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CANADIAN EMPLOYMENT LAW Stacey Reginald Ball Release No. 3, July 2023
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Canadian Employment Law is a one-stop reference that provides a thorough survey of the law with analysis of developing trends. Canadian Employment Law has been cited by the Supreme Court of Canada, and in superior courts in every province in Canada. With methodically organized chapters, Canadian Employment Law can be counted on to provide detailed analysis of the facts and law of thousands of relevant cases. The subject-matter is wide-ranging and addresses topics including wrongful dismissal, fiduciary obligations, tort law and vicarious liability, remedies, constitutional issues, occupational health and safety, employment contracts, duty of good faith and human rights.

What's New in this Update:

This release updates the case law and commentary in Chapters 9, 33, and 35.

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Case Highlights

- **HUMAN RIGHTS — INTRODUCTION — DISCRIMINATION IN EMPLOYMENT** — In *Stolar v. Prema Wellness*, 2023 AHRC 6 (Alta. H.R.T.), the Alberta Human Rights Tribunal addressed whether two entities were co-employers for the purpose of liability. A “common employer” is one in which there is a degree of relationship between the companies, and commonality of purpose and control; assessing commonality is a matter of substance over form. In *Stolar*, the Tribunal considered the following factors in assessing whether the relevant entities were related or associated: whether they carried on a single enterprise; whether the entities’ business operations were closely or inextricably interrelated; whether they had common shareholders and/or directors; whether they operated from the same premises; and whether they were held out as parts of the same entity.
- **HUMAN RIGHTS — DISCRIMINATION ON THE BASIS OF DISABILITY — DRUG AND ALCOHOL TESTING** — Does a prospective employer have a duty to inquire into a complainant’s physical disability before revoking an employment offer on the basis of a failed pre-employment drug test? The Alberta Human Rights Tribunal considered that issue in *Greidanus v. Inter Pipeline Limited*, 2023 AHRC 31 (Alta. H.R.T.). In that case, the Tribunal found that the complainant had not provided any evidence on which one could reasonably conclude that the prospective employer ought reasonably to know that the complainant had a disability or that there may be a connection between the complainant’s disability and the complainant’s inability to satisfy the pre-employment drug test requirement.
- **HUMAN RIGHTS — DISCRIMINATION ON THE BASIS OF RACE, COLOUR, ANCESTRY, ORIGIN, NATIONALITY, CITIZENSHIP, LANGUAGE — DIFFICULTY PROVING DISCRIMINATION ON THE BASIS OF RACE** — In *Commission des droits de la personne et des droits de la jeunesse (T.J.R.) c. Procureur général du Québec (Sûreté du Québec)*, 2022 QCCA 1577 (C.A. Que.), Quebec’s Court of Appeal held that not hiring a police officer because of their failure to properly disclose a diagnosis of Tourette’s Syndrome in the course of their application for employment did not amount to discrimination.
- **HUMAN RIGHTS — DISCRIMINATION ON THE BASIS OF FAMILY AND MARITAL STATUS — CHILDCARE** — In allowing an appeal from the British Columbia Supreme Court’s 2022 decision in *Gibraltar Mines Ltd. v. Harvey*, 2022 BCSC 385 (B.C. S.C.), the British Columbia Court of Appeal addressed the test for establishing prima facie discrimination in employment on the basis of family status and addressed the test set out in the Court of Appeal’s 2004 decision in *Campbell River*. In *Gibraltar Mines*, the Court of Appeal explained that, though *Campbell River* remained good law, the court’s reference there to a “change in a term or condition of employment” was not an exhaustive statement of the test for *prima facie* discrimination in employment. In *Gibraltar Mines*, the Court of Appeal clarified that the British Columbia Code does not require a change in a term or condition of employment to trigger *prima facie* discrimination and that the *Campbell River* test, properly understood, is consistent with the test applied to general

discrimination in the Supreme Court of Canada's decision in *Moore v. British Columbia (Ministry of Education)*.

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