

VOLUME 3
TABLE OF CONTENTS

Volume 1

<i>List of Carswell eReference Products</i>	1
<i>Carswell eReference User Guide</i>	3
<i>Supplementary Table of Cases</i>	STC-1
<i>Table of Cases</i>	TC-1
§1.0 INTRODUCTION	1-1
§2.0 STATUS AS EMPLOYEE	2-1
§2.1 At Common Law	2-2
§2.2 Incorporated Employee.....	2-47
§2.3 Impact of Statute.....	2-51
§2.4 Commissioned Salespersons	2-56
§2.5 Major Shareholder-Employee.....	2-60.1
§2.6 Director-Employee.....	2-65
§2.7 Partner-Employee	2-69
§2.8 A Minister as Employee	2-72
§2.8A Employees of Foreign Consulates and Missions.....	2-83
§2.9 Crown Servants	2-86.1
§2.9A Who are Crown Servants?.....	2-86.1
§2.10 The Decline and Fall of the Royal Prerogative.....	2-93
§2.10A Judicial Criticism of the Doctrine	2-94
§2.10B Statutory Modifications	2-113
§2.11 Crown Corporations.....	2-163
§2.12 Other Categories of Crown Servants/Office Holders	2-169
§3.0 DISMISSAL	3-1
§3.0 Dismissal.....	3-5
§3.0A Dismissal versus Voluntary Resignation.....	3-13
§3.0B What is Notice?	3-30
§3.1 Working Notice	3-32.3
§3.2 Notice Given by Employee	3-32.14
§3.2A Employer’s Right to Terminate Within Notice Period Given by Employee	3-32.16
§3.3 The Doctrine of Constructive Dismissal.....	3-32.20

Wrongful Dismissal

§3.3A	Condonation: Employee’s Acceptance of Employer’s Unilateral Change	3-32.32(1)
§3.3B	Change in Remuneration.....	3-32.32(20)
§3.4	Demotion.....	3-35
§3.5	Lay-off.....	3-69
§3.6	Disciplinary Demotion.....	3-77
§3.7	Geographic Transfer	3-80.1
§3.10	Just Cause	3-87
§3.10A	Doctrines Applicable to Just Cause Cases Generally	3-94.1
§3.11	Redundancy	3-94.18
§3.12	Disobedience.....	3-94.19
§3.12A	Absenteeism and Lateness.....	3-94.57
§3.13	Dishonesty	3-105
§3.14	Intoxication	3-114.32
§3.14A	Failure of Drug/Alcohol Test.....	3-114.38
§3.15	Disabled Employee.....	3-114.44
§3.16	Insolence/Insubordination.....	3-135
§3.16A	Sexual Harassment	3-144.2
§3.16B	Harassment of Other Kinds	3-150.25
§3.17	Breach of Duty Owed by Public Servant	3-152
§3.18	Incompetence	3-152.3
§3.18A	Carelessness	3-171
§3.18B	Habitual Neglect of Duty	3-174.1(1)
§3.19	Conflict Between Respective Interests of Employer and Employee.....	3-174.1
§3.19A	Breach of Fiduciary Duty.....	3-188
§3.20	Employee Suing Employer.....	3-194.7
§3.21	Conduct Outside of Normal Working Hours.....	3-195
§3.22	Duty to Report.....	3-213
§3.23	Personality Conflict and Attitudinal Problems	3-216
§3.24	Failure to Relocate at the Request of the Employer.....	3-216.8
§3.25	Probationary Employee.....	3-216.15
§3.26	Moderated Damages (“Near Cause”).....	3-224.7
§3.27	Fair Hearing	3-232
§3.28	Frustration	3-250.2

