

## Publisher's Note

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## Wrongful Dismissal

This three-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.

This release features an update to the case law and commentary of Chapters 3 (Dismissal), 4 (Damages), 5 (Related Actions), 6 (The Canada Labour Code), 9 (The Significance of Writing in Contracts), and 10 (Practical Considerations).

### Case Highlights

- **Dismissal — Dismissal versus Voluntary Resignation** — The court was satisfied that the employer had met the burden of proving that the employee had voluntarily resigned his position, and the Court of Appeal upheld that finding on grounds that the employer had provided significant evidence of its position that the employee had left his position of his own

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accord, rather than been terminated by the defendant employer. The list of evidence accepted by the court is illustrative of that which would be sufficient in other cases for an employer in a similar position to prove the same premise: *Chhina v. Commercial Spring & Tool Co.*, 2017 ONSC 294, 2017 CarswellOnt 1355 (Ont. S.C.J.), affirmed *Chhina v. Commercial Spring & Tool Company Limited*, 2017 CarswellOnt 19329 (Ont. C.A.).

- **The Significance of Writing in Contracts — Enforceability: The Threshold Question — No Consideration** — An employee signed an employment contract agreeing to accept a position with the employer at a salary of \$68,000 and, the very next day, the employer presented the employee with a new contract evidencing a salary of \$63,482 per annum for the same role, presumptively because it had discovered some sort of “error” in the salary amount presented in the original contract. When the employment contract came to an end, the employee grieved the discrepancy in salary, and the Ontario Grievance Settlement Board found in her favour, because the employer had failed to provide the complainant with “fresh consideration” when it presented her with the second, amended contract: *AMAPCEO and Ontario (Ministry of Community and Social Services) (Robins), Re*, 2017 CarswellOnt 18130 (Ont. Grievance S.B.).
- **Damages - Damages for Mental Distress, Loss of Reputation, Punitive Damages, Aggravated Damages — Punitive Damages - Keays v. Honda Canada — From Punishment to Mutual Contemplation of Damages** — A punitive damage award of \$500,000 was made when the court concluded that the particularly egregious way in which the defendant, Wal-Mart, had behaved in the circumstances warranted such a significant award. Wal-Mart’s behaviour included making “representations to Ms. Galea about her career prospects while making decisions that detracted from, or even defeated that purpose.” The court also noted the power imbalance between the parties in this case, as well as the fact that Wal-Mart is one of the largest corporations in the world; *Galea v. Wal-Mart Canada Corp.*, 2017 ONSC 245, 2017 CarswellOnt 19522 (Ont. S.C.J.).