **6:7**

Post-employment

- confidential information, **15:6, 15:9**
- "fair competition," **15:6, 15:8**
- forms of duty, **15:4**
- highly confidential information, **15:9**
- inevitable disclosure theory, **15:7**
- non-confidential information, use of, **15:6**
- scope of, **15:6**
- taking of employer's property, **15:6**
- trade secrets, **15:5, 15:9**

- Remedy for breach of, employer's, **24:156**

- Wrongful dismissal claims, see WRONGFUL DISMISSAL

HARASSMENT

- Canada Labour Code, **31:18**
- Constructive dismissal and, **31:17**
- Discrimination, as, **35:9**
- Racial, **35:70**
- Sexual, see SEXUAL HARASSMENT
- Sexual orientation, **35:98**
- Tort, as, see TORTS

HEALTH AND SAFETY

- See OCCUPATIONAL HEALTH AND SAFETY

HEALTH AND SAFETY COMMITTEES

- Composition of, **30:2**
- Duties of, **30:2**
- Equal worker representation, **30:2**
- Health and safety representative alternative, **30:2**

HEALTH AND SAFETY COMMITTEES

—Cont'd

- Powers of, **30:2**
- Scope, **30:1**
- Time off work provision, **30:2**

HIRING

- Employer's obligation re, **22:63**
- Employment application, misleading, **23:99**

HONEST PERFORMANCE, DUTY OF

- See EMPLOYMENT CONTRACTS

HOSPITAL LIABILITY

- See TORTS

HOURS OF WORK

- Change in
 - decrease, **10:27**
 - increase, **10:28**
- Reduction in, **10:32**

HUMAN RIGHTS

- Adjudication, **35:15**
- Commissions
 - adjudication by, **35:15**
 - administration of, **35:14**
- Complaints, see HUMAN RIGHTS COMPLAINTS
- COVID-19, see PANDEMICS
- Criminal law, distinguished from, **35:3**
- Damages, quantum of, table of, **35:103 to 35:116**
- Discrimination, see DISCRIMINATION
- Drug and alcohol testing, **35:53**
- Jurisdiction re, **2:8**
- Legislation re
 - purposes of, **35:2**
 - similarity between jurisdictions, **35:1**
- Procedural matters, **35:14**
- Remedies, see HUMAN RIGHTS REMEDIES
- Sexual harassment, see SEXUAL HARASSMENT

HUMAN RIGHTS COMPLAINTS

- Alternative forms of redress, **35:134**
- Appeal, right of, **35:131**
- Board or tribunal, role of, **35:15, 35:130**
- Commission, role of, **35:14, 35:127**
- Criticisms of, **35:133**
- Delay, challenges based on, **35:128**

HUMAN RIGHTS COMPLAINTS

—Cont'd

- Enforcing claims, **35:137**
- Grievance arbitration, **35:133**
- Initiating, **35:126**
- Judicial review of decision, **35:132**
- Jurisdictional challenges
 - generally, **35:129**
 - delay, based on, **35:128**
- Retaliation of reprisal against employee
 - for, **35:11**
- Settling, **35:135**
- Tort actions, **35:133**

HUMAN RIGHTS REMEDIES

- Civil action, in, **24:172**
- Compliance powers, **35:119 to 35:120**
- Costs, **35:125**
- Deduction from moral and aggravated damages, **24:175**
- Double recovery, avoidance of, **22:61**
- Employer liability, **35:121 to 35:123**
 - direct liability, **35:122**
 - joint and several liability, **35:122**
 - vicarious liability, **35:121**
- General overview, **35:100**
- Interest, **35:124**
- Non-pecuniary general damages, **35:102**
- Pecuniary damages, **35:101**
- Punitive damages, **24:218.35, 35:117**
- Quantum, **24:175, 24:176, 24:188**
- Reinstatement, **35:118**
- Stay of proceedings, **24:170**
- Systemic remedies, **35:120**

INCOMPETENCE

- Canada Labour Code, under, **23:80**
- Duty to warn re, **11:9**
- Termination, cause for, **11:20**

INDEMNIFICATION

- Criminal negligence, for, **28:3**
- Director's liability, **28:3**
- Employer, of, **22:24**
- Multi-personnel liability, **28:3**

INDEPENDENT CONTRACTOR

- Service preceding employment, **9:18**

INJUNCTIONS

- Balance of convenience, test for, **24:8.50**
- Damages undertaking, **24:6**
- Fiduciary breaches and, **24:3**

INJUNCTIONS—Cont'd

Interlocutory, **24:252**
Remedy, as, see **REMEDIES**

INSUBORDINATION

Independent medical exam, refusal to attend, **23:101.30**
Just dismissal, cause for, **24:3**
Right to refuse work and, **31:2**
Termination, cause for, **11:15, 11:17**

INTERFERENCE WITH ECONOMIC RELATIONS

See **TORTS**

INTIMIDATION

Tort of, **22:49**

INTOXICATION

Termination, cause for, **11:15**

INVASION OF PRIVACY

See **PRIVACY**

INVENTIONS

Exceptions to presumption of ownership, **17:1**
Fiduciary's right to, **17:1**
Presumed property of employee, **17:1**

JOB TITLE

Change to, **10:16**

JOINT HEALTH AND SAFETY COMMITTEES

See **HEALTH AND SAFETY COMMITTEES**

JURISDICTION

Aboriginal peoples, **2:13**
Activities integral to core federal undertaking, **2:9**
Aeronautics, **2:12**
Banking, **2:14**
Cable companies, **2:11**
Canada Labour Code arbitrators, of, **23:47 to 23:52**
Charter claims, **5:5**
Charter remedy, **2:19**
Collective agreement, effects of on, **5:5**
Concurrency, **2:3**
Corporate identity, **2:6**
Crown corporations, **2:18**
Doctrine of laches, **2:5**

JURISDICTION—Cont'd**Federal**

Canada Labour Code
federal works, **2:1**
territories exceptions, **2:17**
Constitution Act, 1867 heads of power, **2:1**
declaratory power, **2:16**
emergency power, **2:15**
limitation by Privy Council decisions, **2:1**
peace, order and good government basis, **2:1, 2:15**
public sector employees, **2:18**
territories, in, **2:17**
Federal spending, **2:4**
Freight forwarders, **2:10**
Historical background, **2:1**
Human rights, **2:8, 35:128, 35:129**
Indian reserves, **2:13**
Interprovincial undertakings, **2:3**
Interprovincial vs. intraprovincial, **2:10**
Maritime shipping, **2:10**
Modern statement of, **2:1**
Multi-undertaking employers, **2:2**
Non-use of constitutional authority, **2:5**
Occupational health and safety context, see **OCCUPATIONAL HEALTH AND SAFETY**
Occupational health schemes, **2:7**
Provincial
limitation on, **2:1**
private sector, **2:1**
Radio and television, **2:11**
Telecommunications, **2:11**
Telephone companies, **2:11**
Transportation, **2:10**
Trust companies, **2:14**
Workers' compensation, **2:7**

JUST DISMISSAL

Absenteeism, **23:94**
Administrative discharge, **23:71**
Airline employees, **23:92**
Application for employment, misleading, **23:99**
Bank employee, **23:91**
Breach of company policy, **23:97**
Breach of trust, **23:84, 23:91**
Carelessness on job, **23:98**
Competition against employer, **7:16**

