PRESENTATION TO THE

ASSOCIATION OF ONTARIO LAND SURVEYORS

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SEMINAR - "THE LAW TODAY"

...WRONGFUL DISMISSAL

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ASSOCIATION OF ONTARIO LAND SURVEYORS

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I have been asked to speak to you today on the topic of wrongful dismissal. In preparing this speech, I have approached the topic from the point of view of an employer, since many of you will be interested in employee relations and the termination of employees from that perspective. However, the same principles obviously apply to employees.

I. IS THE PERSON AN EMPLOYEE?

The threshold question in the whole issue of wrongful dismissal is whether or not the person who has been or is about to be dismissed is an employee. Whether someone is called a freelance employee or an employee on a short term contract is not necessarily determinative of the matter. Such people may be entitled to pay in lieu of notice on dismissal regardless of how they have been classified. The courts have said that workers with "legal status of employees" will have terms regarding wrongful dismissal automatically implied into their employment contracts.[1]

What then gives someone the legal status of an employee.

The tests which have been developed by the courts are interrelated. They have been referred to as the control test; the four-fold test and the organizational test. As with most legal matters, the courts emphasize that the entire relationship between the parties must be examined, including the parties' understanding of their relationship. Rather than applying one test exclusively, the courts will attempt to look at all factors.

The control test has typically been applied in a situation where the court is trying to distinguish between a contract of service (or employment) and a contract for services. A contract for services might be one where, for example, a surveying firm retains a computer consulting firm to investigate their operation, make recommendations as to the computer facilities which would best respond to the surveying company's needs, install the appropriate equipment and provide training and follow up services. The computer company assigns one particular person to the surveying firm to look after the entire job. This person is present at the offices of the surveying company on a full-time basis for a period of, for example, six months. Would that person be an employee of the surveying company?

Quite clearly, common sense says that he would not. However, the control test which has been applied by the courts traditionally asks four questions in determining whether someone is an employee

and the example which I have set out indicates how those questions would be applied. Firstly, the control test asks, "does the employer, (in this case the surveying firm,) have the right to select the person who is doing the work? Since the computer expert would be assigned by the computer consulting company, the surveying firm would have no control over who that person would be.

Secondly, who pays the wages? In the example I have given you, the computer consulting company would be the entity responsible for wages and would in turn invoice the surveying firm for those services, presumably at a substantial mark up.

Thirdly, does the surveying firm have the right to control the method of doing the work? In the example given, the computer consulting company would be the entity which controlled the method of doing the work, since they in fact would have been retained for the very purpose of advising on the appropriate method of doing the work and then carrying out that work.

Finally, the last aspect of the control test is whether the "employer", in this case the surveying firm, has the right to suspend or dismiss the person carrying out the work. Obviously, the consulting company would be the entity which had this right over its employee, and not the surveying firm.

I have given you a very clear cut example to illustrate the tests which have traditionally been applied. Obviously such a fact situation as I have suggested is not one which would likely come before the courts; it would be clear to all parties that the person carrying out the consultive work on the surveying firm's premises was not an employee. However, with highly skilled or professional employees, the line becomes much more difficult to draw. Control may not be an adequate indicator of employment status. A highly skilled or professional employee may be subject to very little supervision due to the high level of training or the independent nature of his work. As a result, the courts have developed other tests to assist them in determining whether there is an employee/employer relationship.

Specifically, a "four-fold test" has been developed which considers not only control, but ownership of any tools or materials required to carry out the job function; the chance of profit and conversely the risk of loss which the "employee" bears. The crucial question in applying this test could be summarized by asking "whose business is it?". In other words, is the party carrying on business for some benefit to himself and not merely for the benefit of the superior. If the person shares to some extent with the so called employer in the chance of profiting from the overall business or the risk of loss in the event of a downturn in business then he will be less likely to be an employee.

This test would be relevant in a partnership relationship. Once two or more persons enter into a business arrangement in common with a view to sharing profits, the employee/employer relationship will probably have ended. I say probably, because it is possible that in certain situations this would be unfair. For example, in one case a plaintiff drove and operated the defendant's taxi cab for 25% of the gross profit.[2] Notwithstanding that there was profit sharing, the court found that this was not a partnership because all capital had been provided by the defendant, all management was within the defendant's power and employment status was therefore found to exist.

The implications of finding an employer/employee relationship are obvious. Those people who are not employees and who are working as independent contractors or agents are dismissable at will, without notice, unless of course there are some express terms to the contrary.

