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CANADIAN EMPLOYMENT LAW Stacey Reginald Ball Release No. 4, November 2024
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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) and Chapter 23 (Canada Labour Code and Non-Organized Employees).

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Case Highlights

- **§ 6:44.30 Illegality Through Sole Discretion to Terminate and “At Any Time” (New section) — Part 3. Primary Components of the Relationship — Chapter 6. Employment Contract** — The right of the employer to dismiss is not absolute. A clause permitting the employer to have sole discretion to terminate employment at any time may violate legislation. In Ontario, such a clause may, for example, contravene legislative provisions relating to the right of employees to return from statutory leave or the duty of employers not to take reprisal against employees attempting to exercise a right under legislation: *Dufault v. The Corporation of the Township of Ignace*, 2024 ONSC 1029 (Ont. S.C.J.).
- **§ 6:44.70 Illegality by Permitting Employer to Infringe Reprisal Provisions (New section) — Part 3. Primary Components of the Relationship — Chapter 6. Employment Contract** — An employer using words expressing an intent to comply with applicable employment standards legislation may not be sufficient to save a “just cause” termination clause. A termination provision purporting to permit a “just cause” standard to avoid common law notice, particularly one which provides specific examples of just cause “flies in the face of the ESA” and may create confusion and ambiguity notwithstanding the expressed intent to comply with the ESA. In such cases, the ambiguity must be resolved in favour of the employee by finding the termination with cause provision violated the ESA: *Wilds v. 1959612 Ontario Inc.*, 2024 ONSC 3452 (Ont. S.C.J.).
- **§ 23:143.30 Reinstatement and Failed Employee Allegations (New section) — Part 6. Canada Labour Code and Non-Organized Employees — Chapter 23. Canada Labour Code and Non-Organized Employees — X. Remedies Under the Code** — In an unjust dismissal proceeding, an employee using documents from work against the employer did not prevent reinstatement based on trust being destroyed: *Chimi and Air Canada, Re*, 2023 CIRB 1057 (C.I.R.B.). Further, employees can be reinstated even when they have made failed allegations of breach of the implied obligation of good faith and fair dealing in claiming aggravated and punitive damages. However, employees do not have to be reinstated into the same position they held at the time of dismissal. The Board recognizes that Being “reinstated” into a “comparable position” may be ordered: *Chimi and Air Canada, Re*, 2023 CIRB 1057 (C.I.R.B.).

ProView Developments

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