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WRONGFUL DISMISSAL David Harris, B.A., LL.B. Release No. 9, September 2026
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This four-volume national work provides a comprehensive treatment on the law of wrongful dismissal in Canada. Coverage includes: the contract of employment and employee status; types of dismissal and the “just cause” defence; damages and the duty to mitigate; related actions including actions tort, injunctive relief, and statutory actions; employee protections under the *Canada Labour Code*, tax considerations; the impact of statutes on the assessment of damages; practical considerations; charts of notice awards; and relevant legislation and concordance tables.

What’s New in this Update

This release updates Chapter 10—The Canada Labour Code.

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Highlights

- **Chapter 10—The Canada Labour Code—I. Introduction—§ 10:1—Generally**—The *Canada Labour Code*, R.S.C. 1985, c. L-2, is the principal federal statute that governs labour relations and minimum employment standards in federally-regulated workplaces. These federally regulated sectors include banking, telecommunications, broadcasting, interprovincial and international transportation (air, rail, trucking, shipping, and pipelines), postal services, and federal work, undertaking, or business. Among other things, the *Code* prescribes the minimum terms and conditions of employment—including protections around employee termination. Federally regulated employers cannot contract out of the *Canada Labour Code*'s notice protections; any termination clause that undermines *Code*-imposed minimum entitlements is void: *Ghazvini et al v. Canadian Imperial Bank of Commerce*, 2025 ONSC 5218, 2025 CarswellOnt 18401.
- **Chapter 10—The Canada Labour Code—I. Introduction—§ 10:1.50—Adjudicating Unjust Dismissal Claims**—There is a further significant limitation on access to the unjust dismissal regime, one found not in s. 240 but in s. 167(3) of the *Code*. Although Part III generally applies to employment in or in connection with the operation of a federal work, undertaking or business and to employment by a Crown corporation, s. 167(3) expressly provides that Division XIV does *not* apply to or in respect of employees who are managers. Accordingly, even an employee who otherwise satisfies the requirements of s. 240 cannot bring an unjust dismissal complaint if the employee is a manager within the meaning of s. 167(3). That determination will depend on the actual functions and responsibilities of the position, rather than its title alone. See § 10.7 for a full discussion of the *Code* provisions and case law as it pertains to managers.
- **Chapter 10—The Canada Labour Code—III. Constructive Dismissal; Voluntary Resignation; Federal Work, Undertaking or Business, and Exclusions under the *Financial Administration Act*—§ 10:4—Constructive Dismissal**—*Buyalo and Royal Bank of Canada (Unjust Dismissal), Re*, 2016 CarswellNat 2831 (Can. Adjud. (CLC Part III)) is an example of a decision where the changes at issue—here, the elimination of a senior accountant position with advice that a financial advisor position was available at the same compensation and level—were found to be

minor such that no constructive dismissal occurred. With that said, there are limits on the application of the common law doctrine of constructive dismissal, as applied to the unionized employee context. In *Canadian Union of Public Employees, Local 79 v. Toronto (City)*, 2024 CanLII 94967 (ON LA), the grievor alleged a prolonged campaign of harassment, discrimination and reprisals, together with the employer's repeated failure to respond adequately to his complaints or provide a safe workplace. After an extended period on administrative and then medical leave, he resigned, describing his resignation as "forced," and grieved that he had been constructively dismissed. On a preliminary objection, the arbitrator held that the common law doctrine of constructive dismissal was inapplicable on these facts. Generally speaking, the exclusion of the constructive dismissal concept from the unionized workplace is not based solely on the principle that employees should "work now and grieve later." More fundamentally, the common law doctrine rests on concepts that do not readily translate to the collective bargaining regime. The unionized employee is not a party to an individual employment contract that can be treated as repudiated. Nor can the collective agreement itself be unilaterally repudiated. Any alleged breaches of that agreement can be addressed through grievance and arbitration, including remedies such as reinstatement that are unavailable at common law. The employee could not invoke constructive dismissal as a means of resigning from unionized employment and then claiming the common law consequences of dismissal. Admittedly, there are recognized exceptions to the usual "work now, grieve later" principle (e.g., where continued work presents a genuine risk of harm) but the foreclosure of the constructive dismissal avenue did not leave the grievor without a remedy for harassment and discrimination under the *Code* and the collective agreement.

