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REMEDIES IN LABOUR EMPLOYMENT AND HUMAN RIGHTS LAW

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Remedies in Labour, Employment and Human Rights Law is a unique resource which provides a comprehensive analysis of the remedial jurisdiction of adjudicators, tribunals and courts to enforce human rights and employment rights. The authors examine remedies arising from labour arbitration, from wrongful dismissal litigation, and from unjust dismissal cases under the *Canada Labour Code*, following labour relations board hearings and in the human rights context. In each instance the authors discuss the purpose and scope of the available remedial orders as well as the source of the remedial authority, then each type of remedial order is detailed and explored.

This release updates case law and commentary in Chapter 2 (Labour Arbitration Remedies).

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Highlights:

- **Labour Arbitration Remedies — Types of Remedial Orders — Interim Relief — Generally —** In one case, the Ontario Grievance Settlement Board held that a union's application for partial payment of lost wages was not an application for interim relief. While there were remaining disputes between the parties relating to the grievor's financial compensation that had yet to be decided, the decision overturning the grievor's termination and reinstating him had been issued by the board 14 months earlier. The board awarded a partial payment of $75,000, agreeing with the union's submission that not considering a partial payment "at this point would unfairly prejudice and, indeed, punish the grievor by continuing to contribute to the financial harm arising from the ongoing denial of compensation he should have been able to enjoy years ago": *OPSEU and Ontario (Ministry of the Solicitor General) (Semenuk), Re*, 2026 CarswellOnt 7815, at para. 17.
- **Labour Arbitration Remedies — Types of Remedial Orders — Damages — Damages to the Union —** In one case, the arbitrator awarded $300 in general damages to each of the 800 bargaining unit members and $68,192 in pecuniary damages to the union resulting from a policy grievance asserting that the municipal employer's former Chief Administrative Officer (CAO) harassed and intimidated employees in the bargaining unit, by creating an intimidating, hostile and unhealthy work environment. While the collective agreement required notice of possible job losses to be provided to the union, the employer sent the notice to each employee. The arbitrator found that no real thought was given as to what positions were under consideration for elimination, but the employer sent the notice anyway to seemingly undermine the union and establish authority. The CAO also gave conflicting information to employees in group meetings regarding the employer's intent. Moreover, the employer failed to investigate the grievance, which the arbitrator viewed as being inconsistent with the employer's obligation under Alberta's *Occupational Health and Safety Code*: *CUPE, Local 1505 and Wood Buffalo (Regional Municipality)*, 2026 CarswellAlta 1153.
- **Labour Arbitration Remedies — Reservation of Jurisdiction — No Jurisdiction Over Matters Relating to Workers' Compensation Scheme —** Collective agreement grievance arbitrators do not have jurisdiction to hear and determine matters related to workplace injuries over which the Workplace Safety and Insurance Board and Workplace Safety and Insurance Appeals Tribunal have exclusive jurisdiction. On this point, adjudicators have struggled to define the border between workers' compensation claims and grievance arbitration. It has been held that where claims are, in essence, expressions of dissatisfaction with the amount of compensation or extent of services available under the workers' compensation regime, arbitrators do not have jurisdiction. Nevertheless, where the grievance invokes rights separate and severable from those under the workers' compensation scheme, such as allegations of breach of human rights legislation, as well as breach of health and safety provisions of the collective agreement, arbitrators do have jurisdiction. However, this may limit the arguments that can be advanced relating to such claims: *Alberta Health Services and UNA (AB), Re*, 2025 CarswellAlta 1605 (Alta. Arb.), at para. 172.