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### **THE LAW OF DISMISSAL IN CANADA, THIRD EDITION**

**Howard A. Levitt**  
**Release No. 5, May 2022**

#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in July 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the July 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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### What's New in this Update:

This release includes updates to case law and commentary in Chapters 9, 10 and 15. New and updated cases include:

- Wrongful Dismissal: Period of Notice — Factors Determining Length of Notice — Age; Awarding Damages — Valuation of Benefits — Pensions; Appeal — *Premium Fire Protection Ltd. v. Moffatt*, 2021 SKQB 121 (Sask. Q.B.) — affirmed on appeal — all of *Bardal* factors considered re: six month notice period for 33-year-old in administrative position with length of service of five years; “Given the state of the law in Canada and in Saskatchewan, I find that the trial judge did not err by awarding damages to [the respondent] for the value of lost benefits during the notice period without requiring her to prove an actual loss ... I also find that the trial judge did not err by fixing the value of [the respondent’s] lost benefits at 10% of her salary ... While it may have been preferable to try to quantify, more exactly, the value of the benefits lost, given the limited evidence that was before the trial judge on this issue, there was no error in the approach adopted”; “even if the trial judge did place weight on hearsay, I find this was not an error because s. 32 of *The Small Claims Act, 2016* allows a judge to admit any oral or written evidence that he or she considers to be credible and trustworthy ... Regardless, the uncontroverted evidence is that [the respondent] elected to contribute \$75.00 per pay period and that the RRSP plan provided employer matching for her.”
- Wrongful Dismissal: Period of Notice — Clerical/General Labour Notice Table; Awarding Damages — Aggravated/Moral Damages; Appeal — *Covenoho v. First Data*, 2021 ONSC 6542 (Ont. Div. Ct.) — affirmed on appeal — five-week reasonable notice period for the appellant — “The motion judge identified and considered the factors identifiable in *Bardal*” — plaintiff/appellant — 48 years old, bilingual call centre agent, six-month employee; no entitlement to aggravated/moral damages — the motion judge identified and applied “the legal standard set out by the Supreme Court of Canada in *Keays* ... There was no error of law in this approach”; “the test to admit fresh evidence has not been met” — three-pronged test cited.
- Legal Issues Arising During the Litigation Process — Costs Awarded — Garnishment — Abuse of Process — *Hoang v. Mann Engineering Ltd.*, 2021 ONCA 742 (Ont. C.A.) — “motion asking that this court withdraw its reasons, set aside its judgment and allow [the appellant] to amend his pleadings” was dismissed — the appellant’s “attempts to continue to litigate issues decided by this court by way of meritless motions brought after the court has rendered its decision amounts to an abuse of the court’s process” — among other factors, the appellant’s “efforts to continue the litigation in this court may also impact on [the respondents’] ability to enforce orders obtained in these proceedings, or to pursue other remedies ... Further, the court orders that [the appellant] is prohibited from filing any further motions in respect of this appeal (C 68186) without first obtaining leave of a judge of this court.”
- Legal Issues Arising During the Litigation Process — Forum of Action — *Matijczak v. Homewood Health Inc.*, 2021 BCSC 1658 (B.C. S.C.) —

court held in favour of the plaintiff's choice of British Columbia — Three Supreme Court of Canada precedents cited — *Douez v. Facebook, Inc.*, 2017 SCC 33 (S.C.C.), re: two-step process re: party seeking a stay — *Creston Moly Corp. v. Sattva Capital Corp.*, 2014 SCC 53 (S.C.C.), re: principles concerning the interpretation of contracts — *Uber Technologies Inc. v. Heller*, 2020 SCC 16 (S.C.C.), re: clauses void for unconscionability — the court held that the defendant failed to establish that the clause was “valid, clear, and enforceable, and applies to the cause of action before the court ... at least, the agreement should have stated plainly that the Ontario courts have exclusive jurisdiction ... There is no evidence upon which a finding could be made that a bargain was struck between the plaintiff and defendant involving new or additional consideration by the defendant ... the plaintiff was compelled to sign the 2015 contract, or she would not continue to receive work assignments from the defendant ... The defendant has established no prejudice to it defending the claim in British Columbia.”

## **ProView Developments**

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