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EMPLOYEE OBLIGATIONS IN CANADA

James D'Andrea, Q.C.
Release No. 1, October 2021

Publisher's Special Release Note 2021

The pages in this work were reissued in October 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 October 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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Employee Obligations in Canada is the only resource to offer a complete commentary and analysis of the employee's obligations to the employer and of all the legal issues involved. The work sets out examples of how the courts have treated employers' claims against employees and the damages awarded in various actions, including actions for breach of fiduciary duties, breach of confidence and a failure to perform duties. Written by a noted employment lawyer, packed with practical strategies and updated on a regular basis, there's no better resource to help you advise your client on employee misconduct, dishonesty, disloyalty and everything in between.

What's New in this Update

- This release features updates to Chapters 1 (Fiduciary Obligations), 3 (Duty to Follow Lawful Orders), 4 (Competency and Implied Duties of Skill and Care), 6 (Employees' Obligation to Provide Reasonable Notice), 8 (Duty to Provide Medical Information), 10 (Non-Competition Obligations), Selected Legal Literature and Words and Phrases.

Case Highlights

- **Fiduciary Obligations — Who Constitutes a Fiduciary?** — Employee worked for employer for a long time and had excellent record with the company — At some point, company was sold to an individual person named Dwyer — Employee did not like working for new employer and so resigned and went to work for a supplier of the company — New company owner sued the former employee for, among other things, breach of his fiduciary duty — Action dismissed on this point — Employee had not been a fiduciary — While an important employee, defendant “did not have the authority to exercise any discretion or power over the conduct of Trimar’s business affairs that would affect Trimar’s legal or practical interests”, (at para 88), which meant he was not a fiduciary: *Trimar Promotional Products Limited v. Milner*, 2021 NSSC 98.
- **Duty to Follow Lawful Orders — Canadian Jurisprudence** — Plaintiff former employee of the defendant employer had been terminated for cause after he had been found vaping in a restricted area on the employer’s premises — Employer pointed to its company policies, which clearly restricted areas where smoking could occur on the premises, as justification for immediate termination — Employee claimed that although he was aware of, and observed, the company’s policies with respect to smoking, he had been unaware that the policy had been updated to include vaping as well as smoking — Court concluded that company’s failure to advise the employee of the policy amendment was to its own

detriment, not that of the employee — Employees cannot be expected to follow policies of which they are unaware — This was an opportunity for the employer to implement progressive discipline, instead of jumping the gun straight to termination: *Attzs v. Saputo Dairy Products Canada G.P.*, 2020 ONSC 5512.

ProView Developments

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- The Table of Cases and Index are now in PDF with no searching and linking
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- Images are generally greyscale and size is now adjustable
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