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THE LAW OF DISMISSAL IN CANADA, THIRD EDITION

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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), and 6 (What is Cause for Discharge?).

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Highlights

- Applicability of the Law — Statutory Remedies — Other Statutes — *Reed v. Cooper-Gordon Ltd. et al*, 2023 ONSC 5261 (Ont. S.C.J.) — the plaintiff’s request for leave to appeal an arbitration decision re: issues concerning unpaid bonuses and RRSP contributions, and the notice period was granted — Supreme Court of Canada and Ontario Court of Appeal precedents considered — “I would only permit leave to appeal to allow the appellate court to correct the mathematical error of [the arbitrator’s] statement that the notice period was six months. It appears he did not count the seven months between [the plaintiff’s] start date and end date to calculate his damages for notice. To allow this error to persist would be unreasonable ... [re: the arbitrator not deciding the plaintiff’s claim for unpaid bonuses and RRSP contributions for 2016-2019] this omission raises a question of law ... I therefore conclude this question of law will significantly affect the rights of the parties to justify granting leave”; no leave to appeal granted re: valuation of the plaintiff’s shares in the defendant, punitive damages, and the oppression remedy.
- Federal Jurisdiction Employers — Settlement and Releases — *Posca and Royal Bank of Canada, Re*, 2023 CIRB 1092 (C.I.R.B.) — “the Board finds that Parliament amended section 241.2(1)(a)(iii) of the Code to require parties to comply with a particular form of settlement, to ensure that only written settlements would enable the Board to decline jurisdiction ... The Board therefore retains jurisdiction to hear the case on its merits. Considering that the formal requirement has not been met, the Board need not consider whether, in this case, a settlement was reached when the respondent accepted the complainant’s monetary proposal.”
- What is Cause for Discharge? — Subsequently Ascertained Cause — Fraud and Dishonesty — Breach of Rules or Company Policies — *Shalagin v. Mercer Celgar Limited Partnership*, 2023 BCCA 373 (B.C. C.A.) — affirmed on appeal — cause for termination — “It is clear from the judge’s reasons in the case at bar that he did not apply an ‘absolute’ or ‘strict’ rule of the kind that was overturned in *McKinley*. Instead, he addressed the issue of cause ‘through an analysis of the particular circumstances surrounding the employee’s behaviour.’ (*McKinley* at para. 39.)” — “He noted the change in [the appellant’s] purpose in making the recordings — from hoping to improve his English skills in the early years, to hoping to ‘catch out’ one of his superiors exhibiting discriminatory bullying behaviour and then to make a complaint of some kind ... The point is that they did not involve the protected grounds of discrimination, nor could they be said to involve bullying or harassment ... In summary, I do not agree with the appellant that the trial judge committed a palpable and overriding error or somehow misapplied the law of wrongful dismissal to this case.”

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