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EMPLOYEE OBLIGATIONS IN CANADA

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Employee Obligations in Canada is the only resource to offer a complete commentary and analysis of the employee's obligations to the employer and of all the legal issues involved. The work sets out examples of how the courts have treated employers' claims against employees and the damages awarded in various actions, including actions for breach of fiduciary duties, breach of confidence and a failure to perform duties. Written by a noted employment lawyer, packed with practical strategies and updated on a regular basis, there's no better resource to help you advise your client on employee misconduct, dishonesty, disloyalty and everything in between.

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What's New in this Update

This release features updates to Chapter 1—Fiduciary Obligations, Chapter 2—Confidential Information, Chapter 3—Duty to Follow Lawful Orders, Chapter 4—Competency and Implied Duties of Skill and Care, Chapter 5—Duty to Report — Absenteeism and Lateness, Chapter 6—Employees' Obligations to Provide Reasonable Notice, Chapter 7—Employees' Obligations to Disclose, Chapter 8—Duty to Provide Medical Information, and Chapter 10—Non-Competition Obligations.

Highlights

Chapter 1—Fiduciary Obligations—§ 1:8—Specific Fiduciary Duties—Non-solicitation—Merely owing a fiduciary duty and receiving business from former clients, without more, will not necessarily constitute a breach of the duty of non-solicitation. In *Garbage King Inc. v Voth*, 2025 ABKB 661 (Alta. K.B.), the employee, Voth, was the Operations Manager and a Director of Garbage King before resigning and joining a new competing company. Among other claims, Garbage King alleged that Voth had breached his fiduciary duty by soliciting its clients. The company asserted that approximately 90% of its clients transferred their business to Voth's new employer following his departure, leaving Garbage King with only 3 of its 15 customers. The Alberta King's Bench observed that while Voth had a duty to decline to do work for Garbage King clients for a period of time, even if he did not actively solicit them, that period is defined by how long it would reasonably take Garbage King to contact their clients to retain their business. In the case of only 15 clients, that process is not long and without evidence of Voth having done more to solicit clients, the King's Bench was not convinced that this argument would succeed at trial and an injunction on this ground was denied.

Chapter 2—Confidential Information—§ 2:8—Misuse of Confidential Information—In *Benham v Suncor Energy Inc.*, 2026 ABKB 364 (Alta. K.B.), a 2026 Alberta Court of King's Bench decision, the court found that the misuse of confidential information and breach of a confidentiality policy were grounds for just cause. The employee, Mr. Benham, was a long-time employee of Suncor Energy Services Inc. ("Suncor"). He was terminated for cause for breaching his confidentiality obligations and brought a suit for wrongful dismissal. Without approval from his supervisor, Mr. Benham involved his son, Nick, in the development of a patent for Suncor. Nick was a new engineering graduate who was hopeful to get a job at Suncor. The evidence presented was that Nick spent hundreds of hours helping his father develop the patent. Nick alleged that he did not use any

confidential information from Suncor to do so, though there was also evidence that at the time, Mr. Benham had brought home records and kept them in his home office. Mr. Benham went further and forwarded Nick an email containing patent-related information that included a chain with Suncor's external legal counsel and others working on the patent. He then copied Nick on an internal Suncor email regarding the patent. Three months after involving Nick in the development of the patent, on June 14, 2018, Mr. Benham informed Suncor's external legal counsel of his involvement and expressed that he wanted Nick recognized as an inventor of the patent for all of his work. On June 15, 2018, Mr. Benham and others met with Suncor's legal department regarding the patent. In November 2018, Mr. Benham received a formal reprimand from Suncor for breaching Suncor's Standards for Business Conduct, and his actions were contrary to Suncor's Conflict of Interest and Confidentiality Policy Guidance & Standards and its intellectual property policies. This did not stop Mr. Benham from disclosing confidential information, however. Unbeknownst to Suncor, Nick continued to work on the patent, discuss it with his father, and make proposals to another member of the patent team, and in February 2019, he filed his own preliminary patent filing. Suncor was eventually informed of the patent and worked directly with Nick regarding its acquisition, with Mr. Benham being instructed not to discuss such with Nick. Despite this, Mr. Benham continued to advocate within Suncor for Nick's work on the patent and his ideas. Finally, in February 2021, Mr. Benham was informed that he was being removed from the team due to his failure to follow instruction not to involve Nick in the patent process. Later that month, Mr. Benham gave his notice to retire in August 2021. Suncor terminated Mr. Benham with cause in March 2021, citing an investigation into his conduct that began on February 1, 2021, and culminated in the following findings as reason for termination. Despite repeated cautions about his behaviour, Mr. Benham persisted in misusing confidential information, and therefore Suncor had just cause to terminate. This case illustrates how repeated violations of confidentiality policies may constitute just cause for termination.