JUST DISMISSAL—Cont'd

Complaints about supervisor, **11:58**
 Condonation
 effect of, **23:74**
 reasonable dispatch requirement, **23:74**
 severance pay offer, **23:74**
 Confidence, breach of, **23:111**
 Conflict of interest, **23:93**
 Criminal offence, **23:83**
 Culminating incident, **23:73**
 Culpable discharge, **23:71**
 Culture, **23:112**
 Cumulative cause, **23:73.70**
 Disciplinary discharge, **23:71**
 Dishonesty, **23:90**
 Drugs in workplace, **23:108**
 E-mail use, **23:109**
 Employer's right under Code, **23:70**
 Fraud, **23:84**
 Frustration of employment contract,
 23:96
 Good faith and fidelity, lack of, **23:84**
 Incarceration, **23:95**
 Incompetence
 deference to employer's view, **23:80**
 gross, **23:80**
 standard of, **23:80**
 tests re, **23:80**
 voluntary vs. involuntary, **23:80**
 Industry custom, **23:70**
 Insolence, **23:88**
 Insubordination, **23:100**
 insolence, **23:102**
 repudiation, **23:101**
 Internal disciplinary procedures, **23:77**
 Internet use, **23:109**
 Lateness, **23:94**
 Loss of confidence, **23:106**
 Marriage or cohabitation, **23:86**
 Misrepresentation, **23:84**
 Mitigating factors
 circumstances negating intent, **23:122**
 discrimination, **23:117**
 double penalty, **23:125**
 events after discharge, **23:126**
 hardship, **23:121**
 length of service, **23:116**
 non-repetitive conduct, **23:120**
 premeditation, **23:119**
 previous good service record, **23:114**

JUST DISMISSAL—Cont'd

Mitigating factors—Cont'd
 provocation, **23:118**
 remorse, **23:115**
 seriousness of offence, **23:123**
 similar discipline, **23:124**
 Negligence on job, **23:98**
 Non-culpable discharge, **23:71**
 Non-disciplinary discharge, **23:71**
 Off-duty behaviour, **23:83**
 social media and internet postings,
 23:110
 Personality problem, **23:89**
 Physical altercation
 co-workers or third parties, between,
 23:81
 employee and supervisor, between,
 23:81
 Physical disability, **23:94**
 Procedural fairness requirement,
 employer's, **23:75**
 Progressive discipline
 amount of progressive discipline
 required, **23:74.50**
 final warning, **23:72**
 provocation by employer, **23:77**
 purpose of discipline, **23:72**
 requirement, **23:72**
 Qualifications, loss of/inability to obtain,
 23:104
 Refusal to work, **23:100**
 Relevant and mitigating factors, **23:70**
 Sexual harassment, **23:103**
 Sleeping on the job, **23:105**
 Social media postings, **23:110**
 Surreptitiously taping employer, **23:107**
 Theft, **23:90**
 Workplace atmosphere, **23:112**
 "Wrongful" vs. "unjust," **23:70**

KNOW-HOW

Generally, **18:4**

LATENESS

Just dismissal, cause for, **23:94**
 Termination, cause for, **11:34**

LAY-OFFS

Constructive dismissal, **10:46, 10:46.50**
 Pandemics, **10:46.50**
 Unjust dismissal, **23:15**

LIMITATION PERIODS

- Occupational health and safety prosecution, **32:4, 33:15**
- Unjust dismissal, **23:37**
- Work refusal, **31:11**

LIQUIDATED DAMAGES

- Generally, **6:74**

LOSS OF SERVICES

- See TORTS

MANAGERS, CANADA LABOUR CODE

- Generally, **23:20**
- Ability to work independently and minimal supervision, **23:28.60**
- Banking “exceptionalism,” **23:29.50**
- Belief, **23:21**
- Cheque writing and financial approval authority, **23:22**
- Close work with senior executives, **23:28.30**
- Conduit, mere, **23:26**
- Contract, **23:28**
- Contracting ability with third parties, **23:28.10**
- Decisions in matters of importance, **23:28.80**
- Evaluation and review of other employees, **23:28.20**
- Examples, **23:29, 23:31 to 23:34**
- Exception, onus and burden, **23:35.50**
- Firing, **23:20.90**
- Hiring, **23:20.90, 23:24**
- Job title, **23:23**
- Lack of supervision of other employees, **23:28.70**
- Manage, primary responsibility to, **23:20.80**
- Management chain, **23:25**
- Manager & Directeur v. Cadre, **23:20.50**
- Managerial functions, some, **23:28.50**
- Participating in management, **23:28.50**
- Policy decision making requirement, **23:20.70**
- Power of independent decision making, **23:28.40**
- Power to hire and fire, **23:20.90**
- Recommendation power, **23:27**
- Statutory exclusions, interpretation of, **23:20.15**

MATERNITY LEAVE, EFFECT OF

- Damages, **24:47**
- Mitigation, during, **12:34**
- Notice period
 - commencement of, **9:5**
 - length of, **9:68**

MENTAL DISABILITY

- Generally, **35:54**

MENTAL SUFFERING, INFLICTION OF

- See TORTS; WRONGFUL DISMISSAL, Damage claims

MISREPRESENTATION

- Fraudulent, **6:78**
- Just dismissal, cause for, **23:84**
- Negligent, **22:37, 22:40**
- Tort of, see TORTS

MITIGATION

- Canada Labour Code, duty under, **23:174**
- CERB deductibility and mitigation credit, **12:52**
- Criminal offence, effect of, **12:22**
- Employment Insurance income, **12:45**
- Equal or better income, opportunity to earn, **12:51**
- Expenses, **23:159, 24:54**
- Fixed term contracts and, **12:6**
- Improper interference with, **9:45**
- Income
 - during notice period, **12:33**
 - Employment Insurance, **12:45**
 - equal or better income, opportunity to earn, **12:51**
 - lower paying employment, **12:1.50**
 - part-time employment, **12:13**
 - supplementary, **12:44**
- Medical incapacity, **12:35.50**
- Sale of business, **12:31**
- Termination of contract and, **6:55**
- Wrongful dismissal context
 - burden of proof, **12:1**
 - changing careers, **12:14**
 - constructive dismissal and remaining with employer
 - fundamental breach context, **12:8**
 - impossible working conditions, **12:8**
 - Mifsud approach, **12:8**

INDEX

MITIGATION—Cont'd

Wrongful dismissal context—Cont'd
constructive dismissal and remaining
with employer—Cont'd
offer of continued employment
requirement, **12:9**
traditional view, **12:8**
contractual exception to duty, **12:7**
delay due to medical state, **12:35.50**
delay due to personal impact of dis-
missal, **12:5**
delay due to post-employment
recovery, **12:35**
disability during notice period, **12:28,**
12:29, 24:46
early trial, mitigation after, **12:25**
employer's misconduct, **12:19 to 12:21**
employment standards notice period,
12:40
extended notice period, **12:33**
failure by trial judge to find, effect of,
12:30
failure to apply to positions, **12:4.50**
evidence of, **12:50**
failure to mitigate, effect of, **12:23**
general principle, **12:1**
language difficulties, **12:37**
lower paying employment, **12:1.50**
maternity leave, **12:34**
medical assistance, duty to seek, **12:38**
medical incapacity, **12:35.50**
mental health, of employee, **11:79,**
12:35.50
new employment, higher paying, **12:26**
obligation to accept different kind of
work, **12:12**
obligation to move/commute, **12:15**
older employees, **12:36**
onus of proof, **12:24**
part-time employment, **12:13**
pension payments during notice period,
12:16
reasonable steps rule
changing careers, **12:1**
number of resumes sent, **12:1**
personal factors, **12:1**
principle re, **12:1**
remaining with employer, **12:10**
starting a business, **12:11**
stock options, **12:27**
subsequent dismissal for cause, **12:18**

MITIGATION—Cont'd

Wrongful dismissal context—Cont'd
training courses, **12:39**

MONITORING AND SURVEILLANCE

Generally, **10:39**

MUNICIPALITY

Duty to act fairly, **4:6**
Employer status, **4:6**

NEGLIGENCE

Criminal, see OCCUPATIONAL
HEALTH AND SAFETY
Employee, **23:98, 24:23 to 24:146,**
24:161
Misrepresentation, see MISREPRESEN-
TATION