Finally, the third so called test which has been applied is essentially a restatement of the others. It has been called the organizational test and looks at the integration of the worker into the employer's business. If the worker is economically dependent on one particular company and the worker's activities are an essential component of that company's business, the worker in most cases would be regarded as a dependent contractor or employee

rather than an independent contractor or other self-employed person. In other words, is this person working for various businesses, or is he spending all his time at one place, and is his contribution an essential and necessary one to the operation of that business.

In summary, if you as an employer are faced with a wrongful dismissal action, and you seriously question whether the person suing you was in fact your employee, these are the factors which will be considered in determining that issue: control, sharing of profit and/or loss, the interdependence between the business of the employer and the work of the employee, ownership of tools or materials needed to carry on the work and finally, how the parties have themselves characterized the relationship between them.

II. THE HIRING PROCESS

An employer who requires a new employee inwhatever capacity is often searching for such a person with real time constraints in place. In other words, it is frequently a very hurried process carried out with less than complete care. The tendency is to hire the first person who comes along who appears adequate rather than continuing the search until completely satisfied that the person who is hired is the one most suited to the job.

The flipside of this pressure on the employer is that the potential employee may well and in fact probably will exaggerate his or her qualifications for the position. This is to be expected and is a factor to be taken into account by any employer when hiring.

However, the difficulty comes when an employee has actually misrepresented his or her experience and qualifications, and as a result of that misrepresentation has been hired. If the employer, some time after the fact, discovers that the employee has misrepresented his qualifications, the employer may well have a legitimate basis for firing the employee.

In a recent Alberta case[3], the plaintiff employee had previously worked as the president of DeVry Institute of Technology in Calgary. He obtained a new job as the president of a competitor company. He was fired about eight months later on the basis that he had misrepresented his qualifications for the job. Specifically, he misrepresented the amount he was being paid by his previous employer; his educational qualifications; he failed to advise his new employer that he was about to be fired from his previous job and in fact stated the opposite; he stated that he had received a bonus when he left his previous employer and this in fact was untrue. He had received severance pay only.

The court found that these and some other representations were sufficient cause for the employer to terminate the employee. In other words, an employer may rely on the representations made by a potential employee either in a resume or in job interviews. Having said that, however, it is also good advice that employers should attempt to continually improve the hiring process in an attempt to ensure that the best possible job candidate is the one who is hired. The case to which reference has just been made will not assist you as an employer if, after a few months of working with the employee, you realize that he or she is not capable of doing the job, and that an error in judgment was made in hiring this person.

III. NEGLIGENT MISREPRESENTATIONS BY THE EMPLOYER

The converse of misrepresentation by an employee in applying for a job occurs if similar misrepresentations are made by an employer in an attempt to induce a particular person to work for the employer.

A recent case[4], considers the issue of misrepresentation by an employer. The plaintiff was a chartered accountant who was living and working in Calgary. He was offered a position with a computer software company in Ottawa. The plaintiff was told that he would be hired as a chartered accountant to ensure proper

accounting standards on a particular project which was being developed by the defendant computer company. The person interviewing the plaintiff also told him that the product being developed was a major product, that one module had already been developed; that the company was in the process of developing the next two modules and that the company would subsequently be developing additional modules. He was further advised that the development of these modules would continue for another two years and that there would be significant further maintenance and development of the project. A representation was made that the staff on the project would be doubling. As a result of these representations, the plaintiff accepted the job, left secure well-paying employment and moved his family from Calgary to Ottawa. It soon became clear that few if any of the representations which had been made to him were accurate. Senior management had in fact not approved any of the subsequent projects. The feasability study for the first level of the project had not even been started. In other words, the job which had been held out to the plaintiff did not exist.

The plaintiff claimed damages for loss of income, damages resulting from the purchase and sale of his new home and damages for mental distress. He succeeded in each respect. The court found that the interviewer who had made these representations made them negligently in that he failed to advise that the necessary

budgetary approval had not yet been given for the project itself. The court also found that the interviewer knew or reasonably should have known that the plaintiff would rely on these representations in coming to his decision. The damages which were awarded directly resulted from the negligent misrepresentations of the defendant company.