Chapter 2—Confidential Information—§ 2:11—Remedies—In *AGI SureTrack LLC v OPISystems Inc*, 2026 ABKB 58, AGI alleged that OPI, a competing business, took key personnel from AGI and used trade secrets, including AGI's source code for its program. One of the key personnel, Penrod, saved a copy of the platform source code to a USB drive just prior to his last day and took the source code home. Penrod also accessed the source code at least once while actively working for OPI. However, despite this evidence, the injunction sought by AGI was denied. This is another example of these claims failing on the irreparable harm stage of the tripartite test. The court was satisfied that the source code was clearly confidential information, however AGI failed to produce evidence of how exactly it is suffering from OPI's market activity in Canada or if AGI really

does business in Canada at all beyond a bare assertion to that effect. Accordingly, the injunction was denied. Injunctions will often also hinge on the scope of the "confidential information" at issue. The definition of confidential information must have a degree of specificity. For example, in *Quality Chain Canada Ltd. v Xu*, 2026 BCSC 424 (B.C. S.C.), the plaintiff sought an interlocutory injunction seeking, among other relief, an order prohibiting the defendants from using the plaintiff's confidential information. The court denied this request due to a lack of clarity on what "confidential information" entailed, despite evidence that at least one of the defendants had mirrored the contents of his work computer and transported it to a separate drive before deleting evidence of that activity from the server.

Chapter 3—Duty to Follow Lawful Orders—§ 3:5—Canadian Jurisprudence—In 2025, the Alberta Court of King's Bench reviewed a strong example of progressive discipline in response to insubordination that resulted in an upheld just cause dismissal. In *Rudko v Insight Canada Inc*, 2025 ABKB 513 (Alta. K.B.), the employer, Insight Canada, dealt with a senior level of employee, Mr. Rudko, who refused to follow repeated requests by his superior in response to performance concerns. Insight Canada alleged two overarching issues with Mr. Rudko's performance. First, Mr. Rudko failed to meet necessary performance standards. Second, Mr. Rudko demonstrated insubordination when his manager, Ms. Orlando, attempted to address these performance concerns and directed him to provide a development action plan containing detailed action items, which he failed to do despite numerous opportunities. The first allegation informs and provides the context for the second. Insight Canada terminated Mr. Rudko for the second allegation. Ms. Orlando had multiple discussions with Mr. Rudko about areas in which his performance needed to improve, primarily his leadership abilities, in 2016. In March 2017, the two had a meeting where Ms. Orlando requested that Mr. Rudko complete a development action plan by April 4, 2017. He did not. In July 2017, the two again met and performance concerns were discussed. Mr. Rudko was given a formal warning letter in August 2017 outlining key elements in which improvement was expected and advising that failure to improve could result in a final warning or termination. The letter also required Mr. Rudko to submit a development action plan by August 23, 2017, and provided a 45-day window for Mr. Rudko to show he was improving in his performance. Following a later discussion to accommodate vacation schedules, the deadline to submit the development action plan was moved to August 18, 2017. Mr. Rudko did not submit anything. Mr. Rudko and Ms. Orlando had another meeting on October 5, 2017, where it was again stressed that Mr. Rudko's performance needed to improve, and a development action plan was required. Mr. Rudko was advised that if he did not comply with these requests, the next step may be final notice. On October 19, 2017, Ms. Orlando provided Mr. Rudko a final warning letter by email. In the email, she requested that Mr. Rudko

sign two warning letters and return them by October 20, 2017, submit a development action plan by October 26, 2017, and he was given a final 30 days to improve his performance. Mr. Rudko did neither of the things requested of him and although the 30-day period had not elapsed, the failure to do so after so many requests resulted in Mr. Rudko being terminated for cause on October 30, 2017. The court found that the employer had just cause to dismiss Mr. Rudko for insubordination on October 30, 2017, and his wrongful dismissal claim was dismissed.

Chapter 5—Duty to Report—Absenteeism and Lateness—§ 5:3—Chronic Absenteeism—Frustration of contract was established on the basis of long-term absenteeism in *Lai-Terke v EFW Radiology*, 2026 ABCJ 114 (Alta. C.J.), Ms. Lai-Terke went on a sick leave and subsequently received short and long-term disability benefits from November 2017 to April 2021. In June 2021, Ms. Lai-Terke's employer, EFW Radiology, requested updated medical information. Her physician completed a "Medical Ability to Work Form" in July 2021 which indicated that Ms. Lai-Terke had permanent restrictions and was not fit to return to work as an ultrasound technician. The restrictions were indicated as "indefinite". In response to this form, EFW Radiology terminated Ms. Lai-Terke in August 2021 for frustration of contract. The Alberta Court of Justice concluded that the physician's letter was clear and unambiguous, and the only reasonable conclusion that EFW Radiology could have reached was that Ms. Lai-Terke was permanently disabled and unable to return to work. Accordingly, the employment contract was found to be frustrated.