NOTICE OF DISMISSAL

See REASONABLE NOTICE OF DIS-
MISSAL

NOTICE OF LIMITATIONS

See EMPLOYMENT CONTRACTS

OCCUPATIONAL HEALTH AND SAFETY

Appeal of orders, **32:6**
Appeals to labour board
defects in investigation process, **32:2**
federal board's narrow mandate, **32:2**
issue decided on, **32:2**
jurisdiction of board, **32:2**
onus of proof, **32:2**
procedure re, **32:2**
Arbitrators, remedial jurisdiction of, **32:3**
Breach of statute as tort, **27:4**
Canada Labour Code provisions, **25:2**
Co-existing common law and statute, **27:4**
Committees
See HEALTH AND SAFETY COM-
MITTEES
Construction safety, **25:2**
Constructors
defined, **26:2**
duties and rights, **26:9**
Contractor
defined, **26:2**
COVID-19, right to refuse work, **31:7**
Criminal negligence
Bill C-45
amended negligence provisions, **27:7**

OCCUPATIONAL HEALTH AND SAFETY—Cont'd

Criminal negligence—Cont'd
 Bill C-45—Cont'd
 probation orders, **27:11**
 proof of criminal negligence, **27:8**
 sentencing factors, **27:9**
 sentencing options, **27:10**
 summary of legislation, **27:6**
 indemnification, **28:3**
 liability, **27:5 to 27:12**
 sentencing, **27:9 to 27:11**

Directors and officers, corporate
 defined, **26:7**
 duties and rights, **26:7, 26:14**
 duty of care and skill, **27:7, 27:8, 27:13**
 fiduciary obligation, **27:13**
 indemnification, **28:3**
 liability, **27:7, 27:8, 27:13**
 standard of care, **27:7, 27:8, 27:13**
 U.S. jurisprudence, **27:13**

Downsizing staffing, **31:19**

Employees
 defined, **26:3**
 duties and rights, **26:10**
 report duty, **32:4**

Employers
 common law duties of
 generally, **27:1**
 employer's defences, **27:2**
 post-statutory, **27:3**
 pre-statutory, **27:2**
 defined, **26:1**
 duties and rights, **26:8**
 extent of liability, **27:3**
 independent contractor, liability for, **27:3**
 investigation duty, **32:4**
 safe workplace duty, **27:1**
 vicarious liability, **28:1**

Federal jurisdiction
 procedure for determining, **25:3**
 scope of, **25:3**
 subjects of, **25:3**

General statutes, **25:1**

Harassment, **31:17, 31:18**

Hazard-oriented statutes, **25:1**

Indemnification, **28:3**

Investigations, **32:4**

Labour board remedial powers, **32:3**

OCCUPATIONAL HEALTH AND SAFETY—Cont'd

Limitation periods
 investigation, during, **32:4**

Multi-personnel liability
 conflict of interest, **28:2**
 indemnification, **28:3**
 supervisor/employee liability, **28:1**

Owners
 defined, **26:4**
 duties and rights, **26:11**

Project
 defined, **26:2**

Prosecution, see PROSECUTION

Racism, **31:17**

Right to refuse work, see RIGHT TO REFUSE WORK

Safety officers
 investigation by, **32:4**
 orders by, **32:5**
 powers of
 generally, **32:1**
 compelling production of documents, **32:1**
 directions to employers, **32:1**
 imposition of additional requirements, **32:1**
 recommendation of prosecution by, **32:1**
 review of direction vs. appeal, **32:1**
 scope of investigating powers, **32:4**
 suspension of, **32:6**

Sectoral statutes, **25:1**

Shipping, **25:3**

Strategies to reduce liability, **34:1**

Supervisors
 "competent person," as, **28:1**
 defined, **26:5, 28:1**
 duties and rights, **26:12**

Suppliers
 defined, **26:6**
 duties and rights, **26:13**

Suspension of orders, **32:6**

Transportation
 jurisdiction, **25:3**

Types of statutes, **25:1**

Vicarious liability, **28:1**

Violence in workplace, **31:16, 31:18**

OCCUPATIONAL HEALTH AND SAFETY—Cont'd

WHMIS

See **WORKPLACE HAZARDOUS MATERIALS INFORMATION SYSTEM (WHMIS)**

Worker

defined, **26:1, 26:3**

OFFICERS, CORPORATE

See **DIRECTORS, CORPORATE**

OPPRESSION REMEDY

See **EMPLOYMENT CONTRACTS**

OVERTIME

See **REMUNERATION**

PANDEMICS

Disability, discrimination on basis of, **35:138**

Duty to accommodate, **35:138**
social context, **35:138**

Family status, discrimination on basis of, **35:138**

Human rights in employment impact on, **35:138**

Mandatory vaccination policies, **35:138**
disability, discrimination on basis of, **35:138**

religion or creed, discrimination on basis of, **35:138**

Mask policies, **35:138**

disability, discrimination on basis of, **35:138**

religion or creed, discrimination on basis of, **35:138**

PARTNERSHIPS

Dissolution, **7:28**

Employee status, **3:9**

PERFORMANCE, DUTY OF HONEST

See **EMPLOYMENT CONTRACTS**

PERSONAL SERVICE CORPORATIONS

Employee status, **3:15**

PREGNANCY, DISCRIMINATION BECAUSE OF

Generally, **35:85**

PRISONERS

Employment status of, **3:18**

PRISONERS—Cont'd

Status as just cause for dismissal, **11:31, 23:95**

PRIVACY

Breach of employee's, **10:39**

COVID-19 testing policies, **35:138**

Invasion of, **20:1**

Vaccine mandates, **35:138**

PROFESSIONAL

Dues as wrongful dismissal claim, **24:39**

Employer, **7:10**

Fiduciary, as, **13:5, 13:21**

Loss of status as frustration of contract, **6:15**

Table of reasonable notice, **9:93**

PROMOTION

Constructive dismissal and, **10:21 to 10:23**

PROSECUTION

Generally, **33:1**

Defences, see **DEFENCES TO PROSECUTION**

Expert witnesses, **12:43**

Offences, **33:1**

Ontario Provincial Offences Act
process under, **33:2 to 33:17**
stay of proceedings, **33:8**
technical amendments, **33:4**

Penalties, **33:1**

Process, **33:2**

Sentencing, see **SENTENCING**

QUANTUM MERUIT CLAIM

Generally, **24:164**

QUASI-CRIMINAL OFFENCES

Generally, **33:18**

RACIAL DISCRIMINATION

See **DISCRIMINATION**

RCMP MEMBERS

Remedies for, **4:9**

REASONABLE NOTICE OF DISMISSAL

Bonus, calculation of, **24:29**

Calculation of, **9:7**

“Clear and unambiguous” requirement, **9:2**

**REASONABLE NOTICE OF
DISMISSAL—Cont'd**

Commencement of, **9:2**
 maternity leave, effect of, **9:5**
 Contractual displacement of, **6:53**
 Determination of, **9:6**
 Educators, **9:81**
 Employee's belief as to, **9:12**
 Employer's obligation re, **9:6**
 Grid theory, **9:10**
 Illegal, void or unenforceable
 contractual restriction, **9:82**
 notice limitations, **6:45**
 Investing in the employer, **9:59**
 "Moral" damages, **9:104**
 New employment, obtaining and, **9:13**
 Notice period
 contract of employment and, **9:6**
 duty of good faith during, **15:2**
 maximum, **9:8**
 over one year, **9:6, 9:8**
 pay period and, **9:11**
 range of, **9:6**
 reduction of due to new employment,
9:6
 Notice vs. pay in lieu of, **9:14**
 "Objective/subjective" test of commence-
 ment, **9:2**
 Over two years, **9:9, 9:108**
 Purpose of, **9:6**
 Retirement notice, **9:66**
 Schools, **9:81**
 Small communities, **9:86**
 Stock options, **24:32**
 Table of
 See TABLE OF REASONABLE
 NOTICE
 Theory of notice
 contractual intention, **9:1**
 custom and usage vs. policy, **9:1**
 implied intention, **9:1, 9:30**
 origins of, **9:1**
 public policy approach, **9:1**
 timing of assessment of notice, **9:7.50**
 Variables affecting length
 generally, **9:6**
 age, **9:20, 9:65**
 amalgamation, **9:52.50**
 apprenticeship, loss of, **9:44**
 "ball park justice," **9:53**