The implications of this decision are clear: an employer cannot embellish the job which is being offered in order to induce someone away from an existing position. An employer has an obligation in law to be precise and accurate about the job which is being offered, so that the employee may make a reasonably informed decision as to whether to accept it. Such representations, however, must be express representations of fact and not simply implied representations or silence. The employer, to be liable in these circumstances, must have made certain express representations of fact.

IV. CONSTRUCTIVE DISMISSAL

Once the contract of employment has been formed, neither party has the right to unilaterally change a significant term of the contract, unless both parties agree to that change. Obviously, it is seldom the employee who is in a position to attempt to enforce changes to the terms of his employment contract. It is generally

the employer who seeks to do so. In such a case, the employer must keep in mind that in effecting changes to an employee's duties, location, remuneration, or other terms of employment, the employer may be risking a finding that the employee has been constructively dismissed.

Constructive dismissal is any unilateral act on the part of the employer that repudiates an essential or fundamental term of the employment contract, whether that term is expressed or implied.[5]

The principle of constructive dismissal has been successfully applied in cases where an employee has sued his employer for wrongful dismissal, notwithstanding that he was never formally fired or dismissed from his employment. Such an employee has convinced the courts that he was constructively dismissed if some or all of the following actions have been taken against him; his salary has been reduced; there has been a change in benefits; there has been a change in job content and/or level of responsibilities and status; he has been forced to relocate.

From an employer's point of view, there is a valid concern arising from the concept of constructive dismissal. An employer may legitimately and truthfully say that it was never intended that this employee be dismissed. The employer's motivation may well have been to restructure or reorganize the business operation. An

employer, may for example experience a downturn in business which necessitates a tightening up and restructuring of the company. As a result of that financial incentive, the employer may find it necessary to relocate and change the job functions of senior personnel. A person so affected may attempt to argue that he has been constructively dismissed.

The courts have recently begun to recognize that employers must have the right to restructure their operations as required. A recent case stated that the plaintiff employee had no vested right in the original position provided to him when he became an employee.[6] If the employer has acted in good faith and in the promotion of its legitimate business interests the plaintiff is not at liberty to refuse the new position notwithstanding that it fundamentally changes the employee's responsibilities. Similarly, in another case the plaintiff employee complained that he had been constructively dismissed when he was transferred to another position, paid the same salary, but had less status. Specifically, in his new job capacity he was required to report to someone who had previously been his subordinate. The court found that this was not a breach of the employment contract and did not amount to constructive dismissal.[7]

The trend, therefore, seems to be towards recognizing the legitimate business interests of the employer. An employee

alleging constructive dismissal must show an absolute refusal by the employer to perform the employment contract, or, put another way, the actions of the employer must show a clear intention that the employer no longer intends to be bound by the employment contract. If the employer offers an alternative position and does not totally withdraw the employee's function, the more recent cases suggest that an employee will have some difficulty in succeeding on the grounds of constructive dismissal.[8]

V. DISMISSAL AND JUST CAUSE

The more common situation is of course that where there is no argument as to what has transpired. The employee has been called in to the employer's office and has been advised that his services are no longer required. The employer believes that it is justified in taking this action, and the employee believes that it is not.

The fundamental issue of wrongful dismissal is therefore the issue of just cause. What constitutes just cause? For what reasons is an employer entitled to terminate an employment relationship?

In approaching this issue and its corollary issue of the amount of damages that are payable when there is no just cause, it is always necessary to keep in mind that the courts treat each case

before them individually and have for the most part refused to apply any hard and fast rules to the treatment of wrongful dismissal cases. For this reason, no sweeping or really accurate generalizations can be made. Each case will depend on its facts, not the least of which will be the judge's perceptions of the equities or the fairness as between the parties. It is fair to say that in any dispute between an employer and an employee, the courts will tend to feel some sympathy for the employee at first instance. This sympathy may well be lost as the court listens to evidence of the actions of the particular employee, but in general terms an employer dealing with any such claim should recognize that the disparity in bargaining power and position between an employee and employer is something in the nature of David and Goliath and the courts will respond to that disparity.

In general, the following considerations should be kept in mind when attempting to determine whether an employer has just cause for terminating an employee:

1. Rarely will one single incident constitute just cause unless it is an extremely serious incident, extremely prejudicial to the employer or of such a nature that it is clear that it will recur in the future.