Table of Contents—Volume 3

Volume 2

§4.0	DAMAGES.....	4-1
§4.0	Damages	4-5
§4.1	Custom of Industry.....	4-6
§4.2	Theory of the Notice Assessment	4-9
§4.2A	Lump Sum or Salary Continuance	4-18.3
§4.3	The Rough Upper Limit	4-22
§4.4	Other Factors.....	4-28.3
§4.5	Inducement	4-28.16
§4.6	Break in Service	4-28.26(2)
§4.7	Malice.....	4-28.33
§4.8	Success	4-28.35
§4.9	Industry Recession— <i>Bohemier</i>	4-28.37
§4.10	Pension Income	4-37
§4.11	Physical Relocation	4-40
§4.12	“Ball Park” Notice.....	4-44
§4.13	Short-term Senior Employees.....	4-48.4
§4.14	Junior Position.....	4-48.6
§4.15	Part-Time Employee	4-52
§4.15A	Employee on Leave of Absence	4-54
§4.16	Temporary Employee.....	4-56
§4.16A	Seasonal, Casual and Agricultural Employees	4-57
§4.17	Impact of Unemployment.....	4-64
§4.18	Basis of Damage Assessment	4-64.1
§4.19	Damages Beyond Loss of Salary	4-67
§4.20	Salary Increment	4-68
§4.21	Bonus	4-74
§4.22	Pension Benefits	4-76.1
§4.23	Moving Costs and Related Expenses.....	4-86.1
§4.24	Fringe Benefits	4-92.8
§4.24A	Automotive Benefits/Car Allowances	4-98(1)
§4.25	Vacation Pay	4-98.2
§4.26	Share Purchase Options	4-98.8(3)
§4.27	Stock Agreements Between Shareholders	4-98.11
§4.28	Residence	4-98.14
§4.29	Subsidized Mortgage.....	4-98.15
§4.30	Director’s Fees	4-101
§4.31	Commissions	4-102
§4.32	Receipt of Insurance Payments.....	4-108
§4.33	Spouse and Family	4-116.3
§4.34	Prepaid Damages or Penalty.....	4-116.4

Wrongful Dismissal

§4.35	Contractual Right to Return to Bargaining Unit.....	4-117
§4.35A	Interest on Damage Award.....	4-118.1
§4.36	Chart—Periods of Notice Awarded.....	4-118.3
§4.37	Anomolous Damages	4-164
§4.50	Damages for Mental Distress, Loss of Reputation, Punitive Damages, Aggravated Damages	4-201
§4.51	<i>Addis v. Gramophone</i>	4-201
§4.52	Loss of Reputation and Mental Suffering	4-203
§4.53	Mental Distress/Aggravated Damages.....	4-213
§4.54	Punitive Damages.....	4-240.52
§4.55	Loss of Apprenticeship.....	4-256.22
§4.56	Damages for Loss of Competitive Position.....	4-256.24
§4.57	Interest.....	4-257
§4.58	Costs	4-265
§4.75	Duty to Mitigate	4-272
§4.75A	Burden of Proof of Non-Mitigation.....	4-283
§4.76	Obligation to Move	4-287
§4.77	Constructive Dismissal and Duty to Mitigate.....	4-292
§4.78	Career Change/Upgrading	4-298.17
§4.79	New Business.....	4-298.18
§4.80	Failure to Mitigate (Generally).....	4-298.23
§4.81	Failure to Take Specific Steps to Mitigate.....	4-299
§4.82	Value of Capital Asset	4-300
§4.83	Interest Expense Incurred in Pursuit of Mitigation.....	4-300.2
§4.84	Business Profit.....	4-300.2
§4.85	Accounting of Profit	4-302
§4.86	Aberrations	4-304
§4.87	Trial Prior to Expiry of Notice Period	4-304
§4.88	When is the Trial Court <i>Functus Officio</i> ?	4-311
§4.89	Gratuitous Payments	4-312
§4.90	Miscellaneous.....	4-313
§5.0	RELATED ACTIONS	5-1
§5.1	Injunctive Relief	5-2
§5.2	Actions on Employment Contract.....	5-8.5
§5.3	Actions in Tort	5-26.8
§5.4	Statutory Actions.....	5-78.24(2)
§5.4A	Employer in Receivership	5-78.44

Table of Contents—Volume 3

	§5.5	Action on the Case	5-100
	§5.6	Reinstatement at Common Law.....	5-103
	§5.7	Declaratory Relief	5-115
§6.0		THE CANADA LABOUR CODE	6-1
	§6.0	The <i>Canada Labour Code</i>	6-3
	§6.01	Unjust Dismissal vs. Wrongful Dismissal.....	6-10
	§6.02	Probationary Employee.....	6-15
	§6.1	Constructive Dismissal	6-16
	§6.2	Voluntary Resignation.....	6-24
	§6.3	Federal Work, Undertaking or Business.....	6-39
	§6.4	The Concept of Manager	6-51
	§6.4A	The Concept of Superintendent	6-70.1
	§6.5	Employed for Twelve Consecutive Months and Not Part of a Collective Agreement	6-70.2
	§6.6	Limitation Period for Registering a Complaint of Unjust Dismissal	6-70.20
	§6.7	Limitation on Complaint.....	6-70.25
	§6.8	Powers of the Adjudicator.....	6-74.1
	§6.9	The Decision of the Adjudicator.....	6-106
	§6.10	Progressive Discipline	6-114
	§6.10A	Culpable and Non-Culpable Job Performance	6-123
	§6.11	Cause Upheld Where No Rehabilitation Possible.....	6-129
	§6.12	Cause Upheld—Miscellaneous	6-130
	§6.12A	Cause Rejected—Miscellaneous	6-189
	§6.13	Use of Comparative Standard Upheld.....	6-196
	§6.14	Culminating Incident.....	6-198
	§6.15	Where Unjust Dismissal	6-204
	§6.16	Judicial Review.....	6-242
	§6.17	Interplay Between <i>Labour Code</i> Remedies and Common Law Actions.....	6-246
	§6.18	Interplay Between <i>Labour Code</i> Remedies and <i>Canadian Charter of Rights and Freedoms</i>	6-251