**REASONABLE NOTICE OF
DISMISSAL—Cont'd**

Variables affecting length—Cont'd
 break in service, **9:21**
 character of employment, **9:32**
 clerical vs. management, **9:32**
 collective agreement covering other
 employees, **9:87**
 comments to third parties adversely
 affecting job search, **9:41**
 common employer, **9:49**
 compensation, **9:34, 9:85**
 conduct of employee, **9:52**
 direct reports, **9:35.75**
 disability, effect of, **9:46**
 early retirement, proximity to, **9:87**
 economic downturn, **9:25**
 employee position in management
 structure, **9:32**
 employee's family situation and
 inability to relocate, **9:26**
 employee's unilateral life plan, **9:58**
 employer compliance with implied duty
 of good faith and fair dealing,
9:79
 employment opportunities, lack of,
9:22
 equity and equity participation possibil-
 ity, **9:36**
 expectation of secure employment,
9:29
 experience, employee's, **9:49**
 failed employer, **9:63**
 family circumstances, **9:87**
 fixed term contract, lapse of, **9:35**
 formal education and skills limited,
9:62
 future re-employment, prospects for,
9:43
 gender, **9:92.50**
 health of employee, **9:22, 9:51**
 hiring to use employee's contacts, **9:72**
 immigration status, **9:77**
 importance to employer's operations,
9:70
 improper cause allegations, **9:38**
 inadequate performance allegations,
9:38
 independent contractor service preced-
 ing employment, **9:18**

**REASONABLE NOTICE OF
DISMISSAL—Cont'd**

Variables affecting length—Cont'd
 inducement to leave previous employment, **9:28**
 industry custom, **9:55**
 investment advisors and books of business, **9:75**
 job applications prior to dismissal, **9:92.70**
 lack of fluency in English, **9:73**
 length of service, **9:16**
 amalgamation, **9:52.50**
 lifelong employee, **9:40.50**
 length of service in same field, **9:74**
 length of unemployment, **9:24**
 lifelong employee, **9:40.50**
 managerial employee, **9:32**
 manner of dismissal, **9:40**
 maternity leave, **9:68**
 miscellaneous factors, **9:87**
 mitigation, improper interference with, **9:45**
 new employment with purchase of operation, **9:80**
 pandemics and epidemics, **9:26.50**
 part-time service, **9:30**
 pregnancy, **9:68**
 previous service, **9:50.50**
 probation, dismissal while on, **9:87, 23:71.50**
 probationary status, **9:83, 23:71.50**
 promise of extraordinary security, **9:29, 9:56**
 proximity to major benefit, **9:67**
 rank, **9:30**
 reasonable offer doctrine, **9:53**
 recession economy, **9:22, 9:54**
 references, failure to provide, **9:42**
 relocation, **9:69**
 remuneration packages, high, **9:22**
 restraints of trade, **9:64**
 retirement
 retirement age, **9:65**
 retirement plan, **9:84**
 salesperson with built-up client bases, **9:76**
 short-term service, **9:17**
 single employer, **9:37, 9:40.50**
 size of employer, **9:71**

**REASONABLE NOTICE OF
DISMISSAL—Cont'd**

Variables affecting length—Cont'd
 specialists, **9:27**
 specialized field, **9:23**
 subordinates, responsibility for, **9:36**
 successor employer, **9:48**
 third party allegations, **9:39**
 Wallace damages after Keays, moral damages, **9:104**
 conduct warranting aggravated damages, **24:79 to 24:106.50**
 examples, **24:78**
 infliction of mental suffering and, **24:112, 24:112.50**
 pre-existing conditions and, **24:113**
 thin skull employees, **24:77.50**

**REASONABLE NOTICE OF
RESIGNATION**

Generally, **8:5**
 Table of Reasonable Notice of Resignation, **8:6**

REFUSAL OF WORK

See RIGHT TO REFUSE WORK

RELEASES

Enforceability of, **24:227**
 Unjust dismissal and, **23:38**

**RELIGIOUS OR CREED
DISCRIMINATION**

Adverse effect discrimination, **35:75**
 BFORQ defence, **35:74**
 COVID-19, **35:138**
 Direct discrimination, **35:74**
 Duty to accommodate, **35:76, 35:138**
 Mask-wearing policy, **35:138**
 Sincerely held belief threshold, **35:73**
 Statutory provisions, **35:72**
 Vaccination policy, **35:138**

REMEDIES

Accord and satisfaction, **24:228**
 Bonus, **24:29**
 pro-rated, **24:31**
 Breach of Charter right, for, **2:19, 24:169**
 Breach of confidence, **18:8, 24:157**
 Breach of duty of good faith, for, **24:156**
 Breach of restrictive covenant, for, **24:157**
 Canada Labour Code, under, see CAN-
 ADA LABOUR CODE

REMEDIES—Cont'd

- Charter remedy, **2:19**
- Choice of law, **24:231**
- Class action, **24:233**
- Commissions, **24:25**
 - assessing future notice of, **24:26**
 - beyond reasonable notice, **24:150**
 - employee's action for, **24:149**
- Costs
 - complex hard-fought litigation, **24:220.50**
 - importance of proceeding to employee, **24:220.40**
 - in relation to punitive and aggravated/moral damages awarded, **24:220.30**
 - litigation misconduct, **24:188.50**
 - solicitor and client, **24:218, 24:220.70**
 - solicitor client/full indemnity costs, **24:220.70**
 - successful employer being denied or having to pay costs, **24:188.50**
- Declaratory relief, **24:230**
- Employee negligence and disobedience, **24:161**
- Employee's failure to provide reasonable notice, for, **24:159**
- Employment standards, enforcement of, **24:180**
- Excessive draws, employer's action for, **24:148**
- Fiduciary obligations breach of
 - accounting for profits vs. indemnity for damages, **24:153**
- Forum, **24:232**
- Human rights complaints, see HUMAN RIGHTS COMPLAINTS; HUMAN RIGHTS REMEDIES
 - action based on Code, **24:171 to 24:175**
 - common law actions and, **24:172, 24:177**
 - stay of proceedings and, **24:170**
- Indemnification, employee's right to, **24:162**
- Injunctions
 - Anton Piller order, **24:18**
 - other injunctions without notice, **24:19**
 - balance of convenience
 - public interest in fair competition, **24:8**

REMEDIES—Cont'd

- Injunctions—Cont'd
 - balance of convenience—Cont'd
 - size of employer's organization, **24:8**
 - special considerations, **24:8**
 - test, **24:8.50**
 - Charter consistency, **24:21**
 - clean hands requirement, **24:14**
 - contractual agreement re injunction and irreparable harm, **24:11**
 - contractual relations with third parties, **24:9**
 - delay, **24:12**
 - discretionary nature of, **24:1**
 - Doherty v. Allman, rule in, **24:16**
 - employment agreement, **24:11**
 - exceptional circumstances requirement, **24:1**
 - irreparable harm
 - application by employee, **24:7**
 - application by employer
 - evidence requirement, **24:6**
 - loss of market share, **24:6**
 - undertaking as to damages, **24:6**
 - laches, defence of, **24:12**
 - mandatory orders, **24:20**
 - threshold test, **24:5.50**
 - onus of justifying, **24:1**
 - premature application, **24:15**
 - status quo, **24:10**
 - subject of, **24:17**
 - threshold tests
 - breach of confidence cases, **24:5**
 - fair question to be tried as to a right, **24:2**
 - fiduciary cases, **24:4**
 - mandatory orders, **24:5.50**
 - prima facie case, **24:2**
 - restrictive covenant cases, **24:3**
 - serious question to be tried, **24:2**
 - undertaking for damages, **24:13**
- Issue estoppel, **24:178**
- "Lieu time," employee's action for, **24:151**
- Litigation misconduct, **24:188.50**
- Maintenance of harsh and unwarranted cause allegations, **24:218.70**
- Notice to Canada Revenue Agency, **24:226**
- Oppression remedy, **6:76, 24:168**