2. The principle of condonation is often considered by the courts. This principle in substance is that where an employee has done certain wrongful acts but the employer has forgiven those acts or otherwise overlooked them, the employer cannot subsequently rely on those same acts to dismiss that employee. If the facts which the employer complains of were known to the employer for some period of time, but the employer retains the employee after these acts for a reasonable period of time within which the employer might have acted, then the employer will be taken to have condoned the misconduct and will be unable to subsequently rely upon those actions to support the dismissal of the employee.

Having said that, however, the situation may be different even where the employee is guilty of new and additional acts of misconduct which lead to the termination of his employment contract. Can the employer legitimately rely on the prior acts of misconduct as well as those subsequently committed?

One case recently decided sets out some particularly obnoxious haviour by an employee.[9] Within the first month of starting work as the marketing director for the employer defendant, the plaintiff had alienated several fellow workers and clients. Specifically, he had physically shoved a fellow salesman against a wall as a result of the salesman interrupting him during a trade show; he smashed a door with his fist following a discussion with his

supervisor in front of office and sales staff; he had requested that other salesmen split their commissions with him which was contrary to company policy; he had hugged and kissed the receptionist against her will; and he was obnoxious and abusive to a potential customer of the defendant company. All this misconduct occurred within one month of commencing employment.

The president of the company forgave the plaintiff but told him to "clean up his act".

Subsequently to being so advised, the plaintiff, in the following two months committed new acts of misconduct: he berated a hotel manager and staff while with the president; he attended a company dinner drunk at which time he insulted and assaulted his fellow employees; and he again attempted to convince fellow salesmen to split their commissions with him. After being employed by the defendant company for a total of three months, his employment was terminated.

The plaintiff attempted to convince the court that because the president had forgiven him for his initial acts of misbehaviour, the company could not rely further on those acts, but could only rely on the subsequently committed inappropriate actions. The court disagreed and said that the cumulative effect of the conduct of the employee could be taken into account in considering whether

there was just cause for termination.

An employer may also condone actions which constitute just cause for dismissal by paying the employee some portion of his salary on termination. The rationale for this principle is as follows: if an employer has grounds for terminating an employee's contract of employment, then the employer may terminate that employee immediately without any further pay or notice. Payment to an employee in those circumstances is therefore inconsistent, and may be characterized by the courts as an admission that the behaviour which gave rise to termination has been condoned.

Therefore if an employer wishes, as an act of generosity, to give an employee some compensation when terminating that employee, the employer should make it clear that such compensation is being paid solely on an ex gratia basis to assist the employee in relocating himself.

3. Dismissal on the basis of redundancy, economic problems, and/or company reorganization does not constitute just cause. If an employer is experiencing economic difficulties as a result of which employees must be "let go", such an employee may successfully sue the employer for wrongful dismissal. The courts have noted the irony in this fact; a successful wrongful dismissal action in this context may well add to the employer's financial difficulties. An

employer in this situation would therefore be well advised to attempt to negotiate a settlement package with any employees leaving under these circumstances and obtain a release from those employees.

4. Insolence, insubordination, disobedience, neglect of or refusal to perform duties constitutes just cause if it is sufficiently serious that it destroys harmonious relationships between the employer and employee or between the employee and other employees. Such actions may also prejudice the employer's business. If the company's public image is important and the acts of an employee diminish that image, the employee's actions may well be cause for dismissal.

5. Dishonesty is just cause if the act is deliberate, the employer has proof of the act and not just suspicions, the act prejudices the employer or the employer's reputation, or generally reveals the untrustworthy character of the employee when employed in a position of trust.

6. Intoxication may be just cause depending upon the extent of the problem and the prejudice caused to the employer's business. The courts have become more sympathetic to alcohol problems than in the past and it is therefore increasingly important that an employer adopt a constructive, supportive approach and genuinely

attempt to assist such an employee prior to termination. An employer should encourage treatment and allow a certain period of time to pass in which the employee is given the opportunity to make genuine efforts to deal with his problem. However, the actions of an employee who has an alcohol problem are almost certain to impact on other employees, and if the employee fails to make legitimate attempts to resolve his problem, the employer will likely be justified in terminating the employment contract.

7. Absence from work without explanation or if false reasons are given may constitute just cause. Absences due to illness or mental problems may not constitute just cause unless they are prolonged. It is only when such absences constitute a fundamental breach of the employment contract that just cause will be found.

8. Personality conflicts may constitute just cause if they result in unproductive conflict in the workplace or substantially decreased productivity.

