

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 2 (Status as Employee), Chapter 3 (Dismissal), Chapter 6 (Canada Labour Code), and Chapter 9 (The Significance of Writing in Contract).

Caselaw Highlights

- **Status as Employee — At Common Law — Employee vs Independent Contractor** — The existence of a category of employee known as a dependent contractor is solidified in Ontario with this decision - The hallmarks of a relationship of dependent contractor are held to be the permanency and exclusivity of the contractor’s relationship to the employer in question, which includes assessing what percentage of the contractor’s

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business is attributable to the employer – Dependent contractors are entitled to some kind of notice, unlike independent contractors who are not entitled to any reasonable notice upon termination of a contract: *Thurston v Ontario (Children’s Lawyer)*, 2018 CarswellOnt 10634, 2018 ONSC 2137.

- **Dismissal — Dismissal Versus Voluntary Resignation** — An employee had been promoted to a new position, with attendant increased responsibilities, but had not been given a raise commensurate with his new role – The employee complained to the employer that he was not being properly compensated for his new role and communicated his desire to revert to his previous position, the one for which he had originally been hired and had signed an employment contract – The employee indicated his intention to reassign the duties of his new role to someone else, and for himself to return his prior position – The employee indicated he was prepared to be fired for his decision – The employer maintained that the employee had quit his job, and the employee commenced a claim for wrongful termination – The employee was held to have been wrongfully terminated – Telling an employer that one is prepared to be fired for one’s actions does not constitute a “clear and unequivocal act” sufficient to support a finding that the employee had actually resigned: *Mohammed v. Ralota Technologies Inc.*, 2018 CarswellOnt 8671, 2018 ONSC 3362.
- **The Canada Labour Code — The Concept of Manager** — The employer maintained that the former employee in question had been a manager and therefore was not subject to the jurisdiction of the adjudicator – Although the employee was referred to as a manager and held a job title including the word “manager”, she did not actually supervise any other employees, and had no direct reports — Adjudicator held that a person is not a manager if they do not manage any other persons: *Johnson and Bingo, Re*, 2018 CarswellNat 4181 (Canada Adjudication).