REMEDIES—Cont'd

- Ordering of employer to correct records, **24:167**
- Probable hardship, **24:218.50**
- Profit sharing, **24:29**
- Profit sharing during notice period, **24:30**
- Profit sharing to termination date, entitlement to, **24:165**
- Pro-rated bonus during notice period, **24:30**
- Pro-rated bonuses, entitlement to, **24:165**
- Public termination, **24:218.30**
- Punitive damages
 - against employees, **24:217**
 - against employers, **22:27, 24:140.30, 24:182, 24:183, 24:218.30, 24:218.50, 24:218.70**
 - table of quantum of, **24:201**
 - conduct warranting, **24:205, 24:218.30, 24:218.50, 24:218.70**
 - costs in relation to punitive and aggravated/moral damages awards, **24:220.30**
 - duty of honest performance and punitive damages, **24:185**
 - employee confidential information, improper use of, **24:218.45**
 - employee's privacy, breach of, **24:218.45**
 - litigation misconduct, **24:188.50**
 - mutual duty of trust and confidence, **24:186**
 - purpose of, **24:181**
 - quantum of, **24:187**
 - factors considered, **24:188**
 - table of, **24:201**
 - violations of human rights legislation, **24:218.35**
- Quantum meruit claim, **24:164**
- Reinstatement, **23:131, 23:132 to 23:135, 23:136.50, 23:137, 23:138 to 23:142, 24:166**
 - grounds for denying, **23:132.10**
- Releases, enforceability of, **24:227**
- Settlement
 - on basis of unilateral mistake, **24:229.50**
 - setting aside settlement agreement, **6:80.50**
- Specific performance, **24:166**
- Stock options, **24:32**

REMEDIES—Cont'd

- Trade secrets, misuse of, **18:8, 24:158**
- Unjust enrichment claim, **24:164**
- Unpaid wages, action for, **24:163**
- Vacation time, action for accumulated, **24:152**
- Wrongful dismissal, see **WRONGFUL DISMISSAL**
- Wrongful resignation, for, **24:159**

REMUNERATION

- Bonus
 - Canada Labour Code remedies, **23:156**
 - pro-rated, **24:165**
 - removal of and constructive dismissal, **10:53**
 - wrongful dismissal damage claim, **22:29, 24:29**
- Change in and constructive dismissal, **10:53**
- Notice of dismissal and, **9:22**
- Overtime
 - failure to pay, **10:53**
 - wrongful dismissal damage claim, **24:35**
- Refusal to work, during, **31:13**
- Salary, **24:34**
- Wrongful dismissal damage claim, **22:29**

RESIGNATION

- Deemed by contract, **6:52**
- Deemed through litigation, **8:2**
- Demand for, **10:45**
- Dismissal vs., **23:13**
- Fiduciary obligations after, **13:24**
- Resign or dismissal ultimatum, **10:45.50**
- Revocation of, **8:3**
- Test of, **8:1**
- Ultimatum, **10:45.50**
- Wrongful, **8:4, 15:3**
 - damages resulting from, **24:159**

RES JUDICATA

- See **DEFENCES TO PROSECUTION**,

RESTRAINT OF TRADE

- Agreements between employers, **7:24**
- Ambiguity, **7:21**
- Breach of contract by employer, **7:28**
- Certainty requirement, **7:21**
- Contractual labels, **7:3**
- Employee covenants, assignment of, **7:7**

RESTRAINT OF TRADE—Cont'd

- Employment relationship, during, **7:30**
- Employment vs. commercial context, **7:1 to 7:7**
- Employment vs. sale of business, **7:4**
- Functionalist vs. formalist approach, **7:2**
- Non-competition covenant, **7:1 to 7:7**
- Non-solicitation, **7:18**
- Partnership dissolution, **7:28**
- Partnerships and, **7:5**
- Proprietary interests
 - generally, **7:8**
 - confidential information, **7:9**
 - employee skill and experience, **7:11**
 - evolving proprietary interest, **7:11.50**
 - existence of, **7:10**
 - professional employers, **7:10**
 - trade connections, **7:10**
 - trade secrets, **7:9**
- Public interest aspects, **7:22**
- Public policy re, **7:1 to 7:7**
- Reasonableness
 - generally, **7:12**
 - agreement by employee, **7:14**
 - belief, **7:15**
 - certainty and vagueness of restraint, **7:21**
 - meritorious nature of employer, **9:78**
 - non-profit employer, **9:78**
 - onus of proving, **7:12**
 - public interest and, **7:22**
 - quantum of consideration, **7:25**
 - subject-matter of restraint, **7:18 to 7:20**
 - temporal restraint, **7:17**
 - territorial restraint, **7:16**
 - evolving proprietary interest, **7:11.50**
 - timing of determination, **7:13**
- Repudiation of contract by employee, **7:29**
- Restrictive covenants
 - generally, **7:1 to 7:7**
 - change of position, same employer, **7:27**
 - consideration requirement, **7:26**
 - damages for breach of, **7:34, 24:157**
 - dependent contractors, **7:6**
 - drafting, **7:12**
 - enforcement of, **7:1 to 7:7**
 - fairness of, **7:25**
 - independent contractors, **7:6**

RESTRAINT OF TRADE—Cont'd

- Restrictive covenants—Cont'd
 - invalid, **7:33**
 - reasonableness, modern test of, **7:1 to 7:7**
 - unilateral repudiation of contract and, **7:1 to 7:7**
- Severability of covenants, **7:31**
- Shareholders and, **7:5**
- Subject-matter of restraint, reasonableness of, **7:18; 7:19, 7:20**
- Temporal restraints, **7:17**
- Territorial restraint
 - competition vs. solicitation, **7:16**
 - definition of, **7:16**
 - geographical range, **7:16**
 - evolving proprietary interest, **7:11.50**
- True character of restraint, **7:3**
- Vagueness, **7:21**
- Vendor/purchaser context, **7:1 to 7:7**

RESTRICTIVE COVENANTS

See **RESTRAINT OF TRADE**

RETALIATION OR REPRISAL

- Human rights complaint, for, **35:11**
- Work refusal and, see **RIGHT TO REFUSE WORK**

RETIREMENT, NOTICE

See **REASONABLE NOTICE OF DISMISSAL**

RIGHT TO REFUSE WORK

- Acting in accordance with statute, **31:10**
- Burden of proof, **31:10**
- Common law, under
 - codification of, **31:2**
 - employee's assessment of danger, **31:2**
 - employer's unlawful orders, **31:2**
- Communication of refusal, **31:9, 31:10**
- COVID-19, right to refuse work, **31:7**
- Danger
 - employee's assessment of, **31:2**
 - investigation of, **31:10**
 - statutory, see **Statutory**
- Exclusions, **31:8**
- Honest belief, **31:12**
- Insubordination, law of, **31:2**
- Investigation of danger, **31:10**
- Justification criteria, **31:10**
- Normal condition of employment, **31:5**