9. Incompetence or substandard work may be just cause. This is probably the most common problem that employers face. It is important that an employer with concerns in this regard document the problem properly. An employee who is incompetent or whose work is substandard should be told in specific terms of his job duties and his shortcomings in performing them. He should be advised as

to how his performance must improve and given a specific time frame for effecting this improvement. This meeting should be fully documented, and, if possible, the employee should sign a copy of minutes of the meeting which fully set out what was discussed.

At the end of the specified time period, the employer should again meet with the employee and assess the improvement or lack thereof in job performance. It may be that the employee will have improved in some areas, but not all and those remaining areas of concern should similarly be documented and further monitored.

If this sort of a procedure is followed, the employer, if a decision is ultimately made to terminate an employee's contract of employment for incompetence, will have a well documented defence to any wrongful dismissal action which may be subsequently instituted.

10. Employee conduct outside the workplace. What are the limits of an employee's behaviour? Clearly, an employee's behaviour within the workplace is relevant for purposes of assessing continuing employment. However, there may be situations where the employer is entitled to review conduct outside the workplace, and find just cause for termination on the basis of that conduct.

Following, briefly, are two cases where the courts considered conduct outside the workplace.[10]

The first case[11] involved a school teacher at a Roman Catholic school in Alberta, who was unmarried, and who became pregnant for the second time. On the occasion of her first pregnancy, the School Board had given her maternity leave and warned her that any further premarital sex would mean the end of her employment. When she became pregnant the second time, she was dismissed on the basis that she had engaged in further premarital sex. The court upheld her dismissal. This decision was based not only on the particular conduct which had been committed outside of the workplace, but on the precepts of the employer, which include a well established doctrine against premarital sex. It was in this context that the employer's action was found justifiable.

This decision can be contrasted with another British Columbia decision where the plaintiff was employed as a grocery clerk and had admitted buying marijuana from a senior employee.[12] The transactions were all outside working hours and off premises and the plaintiff never had the drug at the defendant's store. The plaintiff had been dismissed because of the marijuana use.

The courts found the employer was not justified in dismissal because the plaintiff's conduct did not prejudice in any way the

defendant's business or reputation.

VI. REASONABLE NOTICE

If an employee has been wrongfully dismissed, what notice is he entitled to?

Prior to 1960, the courts generally applied an upper limit of six months pay in lieu of notice. In 1960, however, a decision of the Ontario Supreme Court[13] stated that no fixed upper limit could be applied in cases of wrongful dismissal. The court in that case set out for the first time the now firmly entrenched test that each case must be decided on an individual basis, taking into account such factors as the type of employment, the length of service of the employee, the age of the employee when dismissed and the availability to him of similar employment, and the experience, training and qualifications of the employee.

As already stated with respect to just cause, because these matters are dealt with in such an individual way, it is difficult to state any meaningful generalizations as to what periods of notice will be found appropriate. However, it can be said that after the 1960 decision to which reference has been made, the maximum amount of notice increased first to twelve months, then to fifteen months and then went as high as eighteen to twenty-four

months of pay in lieu of notice. At least one practitioner in the field of wrongful dismissal believes that the peak notice awards were reached in 1984 or 1985 and that since that time there has been a judicial trend moderating the awards slightly downward.[14] Other practitioners do not agree with this interpretation and maintain that awards have not decreased in any substantial way. However, there is no dispute that certain judicial developments indicate a change in the court's attitude so that decisions are slightly less in favour of the employee than they were five years ago.

In particular, the courts have in many cases followed a test of "fairness" or "ball park" justice. This concept provides that if the employer presents a reasonable severance package to the employee, the courts will not interfere with that reasonable offer for compensation provided it was "fair" or "in the ball park". In other words, even if the court itself would have awarded slightly more, if the employer's offer is reasonably close, the court will not interfere and will not impose any further liability on the employer.

This concept has some serious implications for a plaintiff employee who sues his employer because he feels that the severance package offered is not sufficient. If such an action goes through to trial, and the court finds the employer's offer "in the ball park", not only will the employee get no further payment, but the

employee will be responsible for the employer's legal costs in defending the action.

The question in applying this test obviously becomes a question of what is reasonably close. In one 1987 case of the Ontario Supreme Court[15] the judge found that his assessment of the appropriate notice period was eighteen months, while the amount offered by the employer was nine months. He found that this difference of nine months was not reasonably close and was therefore not "within the ball park". He set out what he thought to be a general rule of thumb that the margin of error should be about three months difference.

