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### TECHNOLOGY CONTRACTING

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This publication provides comprehensive, invaluable information relating to transactions and agreements that technology-oriented companies enter into throughout their life cycle. Each chapter includes a discussion on the law that is relevant to negotiating and drafting particular types of agreements, and practical suggestions for drafting and negotiating clauses and provisions within the agreements. The publication includes key contracts and transactions that are of interest to technology-oriented companies.

This release features updates to Chapter 1 (Confidentiality and Non-Disclosure Agreements), including Appendix 1A (Annotated Non-Disclosure Party Agreement (Biased in Favour of Disclosing Party)), Appendix 1B (Annotated Non-Disclosure Agreement (Biased in Favour of Recipient)), Appendix 1C (Annotated Mutual Nondisclosure Agreement), Appendix 1D (Annotated Agreement Disclaiming Confidentiality) and Appendix 1E (Remedies Table—Misuse of Confidential Information).

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**Highlights**

**Chapter 1. Confidentiality and Non-Disclosure Agreements—§ 1:5. Legal Basis to Confidentiality Agreements—Confidential Information in the Employment Relationship—Implied Duty of Good Faith**—Case law has introduced nuance to the principle that that “an employee will not be permitted, following termination of his employment, to use for his own benefit confidential information acquired in the course of his employment or information which is special or peculiar to his ex-employer”, as established in *Monarch Messenger Services Ltd. v. Houlding*, 1984 CarswellAlta 410 (Monarch). In *Barton Insurance Brokers Ltd. v. Irwin*, 1990 CarswellBC 190 (Barton), the British Columbia Court of Appeal preferred the reasoning and conclusions in *Tomenson, Saunders Whitehead Ltd. v. Baird et al.*, (1980) 7 C.C.E.L. 176 (Ont. S.C.) (Tomenson), to those in *Monarch*. In *Tomenson*, Keith J. observed that the fact that names and telephone numbers of some individuals were easily accessible via personal diaries of the defendants, which they properly took with them, did not constitute a breach of confidentiality. The court concluded that compiling such information from memory and publicly available sources did not amount to unfair competition or misuse of confidential information.

In *Barton*, the court noted that protected information need not be in a tangible form and can include information memorized by a former employee. The court also recognized that the information which can be easily compiled from memory or public sources, such as customer names and contact information, does not necessarily constitute confidential information. The court found that the defendants in *Barton* were entitled to compete with their former employer as their conduct did not involve unfair use of the knowledge gained during employment nor did it breach any fiduciary obligations.