RIGHT TO REFUSE WORK—Cont'd

- Procedures on refusing work
 - forum, choice of, **31:11**
 - hearing by board, **31:15**
 - limitation periods, **31:11**
 - overview of, **31:1**
 - refusal, **31:12**
 - review procedure, **31:12**
 - Summary 7 work refusals, **31:15**
 - temporary reassignment, **31:12**
- Reasonable cause, **31:6 to 31:7**
 - factors determining, **31:6 to 31:7**
 - subjective vs. objective, **31:6 to 31:7**
- Remuneration during, **31:13**
- Reporting to supervisor, **31:12**
- Reprisal actions
 - defence against, **31:10**
 - discharge, **31:9**
 - discipline, **31:9**
 - grounds for, **31:9**
 - presumption re, **31:9**
- Safety officer
 - rejection of complaint, **31:12**
- Safety rules and equipment, use of, **31:10**
- Statutory
 - danger
 - definition, revised, **31:14**
 - duty to report, **31:3**
 - employee error re, **31:3**
 - “imminent,” **31:3, 31:14**
 - “individual susceptibility” test, **31:3**
 - meaning of, **31:3, 31:14**
 - objective criteria of, **31:3**
 - prospective aspect, **31:14**
 - reasonable belief of, **31:3**
 - remote possibility of, **31:3**
 - violence, fear of, **31:3**
 - Ulterior motive for, **31:10**
 - Workplace, meaning of, **31:4**

SAFETY OFFICER

- See OCCUPATIONAL HEALTH AND SAFETY

SENTENCING

- Alternative measures, **8:8**
- Deterrence, **33:21**
- Environmental offences, for, **33:24**
- Factors to be considered, **33:21**
- Fines, **33:22, 33:25**
- proportionality, **33:23**

SENTENCING—Cont'd

- Imprisonment, **33:26**
- Ontario Provincial Offences Act, under, **33:24**
- Protection of public, **33:21**
- Public welfare statutes and, **33:21**
- Purpose of, **33:21**

SETTLEMENTS

- Generally, **24:228**
- Confidentiality of communications relating to, **23:61.50**

SEX DISCRIMINATION

- BFORQ defence, **35:84**
- Pregnancy, **35:85**
- Statutory provisions re, **35:82**
- Systemic discrimination, **35:83**

SEXUAL HARASSMENT

- Cause for termination, as, **11:51**
- Course of unwelcome conduct, **35:90**
- Examples of, **35:87**
- Human rights, and, **35:9**
- No obligation to object on victim, **35:92**
- Perpetrator ought to know conduct unwelcome, **35:92**
- Place of, **35:92**
- Poisoned work environment, **35:88**
- Quid pro quo, **35:88**
- Sexual component requirement, **35:89**
- Statutory provisions re, **35:86**
- Test, **35:87**
- Tort, as, see TORTS
- Vexatious conduct, **35:91**

SEXUAL ORIENTATION DISCRIMINATION

- Benefit plans and, **35:99**
- Employment discrimination and, **35:97**
- Sexual orientation, meaning of, **35:94**
- Spousal status and benefit plans, **35:99**
- Statutory provisions re, **35:93**

SEXUAL ORIENTATION HARASSMENT

- Generally, **35:98**

SHAREHOLDERS

- Employee status, **3:12**
- Restrictive covenants, and, **7:5**

SKILL, IMPLIED DUTY OF

- Generally, **14:1, 27:13**

SPECIFIC PERFORMANCE

Generally, **24:166**

STATUTE OF FRAUDS

Employment contracts and, **5:1, 6:77**

STRIKES

Frustration of contract, as, **6:17**

SUPERVISORS

See OCCUPATIONAL HEALTH AND SAFETY

SYSTEMIC DISCRIMINATION

Generally, **35:22, 35:83, 35:120**

TABLE OF REASONABLE NOTICE

Breach of good faith duty, effect of, **9:103**

Dependent contractors, **9:105**

Education sector, **9:97**

Effect of inducement, **9:101**

Executive, **9:89**

Financial sector, **9:94**

Inducement, effect of, **9:101**

Intermediate category, **9:105**

Managerial, **9:91**

Non-skilled clerical, **9:100**

Notice greater than 24 months, **9:108**

Older employees, **9:107**

Professionals, **9:93**

Resignation, **8:6**

Salespersons, **9:99**

Short service employee, **9:106**

Skilled, **9:95**

Supervisory, **9:97**

Upper managerial, **9:90**

TERMINATION

See also DISMISSAL

Cause, for

absenteeism, **11:34**

accepting employment with new employer, **11:82**

alteration of grounds, **11:70**

applying for other employment, **11:56**

assault, **11:52**

bank employees, **11:81**

breach of employer's policy, **11:36, 11:38**

bribes, **11:19**

burden of proof, **23:72.50**

carelessness, **11:20**

case building, **11:29**

TERMINATION—Cont'd

Cause, for—Cont'd

cohabitation, **11:63**

commencement of action, **11:55**

communication through legal counsel, **11:54**

competition with employer, planning, **11:83**

condonation, **11:13, 11:14, 11:20**

conduct after dismissal, **11:69**

conduct after giving notice, **11:68**

conduct incompatible with faithful service, **11:22**

confidence, breach of, **11:48**

conflict of interest

objective requirement, **11:18**

post-employment preparation, **11:18**

potential, **11:18**

constructive dismissal, conduct after, **11:67**

contemporary social values and, **11:1**

contextual and proportional approach, **11:3, 23:71.10**

contracts and policies of employer, **23:71.10**

criminal acquittal, **11:50**

cumulating incident doctrine, **11:13**

dangerous activities, **11:53**

discipline, progressive, **23:74.50**

discipline and dismissal policy,

employer's failure to follow, **11:84**

discipline of others for similar conduct, **11:62**

disclosure of information, failure, **11:59**

dishonesty, **11:43, 11:46**

dissatisfaction as, **11:1**

drugs in workplace, **11:42**

duty to report misconduct, **11:60**

duty to warn

incompetence, **11:9**

performance problem, **11:9**

writing requirement, **11:9**

e-mail misuse, **11:38**

employment record and, **11:1**

evolving social attitudes, **11:2**

expression of dissatisfaction by employee, **11:26**

failure to disclose, **11:59**

fraud, **11:47**

grounds, alteration of for, **11:70**

habitual neglect of duty, **11:23**

INDEX

TERMINATION—Cont'd

Cause, for—Cont'd

- hearing requirement, common law, **11:11**
- incompetence, **11:20**
- inefficiency as, **11:1**
- insolence, **11:25**
- insubordination
 - “anticipatory,” **11:17**
 - examples of, **11:15**
 - reasonable explanation for, **11:15**
 - single act, **11:15**
 - test re, **11:15**
- Internet policy, breach of, **11:38**
- intoxication, **11:41**
- kickbacks, **11:19**
- lateness, **11:34**
- loss of confidence, **11:28**
- lying to employer during investigation, **11:44**
- marriage to co-worker, **11:63**
- misconduct and mental state, **11:1**
- mitigating factors, **11:72**
- nature of position and employer as variable, **11:80**
- objective assessment of, **11:1**
- off-duty conduct, **11:30**
- onus of proof, **11:1, 11:7, 23:72.50**
- other disciplinary measures, duty to consider, **11:3.50**
- pending criminal charges, **11:33**
- personality problem, **11:35**
- pornography, **11:38**
- prison and incarceration, **11:31**
- privacy, breach of, **11:48**
- probationary employees, **11:65, 23:71.50**
- progressive discipline, **23:74.50**
- proportionality and contextual approach, **11:3, 23:71.10**
- reasonableness of, **11:1**
- reasons, common duty to give, **11:10**
- refusal to move or relocate, **11:16**
- reporting structure, not following, **11:57**
- revelation of character, **11:27**
- sexual harassment, **11:51**
- standard of proof, **11:8**
- test for, **11:1**
- theft, **11:47**

TERMINATION—Cont'd

Cause, for—Cont'd

- unauthorized trading, **11:37**
- unsubstantiated allegations by third party, **11:32**
- violence, **11:53**
- Common law vs. statutory standard, **11:6**
- Disciplinary probation or “PIP,” **11:66**
- Employee, by
 - abandonment, **8:7**
 - reasonable notice requirement, **8:1**
 - dismissal following, **8:10**
 - resignation
 - intention re, **8:1**
 - revocation of, **8:3**
 - test of, **8:1**
 - wrongful, **8:4**
- Employer’s right to dismiss, **8:8**
 - after notice from employee, **8:10**
 - mitigating factors, **11:72**
- Pre-employment, **8:8**
- Reasonable notice
 - contractual displacement, see REASONABLE NOTICE OF DISMISSAL
- Repudiation of contract, **8:8**
 - vs. dismissal for misconduct, **8:11**
- Strict construction of contractual term re, **6:68**
- Termination after certification, but prior to collective agreement, **5:13**