Volume 3

§7.0		IMPACT OF STATUTE ON ASSESSMENT OF DAMAGES.....	7-2
	§7.1	Employment Standards Legislation	7-2
	§7.1A	Notice Fixed at Minimum Set by Employment Standards Legislation	7-12.2

Wrongful Dismissal

§7.2	Relationship Between Just Cause Under Statutory Remedy and at Common Law.....	7-12.2
§7.3	Statutory Remedy and/or Civil Claim.....	7-18
§7.4	Maternity Leave and Parental Leave—Common Law and Impact of Statute.....	7-43
§7.5	Statute Allowing Reinstatement.....	7-49
§7.6	Issue Estoppel	7-52
§7.6A	Cause of Action Estoppel	7-76.3
§7.7	Employment Insurance Benefits	7-84
§7.8	Ontario <i>Employers and Employees Act</i>	7-92
§7.9	<i>Statute of Frauds</i>	7-95
§7.10	Ontario <i>Workplace Safety and Insurance Act</i> , 1997.....	7-97
§8.0	TAX CONSIDERATIONS	8-1
§8.1	Taxability of Payments to Employee.....	8-4
§8.2	Deferral of Taxation for Pre-1996 Employment — Rollover into RRSP.....	8-26
§8.3	Deductibility of Legal Expenses.....	8-31
§8.4	Withholding of Tax at Source.....	8-38
§8.5	Non-resident Recipient	8-40
§8.6	Dismissal Before November 13, 1981	8-42
§8.7	Employer’s Tax Position.....	8-42
§8.8	Interpretation Bulletin IT-337R3.....	8-43
§8.9	Goods and Services Tax	8-54
§8.10	Tax Treatment of Disability Payments.....	8-57
§8.11	Additional Sources of Information	8-66
§9.0	THE SIGNIFICANCE OF WRITING IN CONTRACTS	9-1
§9.1	Written Contract of Employment.....	9-2
§9.2	Contract of Employment: Verbal Contracts vs. Written Contracts	9-7
§9.3	Parol Evidence Rule	9-14.6(9)
§9.4	Implied Terms	9-14.6(10.1)
§9.5	Collateral Contract.....	9-14.6(14.22)
§9.6	Indefinite Term.....	9-14.6(14.24)
§9.7	Contracts for Defined Term.....	9-14.6(15)
§9.8	Defined Notice Period.....	9-14.12
§9.9	Mitigation.....	9-40.4(1)
§9.10	Penalty Clause.....	9-52.4
§9.11	Specific Performance	9-56

Table of Contents—Volume 3

§9.12	Agreement on Termination/Accord and Satisfaction	9-57
§9.13	Statute of Frauds.....	9-77
§9.14	Collective Agreement.....	9-81
§10.0	PRACTICAL CONSIDERATIONS.....	10-1
§10.1	Sale/Reorganization of Employer’s Business.....	10-1
§10.1A	Termination of Business/Death of a Partner.....	10-16.1
§10.2	The Corporate Conglomerate	10-16.4
§10.2A	Common Employer.....	10-16.6
§10.3	Piercing the Corporate Veil	10-16.12
§10.3A	Conflict of Laws	10-20.4
§10.4	Director’s Personal Liability	10-20.19
§10.5	Settlement Negotiations	10-30
§10.6	Limitation Period	10-32
§10.7	Summary Proceedings	10-45
§10.8	Jury Notice	10-56
§10.9	Appeals from Wrongful Dismissal Decisions	10-66
CONCORDANCE AND LEGISLATION		
	Concordance	C-1
	Legislation	L-1
ISSUES IN FOCUS		IF 1-1
WORDS AND PHRASES		WP-1
	Contents	WP-3
SELECTED LEGAL LITERATURE		SL-1
INDEX		I-1