

INDEX

A

After-acquired evidence, 72-73

- additional grounds cannot result in procedural unfairness, 72-73
- • *Windsor (City) and CUPE*, 73

Arbitration hearing. *See* Hearing

C

Company rules and/or policies. *See* Discipline

Computer searches (employer-issued equipment) , 29-31

- employer computer use policy, 31
- reasonable expectation of privacy, 29-31
- • *R. v. Cole*, 29-30

D

Discharge, mitigating factors in applying, 58-59

- *Canada Safeway Ltd. v. U.F.C.W.*, 58-59
- checklist, 60

Discipline, 41-61

- checklist, 60-61, 78
- company rules and/or policies, 55-56
- • *MacMillan Bloedel Ltd. v. C.E.P.*, 55
- • *Teamsters Local Union No. 419 and Loomis Armored Car Service*, 55
- • *Telus Corp. and TWU*, 55-56
- • test against case law, collective agreements, 55
- “corrective theory”, 41
- delay in, 57-58
- • *Alberta Health Services v. AUPE*, 58
- • *Seneca College of Applied Arts & Technology v. O.P.S.E.U.*, 57
- • *Toronto (Municipality) v. C.U.P.E.*, 57-58
- discharge, mitigating factors in, 58-59
- last chance agreements. *See* Last chance agreements
- negating intent. *See* Negating intent
- progressive. *See* Progressive discipline
- warnings. *See* Warnings, effective

Dismissals in The Unionized Workplace

Documents disclosure for hearing. *See* Hearing

E

Employee searches, 24-29

- company policy allowing refusal of search, 25
- • *Chrysler Canada Ltd. v. CAW-Canada*, 24-25
- random searches of cars, packs, lunch boxes, 25-27
- • *Dubreuil Forest Products Inc. and I.W.A.*, 25-27
- search must be without discrimination and without targets, 27-28
- • *S.E.A. v. Maple Leaf Consumer Foods Inc.*, 27-28

H

Hearing, 63-76

- after-acquired evidence. *See* After-acquired evidence
- disclosure of company documents, 65-67
 - • balancing fairness and nexus, 66-67
 - • • *Norfolk General Hospital and ONA*, 66-67
 - • litigation privilege, 66
 - • • *Toronto Transit Commission and CUPE*, 66
 - • no disclosure based on speculation, must be nexus, 65
 - • • *AFG Industries Ltd. v. A.B.G.W.I.U.*, 65
 - • • *Laurentian Hospital v. O.N.A.*, 65
 - • • *Société canadienne des postes v. S.P.C.*, 65-66
- medical records. *See* Medical records
- particulars. *See* Particulars
- pre-hearing production of documents, 63-65
- • principles as to whether relevant or not, 63
 - • • *West Park Hospital v. O.N.A.*, 63
- • requirement for natural justice, 64
 - • • *Sather v. Deputy Head (Correctional Service of Canada)*, 63-64
- • *subpoena duces tecum*, documents arguably relevant, 64
 - • • *Toronto Transit Commission v. A.T.U.*, 64-65
 - • • *Winchester District Memorial Hospital and ONA*, 64
- preparation checklist, 76, 78
- settlement. *See* Settlement
- taking a view of the scene. *See* Taking a view

Index

I

Interview notes and records, 17-24

- litigation privilege and litigation-related preparation, 17-24
- • *Brewers Retail Inc. v. U.F.C.W.*, 19-20
- • *Canadian Blood Services v. O.P.S.E.U.*, 20
- • “dominant purpose”, 19-20, 21
- • “labour relations privilege”, 23
- • *Peel District School Board v. O.S.S.T.F.*, 22-23
- • *Privacy Act* and disclosure of personal information, 23-24
- • *Sather v. Deputy Head (Correctional Service of Canada)*, 23-24
- • *Telus Communications Co. v. T.W.U.*, 23
- • *Thunder Bay (City) Centre for the Developmentally Challenged v. S.E.I.U.*, 18-19
- • *W. Ralston (Canada) Inc. v. C.E.P.*, 20-21

Interviewing employees in the bargaining unit, 13-17

- *Brink’s Canada Ltd. v. Teamsters*, 14
- *Canadian Niagara Hotels Inc. v. Hotel, Restaurant & Hospitality Service Employees Union*, 13-14
- detailed notes taken and reviewed by employees, 13
- eyewitness testimony credibility, 14
- • credibility checklist (Paula Knopf), 16-17
- • *Zehrs Markets Inc. v. U.F.C.W.*, 14-16, 81-114

Interviewing the prospective grievor, 6-13

- right to union representation under collective agreement, 6-13
- • *Alberta v. A.U.P.E.*, 8-9
- • *Brinks Canada Ltd. and Canadian Automobile Workers*, 9
- • *Canada Post Corp. and CUPW*, 10-11
- • *Dunnville (Town) and UFCW*, 7
- • *Guildford Regency Care Home v. H.E.U.*, 6-7
- • *J & A Building Services Ltd. v. U.F.C.W.*, 7-8
- • *Maple Leaf Meats Inc. v. U.F.C.W.*, 11-12

