

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 Chapter 4 (Damages) and updates the Table of Cases.

Case Highlights

- **Damages — Salary Increment — Overtime** — The plaintiff worked for the defendant employer for just over a year before her termination. The plaintiff claimed that she had been wrongfully terminated for her desire to reduce the number of hours she was working during evenings and on weekends. The employer did not present a defence. The court accepted every allegation in the statement of claim as factual, and awarded six months’ damages as reasonable notice. The court also considered the

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plaintiff's claim that she was owed 1,281 hours of overtime pay. Determining that she was not a manager and accepting the plaintiff's assertions, the court awarded \$62,359 as compensation for the unpaid overtime. *Ott v. Canadian Standard Home Services*, 2017 ONSC 7114, 2017 CarswellOnt 18554 (Ont. S.C.J.)

- **Damages — Damages for Mental Distress, Loss of Reputation, Punitive Damages, Aggravated Damages — Mental Distress/Aggravated Damages — Wallace v. United Grain Growers Ltd. — What are the Parameters of “Bad Faith Conduct” or “Unfair Dealing”? — Miscellaneous Procedural Issues** — The court awarded aggravated damages of \$5,000 to the wrongfully dismissed plaintiff employee because the employer had not only actively misled her, but had also been “unduly sensitive” toward her in their manner of dismissal. The court also found that the employer’s treatment exacerbated the stress and mental anguish experienced by the plaintiff as a result of a pregnancy she had lost prior to her termination. *Garnett v. Alberta Motor Association*, 2017 ABPC 267, 2017 CarswellAlta 2293 (Alta. Prov. Ct.)
- **Damages — Duty to Mitigate — Failure to Take Specific Steps to Mitigate** — A plaintiff whose employment with the respondent had been terminated after 12 years, refused three formal offers to re-employ the plaintiff in various positions both before and after the plaintiff’s lawsuit was issued. The employer claimed that the plaintiff failed to mitigate his damages, because he refused to accept any of their reasonable re-employment offers. The plaintiff countered that the employer’s offers were not sincere, and rather were offered for the sole purpose of, “set[ting] up a vexatious defence to litigation that [the employer] knew would be forthcoming or was underway.” The court arrived at the conclusion that the employer had ulterior motives in making offers of re-employment to the plaintiff, such that the employer failed to satisfy its burden of proving that the plaintiff had failed to mitigate his damages. *Ensign v. Price’s Alarm Systems (2009) Ltd.*, 2017 BCSC 2137, 2017 CarswellBC 3265 (B.C. S.C.)