

Publisher's Note

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Employment Law Manual

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 updates the case law and commentary in Chapter 3 (The Contract of Employment), Chapter 4 (Just Cause for Dismissal), Chapter 5 (Constructive Dismissal) and Chapter 6 (Damages).

Highlights

- **Damages — Mitigation of Damages — Mitigation by Accepting Position with Same or Successor Employer — Cases Not Finding Obligation to Accept New Position** — The Trial Judge concluded that the terms of the offers of continued employment to employees of a company that was being restructured were so obviously unreasonable that the plaintiff was not obliged to accept the offer as a means of mitigating damages: *Sletmoen v. Nafco Manufacturing Co. Ltd.*, 2017 CarswellBC 2651, 42 C.C.E.L. (4th) 249 (B.C. S.C.), additional reasons 2017 CarswellBC 2761 (B.C. S.C.).
- **Damages — Punitive Damages — Cases Awarding Punitive Damages** — The defendant terminated the plaintiff, the President of the defendant, alleging that he had committed fraud in relation to financial reporting. The court found that

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this allegation was contrived and completely unfounded. The defendant also advanced a \$1.7 million counterclaim against the plaintiff to intimidate him. The defendant did not present any evidence to substantiate the counterclaim. The defendant's pleadings also contained personal attacks on the plaintiff. The Trial Judge found that there was no basis for the allegation of fraud and concluded that the plaintiff had been wrongfully dismissed. The plaintiff was also awarded \$100,000 in punitive damages: *Ruston v. Keddco Mfg. (2011) Ltd.*, 2018 CarswellOnt 7916, 49 C.C.E.L. (4th) 113 (Ont. S.C.J.), additional reasons 2018 CarswellOnt 14432 (Ont. S.C.J.).

- **Damages — Factors That May Give Rise to Damages for Mental Distress — Unfair or Bad Faith Conduct in the Manner of Dismissal — *Post-Keays* Cases Awarding Damages for Mental Distress — Aggravated Damages** — The plaintiff was the founder and a 30-year employee of O.W.L. which was a charity devoted to raptor rehabilitation and education. O.W.L., without any proper investigation, terminated the plaintiff's employment and sued the plaintiff alleging that she had misappropriated funds and received unauthorized benefits. The court found that these allegations were unfounded and awarded the plaintiff wrongful dismissal damages based upon a 26-month notice period. The court also noted that O.W.L. had been the plaintiff's life work and that she had suffered both emotional and physical distress due to the meritless claims of misconduct advanced by O.W.L. The Court awarded \$30,000 in aggravated damages but declined to award punitive damages: *O.W.L. (Orphaned Wildlife) Rehabilitation Society v. Day*, 2018 CarswellBC 2646, 50 C.C.E.L. (4th) 9 (B.C. S.C.).