Chapter 6—Employees' Obligations to Provide Reasonable Notice—§ 6:4—Factors When Determining Notice—The law is clear, an employee when resigning is expected to give reasonable notice to their employer (*Sure-Grip Fasteners Ltd. v Allgrade Bolt & Chain Inc.*, 1993 CanLII 17526 (Ont. S.C.J.)). Wrongful resignation may be claimed when an employee resigns without sufficient notice. The purpose of a resignation notice period is to allow the employer time to find and train a replacement. The resignation notice period may be stipulated by the employment contract, employment standards legislation, or by common law. If the employee fails to give the requisite notice of resignation, this failure constitutes a breach of the employment contract for which damages are recoverable (see *Fredericton Animal Hospital Ltd. v Horochuk*, 2019 NBQB 160 (N.B. Q.B.)). Wrongful resignation was also considered in a 2025 British Columbia Supreme Court decision involving Mr. Chowne, a principal at a private high school. He claimed constructive dismissal or, alternatively, wrongful dismissal (*Chowne v Timesing Education Group Inc.*, 2025 BCSC 1196 (B.C. S.C.)). The employer maintained that he resigned. The factual background was long, but in short, the employer offered Mr. Chowne a part-time consultant position in May 2023 for

several reasons, and they were planning on hiring a new principal. The employer claimed, and the evidence showed, that Mr. Chowne agreed to this position. Although he later raised constructive-dismissal concerns in July and September, he continued working and agreed to his new role in writing. In September 2023, Mr. Chowne claimed that he only attended the first week of school as a courtesy and requested his record of employment; the employer interpreted this as Mr. Chowne resigning. The crux of the matter was that each year, the Ministry conducts inspections of the private high schools in its purview and Mr. Chowne had always prepared the pre-inspection report. Mr. Chowne received notice of the inspection in May 2023 and began working on the report until he ceased working in September 2023, when the new principal took over. The school failed the inspection come October and the Ministry provided a list of deficiencies to be remedied by the follow-up inspections in November and December. The employer brought in a consultant, relieved the principal from his teaching so he could focus on the inspection, and hired a vice principal in order to address the deficiencies. The school was successful on re-inspection. The employer claimed damages arising from these efforts and Mr. Chowne's failure to complete the report before resigning without notice in September. Mr. Chowne's employment contract stipulated a 30-day notice period for resignation. The court found that he resigned without providing the required notice and therefore breached his contract. However, the employer could not show that earlier notice would have prevented the failed inspection or that Mr. Chowne was required to complete the report by a specific deadline. Consequently, the employer could not establish damages arising from the lack of notice, and both claims were dismissed. *Timesing* illustrates that, absent proof of loss arising from the insufficient notice period, an employer may be unable to recover damages for wrongful resignation.

Chapter 7—Employees' Obligations to Disclose—§ 7:3.50—Time Theft—Not all conduct that appears to constitute time theft will justify dismissal for cause. In a 2026 Ontario Superior Court of Justice decision, time theft had been condoned for years had become essentially company policy and the employee succeeded in his wrongful dismissal claim (see *Willsher v Olympic Wholesale*, 2026 ONSC 3620 (Ont. S.C.J.)). Mr. Willsher was terminated for "topping up" his employees' hours during the night shift and committing time fraud. Mr. Willsher admitted to the "topping up" and said he never concealed it. The practice was a long-standing and well established – predating his employment at the company to after his termination – and he claimed "that this practice accorded with the usual and ordinary responsibilities of a Night Shift Supervisor and was implemented to align employees' actual hours worked with the number of hours that they were guaranteed by their union contract." This practice was corroborated by three other long-time employees. The court concluded that the employer did not have just cause tot

terminate Mr. Willsher and he was wrongfully dismissed.

