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<b>EMPLOYMENT LAW MANUAL</b> <b>The Honourable Mr. Justice John. R. Sproat</b> <b>Release No. 4, June 2022</b>
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### Publisher's Special Release Note 2021

The pages in this work were reissued in August 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the August 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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In addition to an extensive treatment of wrongful dismissal law in Canada, the *Employment Law Manual: Wrongful Dismissal, Human Rights and Employment Standards* features an examination of discriminatory practices under the *Ontario Human Rights Code* and offences under the *Employment Standards Act, 2000*. A section offering practical advice on hiring and firing is supplemented by a collection of helpful precedents, featuring forms of employment contracts, warning letters, termination letters, and more.

This release features updates to the case law and commentary in Chapters 1 (Overview), 3 (The Contract of Employment), 4 (Just Cause for Dismissal), 6 (Damages), 7 (Tort Liability), 9 (Employee Obligations and Liability to Employer), 20 (Remedies), 22 (General Provisions) and 24 (Termination of Employment).

## Highlights

- **JURISDICTION OF VARIOUS TRIBUNALS — WHETHER DECISIONS RESULT IN ISSUE ESTOPPEL — WORKPLACE SAFETY DECISIONS** — In *Morningstar v. WSIAT*, an employee subject to a “campaign of harassment” by co-workers took leave as a result of humiliation and distress caused by an internal investigation that concluded there was no harassment. The employee ultimately resigned based on a medical opinion recommending she not return to the workplace and commenced an action seeking aggravated and punitive damages and claiming constructive dismissal, breach of the *Occupational Health and Safety Act* and harassment. Two decisions by the Workplace Safety and Insurance Appeals Tribunal held that the plaintiff was precluded from pursuing her civil action, and that her only recourse was under the *Workplace Safety and Insurance Act*. The Divisional Court granted the employee’s application for judicial review, holding that she was entitled to continue her civil action for damages for constructive dismissal.
- **WRONGFUL DISMISSAL — WRITTEN CONTRACTS — EMPLOYER OBLIGATION TO EXERCISE CONTRACTUAL RIGHTS IN GOOD FAITH — OTHER CIRCUMSTANCES RENDERING WRITTEN CONTRACTS UNENFORCEABLE** — In *Matijczak v. Homewood Health*, the plaintiff clinical counselor resided in British Columbia and provided services in or over the telephone from British Columbia while employed from 2008 to 2020. Employment contracts signed in 2008 and 2012 provided that they were governed by the laws of British Columbia. In 2015, the employer required the plaintiff to sign a new contract, one including a provision that it was subject to the laws of Ontario and that the parties “irrevocably attorned to the jurisdiction of the Superior Courts of Ontario....” The British Columbia Supreme Court found that British Columbia’s Courts retained jurisdiction on the bases that: the 2015 contract did not say that Ontario had “exclusive” jurisdiction; it would be unconscionable to force the plaintiff to sue in Ontario; and the plaintiff received no consideration for the 2015 contract.
- **WRONGFUL DISMISSAL — DAMAGES — DAMAGES FOR MENTAL DISTRESS — AGGRAVATED DAMAGES — UNFAIR OR BAD FAITH CONDUCT IN THE MANNER OF DISMISSAL** — In *McGraw v. Southgate (Township)*, the female plaintiff was employed in a small community as an administrative assistant in the fire department, and

as a fire captain. The plaintiff was “marginalized in a toxic, male dominated workplace.” “Mostly unfounded, malicious, sexist falsehoods” circulated that the plaintiff had sent inappropriate pictures of herself to other firefighters, helped and student cheat on a test, and exchanged sex for grades. The municipality’s Chief Administrative Officer was found to have embellished certain rumors and made up the “grades for sex” rumor. The Superior Court of Justice awarded the plaintiff \$75,000 in moral damages, \$35,000 for sex discrimination under s. 46.1 of the *Human Rights Code*, \$60,000 for punitive damages and \$20,000 for defamation.

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