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CANADIAN EMPLOYMENT LAW

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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 Chapter 6 (Employment Contracts), Chapter 9 (Reasonable Notice of Dismissal), Chapter 11 (Cause for Summary Dismissal), Chapter 12 (Mitigation), Chapter 23 (Canada Labour Code and Non-Organized Employees) and Chapter 24 (Remedies).

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Case Highlights

- **CANADA LABOUR CODE AND NON-ORGANIZED EMPLOYEES — REMEDIES UNDER THE CODE — LEGAL COSTS — SUBSTANTIAL INDEMNITY (SOLICITOR AND CLIENT COSTS) EVOLUTION** — The Federal Court of Appeal has held substantial indemnity (solicitor and client) costs are not limited to circumstances where there has been “unduly objectionable employer conduct,” be it during the litigation process or otherwise. The court has cited several sound policy reasons to support this approach. The purpose of the unjust dismissal provisions the Code were designed to place non-unionized employees on a more equal footing with unionized employees. Unionized employees do not face the burden of paying for legal representation in a dismissal grievance. The trade union pays for and provides legal representation for a contested grievance hearing. The employee in the unionized context does not face the prospect of the award becoming a pyrrhic victory because the quantum of payable legal fees amount to a large portion of (or even exceed) the quantum of the award. Thus, Substantial indemnity costs may often be required to make the complainant whole in an unjust dismissal proceeding under the Code: *Amer v. Shaw Communications Canada Inc.*, 2023 FCA 237 (F.C.A.).
- **CANADA LABOUR CODE AND NON-ORGANIZED EMPLOYEES — QUALIFYING CONDITIONS — SOME MANAGERIAL FUNCTIONS** — The Board has declined to exclude individuals from the unjust dismissal provisions of the Code simply because they carry out some managerial functions, or independent decision making. The Board has also declined to exclude individuals from the unjust dismissal provisions of the Code simply because the employer has designated them as a manager. An employer cannot simply state that they expected an employee to have managerial functions and have the Board deem the employee a “manager.” An employer’s or superior’s expectations are only relevant to whether the employee was a “manager within the meaning of s. 167(3)” if these expectations were clearly communicated and understood to be part of the employee’s job functions: *Nugent v. Royal Bank of Canada*, 2023 CIRB LD 5218.
- **REMEDIES — APPELLATE REVIEW IN EMPLOYMENT CASES — PUNITIVE DAMAGES** — The standard of review for punitive damages awards by juries is different from other types of jury damages awards. The appellate court must consider whether there was an evidentiary basis that would rationally lead to a punitive damages award. If so, it makes a determination whether the quantum of the award was rationally connected to the evidence and the purposes of punitive damages: *Baker v. Blue Cross Life Insurance Company of Canada*, 2023 ONCA 842 (Ont. C.A.).

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