TERMINATION CLAUSE

- Failure to comply with, **6:69**
- Sophisticated employees and employees with counsel, **6:26.50**

THEFT

- Just dismissal, cause for, **23:90**
- Termination, cause for, **11:47**
- Vicarious liability for, **22:3**

TORTS

- Admissions of former employee, **22:23**
- Borrowed employee
 - burden on general employer, **22:21**
 - control test, **22:21**
 - multi-employer situation, **22:22**
 - partnerships, **22:22**
- Clergy, tort liability of, **22:35**
- Collective agreements and, **5:7**
- Common employment, doctrine of, **22:26**

TORTS—Cont'd

- Conspiracy, **22:57**
- Contract and, **22:82**
- Damages, **22:60, 22:61**
- Defamation, **22:46**
 - defamatory statements to parties outside workplace relationship, **5:8**
 - express malice, **22:46**
 - qualified privilege, defence of, **22:46**
 - special damages, proof of, **22:46**
- Developing causes of action
 - bad faith as contractual action, **22:77**
 - bad faith as tort
 - application of policies to bad faith, **22:76**
 - claims against insurers in U.S., **22:74**
 - general reflections, **22:78**
 - policies of tort law, **22:75**
 - bad faith discharge
 - Canadian model re generally, **22:69**
 - Canada Labour Code, **22:72**
 - contractual discretion, judicial controls on, **22:70**
 - labour relations, **22:73**
 - modern social policy, **22:72**
 - procedural fairness, **22:71**
 - justification of, **22:67**
 - wrongful dismissal law deficiencies, **22:68**
 - employer's duty of care
 - duty to act humanely, **22:79**
 - employee's career, re, **22:79**
 - invasion of privacy, **22:81**
 - retaliatory discharge, **22:80**
- Employee, tort liability of, **22:35**
- Employee negligence and employer, **22:34, 24:161**
- Employee negligence and third parties, **22:29 to 22:33**
 - contractual modification of tort responsibilities, **22:33**
 - duty of care, **22:29**
 - limitation/exclusion of liability contracts
 - application in employment context, **22:31**
 - historical background, **22:30**
 - jus tertii principle, **22:30, 22:32**

TORTS—Cont'd

- Employee negligence and third parties, **22:29 to 22:33—Cont'd**
 - limitation/exclusion of liability contracts—Cont'd
 - privity of contract, relaxation of, **22:32**
 - misstatements, **22:29**
 - performance of essence of contract, during, **22:29**
 - reasonable foreseeability test, **22:29**
 - third party claims, **22:29**
- Employee retention, direction and discipline, employer's duty re, **22:64**
- Employee safety, employer's duty re, **22:62**
- Employer's indemnification, **22:24**
- Harassment, **22:65**
- Hiring, employer's obligations re, **22:63**
- Hospital liability
 - Canadian approach
 - doctors, **22:18**
 - locums, **22:20**
 - nurses and other employees, **22:19**
 - traditional approach, **22:17**
- Human rights complaints, **35:133**
- Inducement of breach of contract
 - generally, **22:50**
 - constituent elements, **22:50**
 - damages for, **22:55**
 - employee's action, as
 - "acting bona fide within the scope," **22:53**
 - appropriate circumstances, **22:53**
 - employer's action, **22:54**
 - negligent inducement of breach of contract, **22:51**
 - unlawful interference with economic relations, **22:52**
 - damages for, **22:56**
- Infliction of mental suffering, **22:58, 24:112.50**
 - and Wallace/moral damages, **24:112**
 - causation, principles of, **24:112.50**
- Intentional infliction of mental suffering and shock, damages for, **22:60**
 - causation, principles of, **24:112.50**
- Interference with economic relations, **22:50 to 22:56**
- Intimidation, **22:49**
- Libel, see Defamation

TORTS—Cont'd

- Loss of services (per quod servitium amisit), **22:48**
 - damages, limitation of, **22:48**
 - menial or familiar character restriction, **22:48**
- Negligent infliction of emotional distress, mental suffering, nervous shock, **22:59**
- Negligent infliction of mental suffering and shock, damages for, **22:60**
 - causation, principles of, **24:112.50**
- Negligent misrepresentation
 - constituent elements of, **22:36**
 - contributory negligence, **22:43**
 - damages, **22:40**
 - detrimental reliance, **22:40**
 - duty of care, **22:37**
 - future occurrences, **22:39**
 - Hedley, Byrne case, **22:36**
 - inaccuracy requirement, **22:39**
 - negligent referencing, **22:45**
 - policy reasons for not imposing attributing liability, **22:41**
 - reasonable person standard, **22:38**
 - reasonable reliance, **22:42**
 - standard of care, **22:38**
 - valid disclaimer, **22:37**
- Officers and directors, tort liability of, **22:35**
- Sexual harassment, **22:66**
- Slander, see Defamation
- Superior employees, **22:26**
- Unfair representation claims jurisdiction, **5:12**
- Vicarious liability
 - agents, **22:28**
 - borrowed employee, for, see Borrowed employee
 - course of employment
 - act intended to benefit employer, **22:3**
 - dishonest acts, **22:3, 22:10**
 - examples of torts within, **22:4**
 - examples of torts without, **22:5**
 - fraud, **22:3, 22:10**
 - frolic and detour, **22:15**
 - intentional acts unauthorized by employer, **22:7**
 - arson, **22:11**
 - assaults, **22:8**

TORTS—Cont'd

- Vicarious liability—Cont'd
 - course of employment—Cont'd
 - intentional acts unauthorized by employer, **22:7—Cont'd**
 - defamation, **22:12**
 - fraud and dishonesty, **22:10**
 - negligent/intentional infliction of mental suffering, **22:13**
 - sexual assaults, **22:9**
 - intentional torts, **22:6**
 - meaning of, **22:3**
 - non-profit organizations, **22:16**
 - ostensible authority, **22:3**
 - prohibited conduct, **22:14**
 - thefts, **22:3**
- employment relationship requirement, **22:1**
- historical roots of doctrine, **22:1**
- hospitals, see Hospital liability
- independent contractors, **22:28**
- original liability, contrasted with, **22:1**
- punitive damages and, **22:27**
- rationale for
 - control theory (respondeat superior), **22:2**
 - identification theory (qui facit per alium facit per se), **22:2**
 - loss distribution theory, **22:2**

TRADE SECRETS

- Breach of confidence, **18:4**
- Fiduciary obligations, **13:21**
- Post-employment duty of good faith, **15:5, 15:9**
- Remedy for misuse of, **18:8, 24:158**
- Restraint of trade, **7:9**

TRUST

- Destruction of, **10:40**
- Mutual duty of, **6:9, 24:186**

UNDUE HARDSHIP.

