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### CANADIAN EMPLOYMENT LAW

Stacey Reginald Ball  
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#### Publisher's Special Release Note 2021

The pages in this work were reissued in June 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 June 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. Canadian Employment Law is a one-stop reference that provides a thorough survey of the law with analysis of developing trends. Canadian Employment Law has been cited by the Supreme Court of Canada, and in superior courts in every province in Canada. With methodically organized chapters, Canadian Employment Law can be counted on to provide detailed analysis of the facts and law of thousands of relevant cases. The subject-matter is wide-ranging and addresses topics including wrongful dismissal, fiduciary obligations, tort law and vicarious liability, remedies, constitutional issues, occupational health and safety, employment contracts, duty of good faith and human rights.

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## What's New in this Update:

This release updates the case law and commentary in Chapters 6 (Employment Contracts), 7 (Restraint of Trade Doctrine in Employment Context), 9 (Reasonable Notice of Dismissal), 12 (Mitigation), 13 (Fiduciary Obligations), 23 (Canada Labour Code and Non-Organized Employees), and 24 (Remedies). Also in this release, over 140 entries have been added to the Notice Charts contained at Chapter 9 (Reasonable Notice of Dismissal).

## Case Highlights

- **EMPLOYMENT CONTRACTS — NOTICE TO EMPLOYEE OF LIMITING TERMINATION PROVISION** — As a general rule (set out by the Court of Appeal for Ontario in *Dawe v. The Equitable Life Insurance Company of Canada*, 2019 CarswellOnt 9681, and by the Superior Court of Justice in *Battiston v. Microsoft Canada Inc.*), an employer must draw to the employee's attention a limiting condition on compensation payable upon termination. A pre-condition of the acceptance of limiting conditions is the employee's knowledge of them. In *Battiston v. Microsoft Canada Inc.*, 2021 ONCA 727, the Court of Appeal reversed the trial judge on the issue of whether the term was brought to the employee's attention because the employee checked a box indicating that he had read the terms of the stock awards plan and agreed to the terms of the agreement. (The Court of Appeal's decision should be read alongside the Supreme Court of Canada's decision in *Douez v. Facebook, Inc.*, 2017 SCC 33, where a contractual provision was not enforceable notwithstanding that the employee had clicked on online box "agreeing" to Facebook's terms and conditions.
- **RESTRAINT OF TRADE DOCTRINE IN THE EMPLOYMENT CONTEXT — REASONABLENESS BETWEEN THE PARTIES** — In *Parekh et al. v. Schechter et al.*, 2022 ONSC 302 (Ont. S.C.J.), a prohibition against a dentist's competition within a five-kilometer radius within central Toronto for three years was enforced by an interlocutory injunction. The court found that the non-competition covenant was "more closely attached to the contract for the sale of the business compared to one prepared in an employment context". Where, as here, the associate dentist was a significant part of the goodwill of the dental practice, there was a greater possibility that a non-competition clause would be enforced. That the dentist did not receive consideration for goodwill upon the sale of a practice did not alter the result, where the associate's "inextricable role" in the practice was well beyond that of a regular employee.
- **CANADA LABOUR CODE AND NON-ORGANIZED EMPLOYEES — QUALIFYING CONDITIONS — NO OTHER REDRESS** — In *Hayes and Royal Bank of Canada, Re*, 2021 CIRB 961 (C.I.R.B.), the complainant filed an unjust dismissal claim under the *Canada Labour Code*. The complaint arose in the context of the claimant's return from a short-term disability leave and included allegations that the employer had discriminated against the complainant on the basis of disability by its reorganization of his work functions. The Board dismissed the complaint under s. 242(3.1)(b) of the *Code* on the basis that there existed an

alternate procedure for redress, *i.e.* before the Canadian Human Rights Commission pursuant to a complaint under the *Canadian Human Rights Act*. That the limitation period to file a human rights complaint had expired was not relevant. What was relevant was the fact that “. . . another procedure for redress exists, regardless of whether it is still available.”

## **ProView Developments**

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