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EMPLOYMENT LAW MANUAL

The Honourable Mr. Justice John R. Sproat

Release No. 9, November 2026

In addition to an extensive treatment of wrongful dismissal law in Canada, the *Employment Law Manual: Wrongful Dismissal, Human Rights and Employment Standards* features an examination of discriminatory practices under the *Ontario Human Rights Code* and offences under the *Employment Standards Act, 2000*. A section offering practical advice on hiring and firing is supplemented by a collection of helpful precedents, featuring forms of employment contracts, warning letters, termination letters, and more.

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What's New in this Update

This release updates the case law and commentary in Chapter 3 (The Contract of Employment), Chapter 4 (Just Cause for Dismissal), Chapter 5 (Constructive Dismissal), Chapter 6 (Damages), Chapter 9 (Employee Obligations and Liability to Employer) and Chapter 13 (Prohibited Grounds of Discrimination).

Highlights

WRONGFUL DISMISSAL—JUST CAUSE FOR DISMISSAL—I. GENERAL PRINCIPLE—GENERALLY—In *Birnbaum v. Dr. Chan*, 2026 CarswellOnt 5779, 2026 ONSC 2009, 100 C.C.E.L. (4th) 173 (Ont. S.C.J.), the plaintiff was employed by the defendant as a medical secretary from 2001 to 2020. Justice Pollak described that in 2014 Dr. Chan discovered that the plaintiff had breached patient privacy and confidentiality requirements. This resulted in a written warning. In addition, the log on screen that the plaintiff utilized to do her work warned that unauthorized use of the patient record software program was unlawful. On April 3, 2020, the plaintiff was advised that her employment was terminated immediately on a without cause basis but that she would be paid until March 31, 2021. The defendant subsequently learned that notwithstanding the 2014 warning the plaintiff had continued to breach patient privacy and confidentiality. As a result, the defendant stopped the salary continuation. Justice Pollak concluded that this misconduct constituted after acquired just cause for dismissal. Justice Pollak also concluded that Dr. Chan had discharged her duty to accommodate the plaintiff to the point of undue hardship.

WRONGFUL DISMISSAL—CONSTRUCTIVE DISMISSAL—I. GENERAL PRINCIPLES—GENERALLY—In *Yakubow v. Edmonton Granite Memorials Ltd.*, 2026 CarswellAlta 1221, 2026 ABKB 360, (2026), 100 C.C.E.L. (4th) 157 (Alta. K.B.), the plaintiff commenced employment in 2002 and was promoted to the position of sales manager in 2015. In January 2023, the new owner of the defendant presented the plaintiff with a written employment contract containing five terms, each of which could amount to a constructive dismissal. The plaintiff was presented with the contract on a Friday and the defendant requested that it be signed by the following Monday. Despite pressure from the defendant, the plaintiff refused to sign. The following Thursday the plaintiff left his employment and took the position that he had been constructively dismissed. The defendant took the position that because the terms of the new employment contract had not been implemented there was no constructive dismissal. Justice Oviatt reviewed the evidence and rejected this argument, reasoning that the employer's conduct objectively communicated an intention to proceed with new contract terms, particularly termination and restrictive covenant provisions. The evidence did not support the assertion that those terms were negotiable.

WRONGFUL DISMISSAL—DAMAGES—III. OTHER FACTORS RELEVANT TO DETERMINING THE PERIOD OF REASONABLE NOTICE—FAILURE TO PROVIDE APPROPRIATE LETTER OF

REFERENCE—In *Talwar v. Best Buy Canada Ltd*, 2025 CarswellOnt 22811, 2025 ONSC 5814, 100 C.C.E.L. (4th) 222 (Ont. S.C.J.), the plaintiff had been employed for 15 years as a service technician. A quality control log evidenced that the plaintiff had briefly opened files on a customer computer that he was repairing which was a breach of the defendant's privacy policy. Justice Gambacorta concluded that the files were accessed inadvertently and, as such, this did not constitute just cause for dismissal. In the end, Justice Gambacorta awarded the plaintiff damages based upon an 18-month notice period. Not providing a reference letter to a tenured employee justified a notice period at the upper end of what was reasonable to reflect the additional challenge in finding new employment.

WRONGFUL DISMISSAL—DAMAGES—VI. CALCULATION OF DAMAGES RELATED TO THE PERIOD OF REASONABLE NOTICE—ELEMENTS OF THE DAMAGE CALCULATION—BONUSES—GENERAL PRINCIPLES—In *Warren v. Canaccord Genuity Corp.*, 2026 CarswellOnt 1494, 2026 ONSC 547, 2026 A.C.W.S. 392, 99 C.C.E.L. (4th) 304 (Ont. S.C.J.), most of the plaintiff's compensation was provided by means of an annual bonus. He was terminated on September 6, 2019. Justice Schabas found that he was entitled to a 21-month notice period which ran into fiscal 2021 which was described as a once in a decade bull market. Justice Schabas rejected the defendant's argument that the damages related to bonus compensation should be determined based upon the average bonus over the three years prior to termination. Instead, he concluded that the damages should be based on the bonuses paid to comparable employees who worked during the 21-month notice period.

WRONGFUL DISMISSAL—DAMAGES—VI. CALCULATION OF DAMAGES RELATED TO THE PERIOD OF REASONABLE NOTICE—ELEMENTS OF THE DAMAGE CALCULATION—§ 6:54. FRINGE BENEFITS—GENERAL—In Hill v. 1359768 Ontario Inc. (B&B Towing), 2026 CarswellOnt 13107, 2026 ONCA 577 (Ont. C.A.), the trial judge found that the plaintiff had been wrongfully dismissed. While the plaintiff did not adduce evidence that he made personal use of the company tow truck and cell phone the trial judge awarded $123,000 in damages related to the use of the tow truck and $2,640 for the use of the cell phone. The Court of Appeal had no difficulty in setting aside these awards. It did take the opportunity to provide a helpful overview of the general principles governing when damages are awarded in relation to employment tools such as a vehicle or cell phone and an explanation of their applicability to the facts of the case. The Court found that "a wrongfully dismissed employee is entitled to claim as damages the pecuniary value of all the compensation and benefits that would have been received during the period of reasonable notice," and that "the onus is on the employee to establish the facts of damages and their amount on the evidence". The Court also found that, "Damages in a wrongful dismissal action are not limited to compensation for salary and may include compensation for the value of fringe benefits to which an employee was entitled. The employee's onus to es-

tablish damages therefore includes proving their entitlement to and the value of fringe benefits" (paras 43-44).