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**EMPLOYEE OBLIGATIONS IN CANADA**

**James D'Andrea**

**Release No. 15, September 2018**

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 updates Chapters 1 (Fiduciary Obligations), 2 (Confidential Information), 3 (Duty to Follow Lawful Orders), 7

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(Employees' Obligation to Disclose) and 10 (Non-Competition Obligations).

### **Case Highlights**

- **Fiduciary Obligations — Specific Fiduciary Duties — Non-solicitation** — Two employees left their employer and began working for the same competitor — The former employer alleged that both former employees had violated their respective non-solicitation covenants and were thus liable for damages — The court agreed and found that not only were the individual former employees liable for the breach of the non-solicitation covenant, but that the new employer was similarly liable — Where new employers participate in their employees' breaches of restrictive covenants from former employers, they may be held equally liable for such breach: *MD Physician Services Inc. v. Wisniewski*, 2017 ONSC 2772 (Ont. S.C.J.), affirmed 2018 ONCA 440 (Ont. C.A.).
- **Fiduciary Obligations — Specific Fiduciary Duties — Conflict of Interest** — Employee had history fraught with discord, including termination and unpaid suspension from employment — Employee negotiated new employment contract with Board of Directors of employer, which included employee's own father and his father's friends — The terms of the new contract purported to pay the employee for a term of seven years, regardless of job performance or any changes with the employer — When Board was ousted shortly after employee's re-employment, employee was fired and commenced claim for payment under his contract — Court found all parties had violated duty to report conflict of interest to employer, and also concluded that contract, as negotiated, was unreasonable, unfair to the employer, and unenforceable: *Waddilove v. 1748960 Ontario Limited*, 2018 ONSC 448 (Ont. S.C.J.).
- **Non-competition Obligations — Fiduciary Duties and Non-competition** — Employee had been a fiduciary of the plaintiff employer before leaving and starting to work for someone else — Employer sought to enforce non-competition clause with an injunction, but the court rejected the application — The court was satisfied that, although the employee had indeed been a fiduciary of the employer, and definitely had possession of confidential information belonging to the employer, the restrictive covenant was unenforceable because the geographic restriction was overly broad and, when taken in concert with the restraint on trade, rendered the entire covenant unreasonable and unenforceable: *Westpac Solutions Ltd. v. Morgan*, 2018 BCSC 976 (B.C. S.C.).