Investigation by employer, 3-39

- case law, generally
- • *British Columbia Public School Employers’ Assn. v. BCTF (Bonenfant Grievance)*, 3-4
- • *Finning International Inc. and IAMAW*, 4
- • *National Steel Car Ltd. v. U.S.W.*, 4-5
- • *School District No. 44 (North Vancouver) and BCTF (Samson Grievance)*, 3
- checklist, 38-39

Dismissals in The Unionized Workplace

- computer searches. *See* Computer searches
- employee searches. *See* Employee searches
- interviews. *See* Interview notes and records; Interviewing employees in the bargaining unit; Interviewing the prospective grievor
- polygraph evidence. *See* Polygraph evidence
- social media evidence. *See* Social media evidence and Internet audits
- surveillance. *See* Surveillance

Investigation checklist, 38-39, 77

L

Lakeridge Health Corp. v. O.P.S.E.U., 115-136

Last chance agreements, 46-54

- “Achilles heel” (when contrary to *Human Rights Code*), 48-50
 - • *Black v. Gaines Pet Foods Corp.*, 49
 - • *Fantom Technologies v. U.S.W.A.*, 48-49
 - • *Great Atlantic & Pacific Co. of Canada Ltd. v. U.F.C.W.*, 49-50
 - • *O.P.S.E.U. v. Ontario (Ministry of Community & Social Services)*, 49-50
 - checklist, 60-61
 - duty to accommodate , and, 53-54
 - • *Thunder Bay (City) v. A.T.U.*, 53-54
 - factors to be effective, 46
 - serve a valuable purpose and should be applied, 46-48
 - • *Lear Corp. Canada Co. and CAW*, 46-48
 - unenforceable when contrary to *Canada Labour Code* and *Canadian Human Rights Act*
 - • *Seaspan ULC and ILWU Canada*, 50-53
- “Lie detector” tests**, 33

M

Medical records, 67-71

- production at hearing of doctor who prepared reports/notes, 67-68
- • *Abitibi-Consolidated Inc. v. I.A.M. & A.W.*, 68-69
- • *LaSalle Police Services Board v. LaSalle Police Assn.*, 69
- • *Miracle Food Mart of Canada v. U.F.C.W.*, 67-68
- • *Mosaic Potash Colonsay ULC and USW*, 70
- • *Spectra Energy Transmission and CPEA*, 69

N

Negating intent, 56-57

Index

- *Canada Safeway Ltd. v. U.F.C.W.*, 57
- *Loblaws Supermarkets Ltd. v. U.F.C.W.*, 56-57

P

Particulars, 71-72

- ordered where not sufficient disclosure to prepare case, 71
- • *Laurentian Hospital v. O.N.A.*, 71-72
- • *Ontario (Liquor Control Board) and OPSEU*, 72
- • *Weetabix of Canada Ltd. v. U.F.C.W.*, 72

Polygraph evidence, 33-34

- “lie detector” tests unreliable and undesirable in labour relations, 33
- • *Loomis Armoured Car Service Ltd.*, 33
- • *Teamsters Local Union No. 419 and Loomis Armoured Car Service*, 34

Progressive discipline, 41-43

- not appropriate depending on circumstances, 41-42
- • *Canadian Regional Airlines Ltd. v. C.U.P.E.*, 41-42
- not appropriate if offence serious, 42-43
- • *Kelowna (City) and CUPE*, 43
- • *Tenaris Algoma Tubes Inc. and USWA*, 42-43
- not appropriate if wrongdoer not admitting, apologizing or showing remorse, 43
- • *Kelowna (City) and CUPE*, 43
- reformative, 41

S

Settlement, 74-75

- general damages allocation, 75
- renunciation of “right to reinstatement” separate from employment insurance, 75
- • *R. v. Plasse*, 75
- severance package or “buyout”, 74
- “sham” settlement arrangement, 75

Social media evidence and Internet audits, 31-33

- *Canada Post Corp. v. C.U.P.W.*, 31
- disclosure of confidential patient information, 32
- • *Credit Valley Hospital v. C.U.P.E.*, 32
- excessive Internet usage, 32-33
- • *Fraser Health Authority v. H.S.A.B.C.*, 32-33
- no reasonable expectation of privacy, 31

Dismissals in The Unionized Workplace

- private vs. public conversations, 31

Surveillance, 35-38

- no reasonable expectation of privacy in public, 38
- • *Goodrich Turbomachinery Products v. U.S.W.A.*, 38
- • *Toronto (City) v. C.U.P.E.*, 38
- reasonableness and relevance tests, 35-36
- • *Energex Tube and Unifor*, 36
- • *Northstar Aerospace (Canada) Inc. v. CAW-Canada*, 35
- weigh surveillance with caution, 37
- • *Agropur, Division Natrel and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees*, 37

T

Taking a view, 73-74

- factors to consider when request made, 73-74

W

Warnings, effective, 44-46

- checklist, 60
- “full and final warning”, 45
- • *OEM Remanufacturing and CLAC*, 45
- progressive discipline, 44
- specific notification of probable consequences of failure to heed warnings, 44
- • *Crowe Foundry Co. and CAW*, 44
- • *Peel (Regional Municipality) and CUPE*, 45

William Scott & Co. v. C.F.A.W., 1

Z

Zehrs Markets Inc. v. U.F.C.W., 14-16, 81-114