Chapter 7—Employees' Obligations to Disclose—§ 7:4—Post-Termination Disclosure—After-acquired cause may also be found in the case of fiduciaries. The New Brunswick Court of Appeal in *VIC Progressive Diamond Drilling Inc. v Araneda*, 2026 NBCA 26 (N.B. C.A.), overturned a King's Bench decision that had found that Laura Araneda was constructively dismissed and that the company, VIC, did not have after-acquired cause. VIC was a family-run business and Laura served as the President until the board voted to replace her prior to her termination. While in this role, Laura covertly incorporated a new, directly competing company to VIC – HIT Drilling. HIT was incorporated with a business contact, Kyle, as the President and Laura's spouse listed as CFO. The evidence showed that while Laura's spouse was listed on the incorporation documents, he had no active role in HIT, rather, the responsibilities were split between Kyle and Laura. Laura proceeded to steal a contract by informing the client that there would be a "change in the company that the contract will be under" and transferred it to HIT. She also withdrew all funds in one of VIC's bank accounts by writing herself a cheque, which was not discovered until after her termination. She further misrepresented VIC's financial position to RBC by altering inventory ledgers to inflate the value of purchased inventory, thereby increasing the inventory valuation reported to the bank – RBC relied on inventory numbers as security for its loan to VIC. The Court of Appeal reviewed all the evidence and had no choice but to conclude that the trial judge erred in finding Laura was constructively dismissed. Accordingly, the Court concluded that VIC had established after-acquired cause.

Chapter 8—Duty to Provide Medical Information—§ 8:5—Employer Responsibilities Regarding Employee Medical Conditions—Taking Employee Conditions Seriously—In *Dunseith v Calgary French & International School Society*, 2026 ABKB 272 (Alta. K.B.), the Applicant resigned from her teaching position at the respondent Calgary school rather than face a suspension without pay and possible future termination due to her refusal to get the COVID-19 vaccine. The Applicant claimed discrimination under section 7 of the *Alberta Human Rights Act* on the grounds of mental disability for her anxiety. The school enacted a policy requiring employees to be vaccinated against COVID-19 by November 1, 2021. A grace period from September to October 2021 was provided with ongoing rapid testing until proof of vaccination could be provided. Consistent with the Alberta Health Services Covid-19 Scientific Advisory Group guidelines, the policy contained a medical exemption process for employees if they could provide evidence from a physician that they "had suffered either a severe allergic reaction or myocarditis from a previous vaccination." The Applicant did not claim she fell into either of these categories. Rather, she sought an exemption based on anxi-

ety related to injections and provided psychological evidence of generalized anxiety disorder, PTSD, and injection-specific anxiety. The exemption was denied, and the employee resigned before filing the human rights complaint. Decision-makers accepted that the Applicant had a mental disability but concluded that the disability did not prevent her from being vaccinated and therefore was not connected to the loss of her employment, failing on the third prong of the *Moore* test. Both the AHRC and the Chief held that the school provided appropriate accommodation until the deadline for employees to receive the vaccine and were not obligated to further accommodate the Applicant through remote work or rapid testing. On judicial review, the court considered whether a sufficient connection existed between the employee's disability and the adverse employment consequence. After reviewing discrimination law, the Court concluded that the Applicant had the onus of providing evidence that her anxiety disorder made receiving the vaccine untenable, rather than merely unpleasant, such that the compulsion to do so would violate her human dignity – she failed to do so. The Chief's decision was reasonable given the "modest and restrained medical description" of the impact of receiving the vaccine. Without that functional inability, the fact that the policy coincided with her anxiety disorder to an "unknown degree" was insufficient to establish prima facie discrimination.

Chapter 10—Non-Competition Obligations—§ 10:12—Legitimate Interests—An example of an unambiguous non-competition clause that was nevertheless found to be unenforceable is *Chatters Limited Partnership v Chatters Deerfoot Meadows Limited*, 2025 ABKB 536 (Alta. K.B.). In *Chatters*, the applicant sought an interlocutory injunction restricting the defendants from "owning, maintaining, operating, engaging in or having any interest in any business the same or similar or directly competing with Chatters Deerfoot Meadows Salon as per franchise agreement." Based on the definitions in the Franchise Agreement, there was no doubt to the court that this clause was unambiguous with respect to the temporal duration, geographic scope, and the activities it sought to restrain. What was in issue was whether the applicant had a proprietary and legitimate interest to protect. The business that the defendants opened was very similar to the applicant and, while marketed differently, provided many of the same services. However, there was insufficient evidence that the defendants' business was in direct competition with the applicant. There was insufficient evidence that the defendant's business used any customer information from the applicant; that it would in any way damage the applicant's name or brand; or that the defendant was using any trade secrets, marketing strategies, pricing models, or methods of operation of the applicant. Despite this conclusion, the court also conducted an alternative analysis and further determined that while unambiguous, the geographic scope of 10 miles was unreasonable and would further render the covenant unenforceable. The application for the injunction was dismissed.

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