- See ACCOMMODATE, DUTY TO

UNJUST DISMISSAL

- Bad faith discharge, **22:72**
- Common law approach vs., **23:1**
- Interpretation by adjudicators, **23:1**
- Introduction of, **23:1**

UNJUST DISMISSAL—Cont'd

- Jurisdictional requirements
 - collective agreement, existence of, **23:35**
 - constitutional jurisdiction, **23:43**
 - constructive dismissal, **23:11, 23:37**
 - contractual limitations, **23:39**
 - dismissal, **23:10**
 - employee status
 - commission compensation, **23:6**
 - common law tests, use of, **23:6**
 - deceased employee, **23:42**
 - owning own tools, **23:6**
 - employer
 - band council as, **23:8**
 - establishing, **23:8**
 - under federal jurisdiction, **23:6**
 - exclusion clauses, **23:39**
 - fixed-term contract, non-renewal of, **23:14**
 - lay-offs
 - arbitrary and unreasonable, **23:15**
 - contracting-out work, **23:15**
 - discontinuance of function, **23:15**
 - disguised dismissal, **23:15**
 - downsizing, **23:15**
 - economic necessity, **23:15**
 - limitation periods, **23:37**
 - managers, interpretation of exception re banking “exceptionalism,” **23:29.50**
 - decision-making autonomy test, **23:20**
 - examples, **23:29, 23:31 to 23:34**
 - exemptions, **23:29, 23:31 to 23:33**
 - hierarchy importance test, **23:20**
 - narrow interpretation, **23:20**
 - statutory term, **23:20**
 - superintendent vs. manager, **23:20**
 - temporary position, **23:20**
 - no other redress, **23:9**
 - release, execution of, **23:38**
 - resignation vs. dismissal, **23:13**
 - twelve consecutive months requirement, **23:36**
 - withdrawal of services, **23:13**
- Jurisdiction of inspector, **23:45**
- Managerial exception, interpretation of, **23:2, 23:20, 23:20.15, 23:20.80, 23:20.90, 23:29.50**
- Policy behind, **23:1**

UNJUST DISMISSAL—Cont'd

- Procedure
 - adjournments, **23:68**
 - alteration of grounds, **23:65**
 - burden of proof, **23:64**
 - discovery, **23:53 to 23:54**
 - evidence, **23:60 to 23:62**
 - hearing by video conference, **23:69**
 - hearing location, **23:67**
 - in camera proceedings, **23:55**
 - natural justice, rules of, **23:66**
 - new allegations, **23:65**
 - onus of proof, **23:60, 23:63**
 - order of proceedings, **23:58**
 - preliminary objection, **23:59**
 - production of documents, **23:53**
 - production of particulars, **23:54**
 - transcripts, **23:57**
 - Purpose of Canada Labour Code provision, **23:1.50**
 - Remedial purpose of, **23:1**
 - Scope of, **23:2**
 - Substantive rights, **23:4**
- VICARIOUS LIABILITY**
- Fraud, for, **22:3, 22:10**
 - Mental distress, for, **24:116**
 - Occupational health and safety, **28:1**
 - Test re, **3:1**
 - Theft, for, **22:3**
 - Torts, for, see TORTS
- VIOLENCE**
- Just dismissal, cause for, **23:81**
 - Refusal to work for fear of, **31:3**
 - Termination, cause for, **11:52, 11:53**
 - Vicarious liability for, **22:8**
 - Workplace, **31:16, 31:18**
- WORK**
- Employer's duty to provide, **19:1**
 - Right to refuse, see RIGHT TO REFUSE WORK
- WORKPLACE HAZARDOUS MATERIALS INFORMATION SYSTEM (WHMIS)**
- Legislative scheme, **29:2**
 - Purpose of, **29:1**
 - Scope of, **29:1**
- WRONGFUL DISMISSAL**
- See also REMEDIES

WRONGFUL DISMISSAL—Cont'd

Constructive dismissal, see **CONSTRUCTIVE DISMISSAL**

Damage claims

- action for debt, **24:41**
- aggravated damages, see **Mental distress and aggravated damages**
- bonuses, **24:29, 24:33**
- car allowance/company car, **24:37**
- commissions, **24:25**
- compromise of competitive position, **24:56**
- computer, **24:51**
- disability insurance payments, **24:45**
- disability payments, effect of, **24:44**
- dividends, **24:33**
- duty of good faith, breach of, **24:118**
- employee discounts, **24:55**
- employer adducing evidence first, **24:143**
- extended damages, see **Mental distress and aggravated damages**
- family members, action by, **24:142**
- fringe benefits, **24:27**
- housing benefits, **24:49**
- injunction, length of, **24:22**
- interest, **24:125**
- letter of reference, failure to supply, **24:122**
- living allowance, **24:50**
- loss of equity on home, **24:119**
- loss of opportunity, **24:42**
- loss of remuneration, **24:24**
- loss of reputation, **24:118**
- maternity leave, effect of, **24:47**
- mental distress and aggravated damages
 - generally, **24:58**
 - duty of good faith, extended damages and, see **Duty of good faith**
 - insensitive employer conduct relating to employee medical state, **24:96.50**
 - post-Wallace aggravated damages, **24:111, 24:114**
 - summary judgment, **24:140.70**
 - thin skull employees, **24:77.50**
 - tort damages and duplication with bad faith contractual damages, **24:117**
 - tort theory, **24:116**

WRONGFUL DISMISSAL—Cont'd

Damage claims—Cont'd

- mental distress and aggravated damages—Cont'd
 - vicarious liability for, **24:116**
 - Wallace after Keays, **24:71 to 24:110**
 - conduct warranting aggravated damages, **24:79 to 24:106.50**
 - examples, **24:78**
 - extended economic loss, **24:72**
 - loss of reputation, **24:73**
 - medical evidence requirement, **24:77**
 - mental distress, **24:74**
 - thin skull employees, **24:77.50**
 - mitigation expenses, **24:54**
 - moving expenses, **24:48**
 - overtime, **24:35**
 - earned prior to dismissal, **24:36**
 - pension losses, **24:123**
 - phone, **24:53**
 - post employment grants, **24:57**
 - professional dues, **24:39**
 - profit-sharing, **24:29**
 - punitive damages on summary judgment, **24:140.30**
 - punitive damages since Keays, **24:183**
 - real estate losses, **24:49**
 - restricted (share) units, **24:31**
 - retiring allowance, **24:144**
 - salary increments, **24:34**
 - seminars, **24:52**
 - shareholder agreements, **24:33**
 - software, **24:51**
 - spousal claims, **24:142**
 - stock options, **24:31, 24:33**
 - tax consequences, **24:141**
 - U.I.C./C.P.P. contributions, **24:40, 24:120**
 - vacation pay, **24:38**
 - workers' compensation board payments, **24:121**
- Duty of good faith, 24:59 to 24:70**
- consequences of breach, **24:61 to 24:70**
 - discreet Wallace extensions, **24:70**
 - examples, **24:66, 24:67**
 - fixed term contracts, **24:63**
 - mitigation and intangible losses, **24:64**

WRONGFUL DISMISSAL—Cont'd

Duty of good faith, **24:59 to 24:70**
 —Cont'd
 consequences of breach, **24:61 to 24:70**
 —Cont'd
 quantum of extended damages, **24:68**
 social strata and quantum, **24:65**
 timing of employer bad faith or unfair conduct, **24:69**
 creation of, **24:60**
 post-Wallace aggravated and mental distress damages, **24:59**
 Employment standards legislation
 issue estoppel, **24:178**
 judicial enforcement of rights under, **24:180**
 severance payments under, **24:179**
 shareholders' agreements, **6:52.50**
 Human rights complaints and, see REMEDIES
 Jury submissions and instruction, **24:140**
 Jury trials, **24:139**
 Mitigation, obligation re, see MITIGATION

WRONGFUL DISMISSAL—Cont'd

Set offs, **24:229**
 Summary judgment, **24:131**
 aggravated damages, **24:140.30**
 cause allegations, **24:133**
 constructive dismissal, **24:134**
 contractual interpretation, **24:136**
 discharge, **24:140**
 employee's mitigation, **24:135**
 fixed term contracts, **24:138**
 Ontario simplified rules, **24:138.50**
 punitive damages, **24:140.30**
 resignation, **24:138.50**
 restrictive covenants, **24:137**
 Trial before end of notice period, **24:126 to 24:130**
 treatment of awards, **24:126 to 24:130**
 contingency approach, **24:127**
 no discount lump sum judgment without trust, **24:130**
 partial summary judgment approach, **24:129**
 trust and accounting approach, **24:128**
 Wallace/moral damages, **24:71 to 24:114**