- **Chapter 10—The Canada Labour Code—III. Constructive Dismissal; Voluntary Resignation; Federal Work, Undertaking or Business, and Exclusions under the *Financial Administration Act*—§ 10:4—Constructive Dismissal**—Drawing from the human rights context, a "poisoned work environment" may be found where harassment or discriminatory conduct tied to a protected ground becomes a condition of employment. In *Iron Forming Inc. v. Labourers' International Union of North America, Local 183*, 2025 CanLII 83020 (ON LA), the arbitrator found that a male construction worker had been subjected to repeated

sexualized and degrading conduct by his foreman, including being called “bitch” daily for about six weeks, and being the object of vulgar sexually charged comments which included the sexually suggestive direction to lick grease from the foreman’s finger. Although the case arose under the Ontario *Human Rights Code*, the award is a useful illustration of the poisoned-environment analysis. The arbitrator held that the conduct was persistent, serious, and sufficient to create a hostile or intolerable work environment to the point where it was considered “poisoned”. Also, at least in Ontario it has also been confirmed that the common test for determining whether a poisoned work environment amounts to a constructive dismissal is the same as the one for finding a poisoned work environment in violation of the *Human Rights Code*: *Crêpe It Up! v. Hamilton*, 2014 ONSC 6721, 2014 CarswellOnt 17080.

- **Chapter 10—The Canada Labour Code—III. Constructive Dismissal; Voluntary Resignation; Federal Work, Undertaking or Business, and Exclusions under the *Financial Administration Act*—§ 10:5—Voluntary Resignation**—The practical consequences of “voluntary resignation” versus dismissal are clearly different; unlike one who has voluntarily resigned, a dismissed employee may invoke the *Code*’s statutory remedies, including the remedial jurisdiction in unjust dismissal scenarios. Whether a resignation has occurred is determined contextually, looking at both subjective and objective factors. The modern formulation is that the alleged resignation must be voluntary, and it must reflect the employee’s true intention. The inquiry has both a subjective and an objective component. This was the approach taken in *H & R Transport Ltd. v. Baldrey*, 2005 FCA 151, 42 C.C.E.L. (3d) 25, 334 N.R. 340, 2005 CarswellNat 1139 (F.C.A.) The Canada Industrial Relations Board applied the same approach in *Stephan v. Toronto Terminals Railway Company Ltd.*, 2022 CIRB 1050, 2022 CarswellNat 6853. It confirmed that a valid resignation must be voluntary and reflect the employee’s true intention. The assessment generally focuses on whether the employee subjectively intended to resign, and whether objective conduct or words implemented that intention. The inquiry must be contextual and must take account of all the circumstances. See also *Rocco Palermo v. Morlease Ltd.*, 2020 CIRB 940, 2020 CarswellNat 6996.
- **Chapter 10—The Canada Labour Code—XII. Cause Upheld—Miscellaneous—§ 10:49—Disobedience**—In *Henrikson v. WestJet*, 2026 FCA 39,

2026 CarswellNat 495, the employee was an aircraft maintenance engineer who had been dismissed for failing to comply with his employer's mandatory COVID-19 vaccination policy, which had been implemented in response to federal regulatory requirements specifically aimed at the aviation sector. His unjust dismissal complaint was rejected, and his subsequent judicial review application before the Federal Court of Appeal was also denied. The employer's policy was a clear, reasonable safety-based workplace rule that had been consistently applied. Moreover, even leaving aside the government mandates for the sector, the employer's policy was independently justified on occupational health and safety grounds. The employee's termination for non-compliance was not disproportionate.

- **Chapter 10—The Canada Labour Code—XVII. Interplay between *Labour Code* Remedies and Common Law Actions; Interplay between *Labour Code* Remedies and the Charter—§ 10:76—Interplay between *Labour Code* Remedies and Common Law Actions**—In *Ghazvini et al. v. Canadian Imperial Bank of Commerce*, 2025 ONSC 5218, 2025 CarswellOnt 18401, the employees did not allege that their dismissals were unjust; indeed, the parties agreed that they were not unfair or unjust but rather the result of a broader restructuring. They also agreed that *Canada Labour Code* applied, but the issue was whether the contractual termination provisions governing the employees had validly displaced their common law entitlement to reasonable notice. The court held that they did not. In doing so, it emphasized that the *Code's* individual termination provisions do not extinguish civil proceedings for wrongful dismissal, and that a federally regulated employee may still claim common law reasonable notice where the employment contract has not validly limited that entitlement. Further, the court treated the *Code's* “just cause” standard as a statutory minimum that cannot be contracted out of. A “for cause” clause that permitted termination without notice for conduct that might fall short of just cause under the *Code* was unenforceable. Applying *Waksdale v. Swegon North America Inc.*, 2020 ONCA 391, leave to appeal refused 2021 CarswellOnt 356 (S.C.C.), the invalidity of that clause rendered the termination provisions as a whole unenforceable, even though the employees had actually been dismissed without cause. The *Code's* unjust dismissal regime and a common law wrongful dismissal action are analytically distinct but not siloed from one another: the statutory scheme informs the

enforceability of contractual limits on common law
notice.