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THE LAW OF DISMISSAL IN CANADA, THIRD EDITION

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Release No. 7, August 2025

What's New in this Update:

This release includes updates to case law and commentary in Chapters 1 (Applicability of the Law), 2 (Federal Jurisdiction Employers), 4 (The Employer and the Employee), 5 (Constructive Dismissal), 6 (What is Cause for Discharge?) and 8 (Wrongful Dismissal: Period of Notice).

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Highlights

- **Applicability of the Law — Tests That Determine Who is an Employee — Intermediate Agents** — *Saskatoon Minor Basketball Association v. MacDonald*, 2025 SKCA 42 — affirmed on appeal — re: employee status — “but the weight of the evidence (including the level of remuneration, length of the relationship, level of supervision, power imbalance, role being fulfilled and level of integration between [the respondent and the appellant]) favours the conclusion arrived at by the Chambers judge ... it is unnecessary to consider whether [the respondent] might be a dependent contractor”; “The determination of 22 months (less three for working notice) made by the Chambers judge is on the higher end of the range, but it is still within the appropriate range”; two factors cited re: no failure to mitigate — “To take this offer would be to give up a significant portion of her claim for reasonable notice”; Chambers judge’s award of \$11,000 in costs was in the discretion of the court and the respondent “had clearly surpassed the offer she had made.”
- **Federal Jurisdiction Employers — Concurrent Redress** — *Christopher R. Theriault v. Atlantic Towing Limited*, 2025 FCA 65 — application for judicial review dismissed — CIRB had declined jurisdiction and could not exercise its residual jurisdiction to consider the complaint in the absence of a referral from the Canadian Human Rights Commission — the Federal Court of Appeal noted, “The Board carefully reviewed the documents in the record and explained its reasons for concluding that the essential nature of [the complainant’s/applicant’s] complaint was a claim for unjust dismissal on the part of [the respondent employer] ‘by refusing his request for a religious exemption from vaccination’ ... the Board reasonably read [the applicant’s] references to possible options to termination in his 2022 submissions as tangential to his request for religious accommodation, and not as a distinct basis of unjust dismissal.”
- **The Employer and the Employee — Who is the Employer?** — *James McCallum & Associates Ltd. v. Courchene*, 2025 BCCA 82 at para. 25 — appeal allowed from a chambers judge’s decision that dismissed the appellant’s application to strike the claim against it. The Court of Appeal struck the claim, after noting that the plaintiff/respondent “has pleaded no facts to suggest that [the alleged common employer’s — an accounting firm’s] role went beyond some supervision or direction of her to involve some employer-like attributes, such as by issuing a paycheque on its own account to her or giving her notice of her dismissal or directly benefiting from her services perhaps as an investor or co-owner of the business.”

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