The judge, in that case, did however assist employers in that he also stated that the onus of proving the unreasonableness of the offer is upon the plaintiff employee. In other words, the employee must set out all the facts as to why he should be entitled to additional notice above and beyond what has been offered.

As stated, however, this case is under appeal and it may be that some further guidance will be given in the issue of "ball park justice".

The other manner in which the courts have indicated some increase in sympathy with the employer's position has been found

in a few cases which suggest that there should be a cap on the maximum period of reasonable notice. The courts have been careful to say that there may be exceptional circumstances which would make this cap inappropriate, but have suggested that in most cases, where all circumstances favour the employee, the rough upper limit for reasonable notice should be eighteen to twenty-four months. In other cases, where the responsibility, age and/or years of service are less, the notice period should be scaled downward.[16]

This philosophy of a maximum notice period or cap, has been followed in two subsequent cases decided in British Columbia.[17]

An Ontario Supreme Court judge has gone further and in a 1987 case stated that twelve months notice appears to be the reasonable maximum period of notice available in any case in which everything favours the employee.[18]

It seems unlikely that this latter suggestion will be followed by all courts but it does seem reasonable that this comment will have some impact on how other courts assess the appropriate period of notice.

VII. CONCLUSION

The field of wrongful dismissal is one which will touch every employer and is therefore an area with which it is important to have some basic familiarity with the fundamental principles and concepts. As in most areas of the law, common sense goes a long way in dealing with employees. The underlying theme of all the issues which have been highlighted is one of fairness. The employee should be treated fairly in the hiring process and should therefore be precisely and accurately advised of the job duties and position; if there is dissatisfaction with job performance or other misconduct the employee should be advised both verbally and in writing of the employer's concerns and should further be told specific steps which are necessary to meet those concerns; if an employee is to be dismissed with either notice or pay in lieu thereof, the amount of notice should be assessed taking into account all the circumstances of the employee's service and the length of that service.

NOTES

1. Carter v. Bell [1936] O.R. 290 (C.A.) 297

2. Seamone v. Boehner [1951] 1 D.L.R. 777 (N.S.S.C.)

3. Unreported judgment of Mr. Justice Power, Action No.8501/05801 Reasons for Judgment released June 16th, 1987

4. Oueen v. Cognos Inc. (1987) 18 C.C.E.L. 146

5. Brian A. Grosman, "Recent Developments in the Law of Hiring and Firing", Canadian Bar Association Address to Corporate Counsel Section, October 27, 1988, p.21

6. Canadian Bechtel v. Molenkoof (1978) 1 C.C.E.L. 95 (C.A.)

7. Longman v. Federal Business Development Bank (1982) 131 D.L.R. (3d) 533 (B.C.S.C.)

8. Poole v. Tomenson, Saunders. Whitehead Ltd. (1987) 18 C.C.E.L 238

9. Denchfield v. Pacific Rim Container Sales Ltd. (1987) 7 A.C.W.S. (3d) 346

10. Brian A. Grosman, "Recent Developments in the Law of Hiring and Firing", Canadian Bar Association Address to Corporate Counsel Section, October 27, 1988, pp.7-9

11. Casacrande v. Hinton Roman Catholic Separate School District No. 155 et al. (1987) 5 A.C.W.S. (3d) 164

12. Ward v . McDonald's Restaurants of Canada Ltd., unreported decision of Mr. Justice Mackinnon, May 12, 1987

13. Bardal v. Globe & Mail Ltd. (1960) D.L.R. (2d) 140 (Ont.H.C.)

14. "Developments in the Determination of the Appropriate Period of Reasonable Notice in Wrongful Dismissal Actions", Randall Scott Echlin presented to the Law Society of Upper Canada November 25th, 1988

15. DeFreitas v. Canadian Express and Transportation Limited (1987) 16 C.C.E.L. 160

16. Ansari et al. v. British Columbia Hydro Power Authority (1986) 13 C.C.E.L. 238 (B.C.S.C.)

17. Sorel v. Tomenson, Saunders, Whitehead Ltd. et al. (1987) C.C.E.L. 223 (B.C.C.A.) and Robertson v. B.F. Goodrich Canada Inc. (1986) 8 D.E.L.D. 55 (Ont. H.C.)

18. Oshust v. Foster, Wheeler Ltd. (1987) 8 A.C.W.S. (3d) 16 (Ont. H.C.)