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CLARKE'S CANADA INDUSTRIAL RELATIONS BOARD

Graham J. Clarke and Sara Bennett

Release No. 1, July 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 new case citations and additional commentary to Parts I to IV of the *Canada Labour Code*, the *Wage Earner Protection Program Act* and *CIRB Regulations*, 2012.

Highlights

- In *Grant v. Unifor*, 2022 FCA 6 (F.C.A.), the Federal Court of Appeal upheld the Board's decision to dismiss a complaint on timeliness. The Board found that the applicant had not shown compelling reasons for granting an extension of time. The Board's reasons "need not be encyclopedic". Read in light of the record, the reasons showed that the Board grappled with the request for an extension of time and thus satisfied the requirement of justification for its decision.
- In *Watson*, 2022 CIRB 1002 (application for judicial review pending in the Federal Court of Appeal (A-45-22)), the Board dismissed a duty of fair representation complaint concerning the union's refusal to challenge the Air Canada's mandatory vaccination policy. In deciding not to pursue the grievance, the union obtained two legal opinions and put the question to its executive committee.
- In *Cook*, 2021 CIRB 995, the Board found that it does not have jurisdiction to consider a wage recovery appeal pertaining to a claim for severance and termination pay when the employee could have filed an unjust dismissal complaint. The 2019 legislative amendments at s. 251.01(3.1) and (4) do not grant employees new rights. They simply clarify that an unjust dismissal complaint must proceed first or be dealt with before the Head deals with a complaint for unpaid wages based on substantially the same facts.
- In *WestJet, an Alberta Partnership*, 2021 CIRB 985, the Board set out its policy on accepting electronic membership evidence in the context of a certification application. The Board will accept electronic membership evidence where it can ascertain the reliability of the system used and verify the evidence through rigorous audit trails. The method used to collect the electronic membership cards, including digital payment of the initiation fee, was reliable and verifiable.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work

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- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable