

WRONGFUL DISMISSAL, by David Harris. Richard de Boo Ltd.,
Toronto, 1978, pp. 112

If you are called upon to advise an employee who has just lost his job or considers that his job is in jeopardy, or you are called upon to advise an employer who wishes to let an employee go, or if you are called upon to advise a client who is about to enter upon a contract of employment either as an employer or as an employee, then you would be well advised to take a couple of hours to read Mr. Harris' highly readable 112-page book on wrongful dismissal. Having regard to the explosion in our courts of wrongful dismissal cases and what may, with respect, be generally described as a liberal judicial approach to the position of terminated employees, Mr. Harris' book is timely indeed.

The author has collected, in four principal categories, the recent Canadian judicial pronouncements in this area, with some reference as well in the absence of Canadian jurisprudence to English and American authorities. These categories are: Status As Employee, Dismissal, Damages and Income Tax Considerations.

In dealing with the first item, "Status As Employee", Mr. Harris canvasses the essential ingredients of the employer-employee relationship and goes on to comment on the situation which is becoming increasingly commonplace: that of a Shareholder-Employee, Director-Employee, and Partner-Employee. In addition, he deals with the somewhat anomalous position of the "Crown servant".

In the second category, "Dismissal", Mr. Harris points out that the act of termination may occur in many different ways. For instance, a demand for resignation may be equivalent to an act of firing. So also a reduction in salary, a demotion in job responsibility, a unilateral alteration of duty, an alteration in fringe benefit, a unilateral change in job location, the employment of a substitute or even a promotion may be considered tantamount to a dismissal. Indeed, one will learn that a resignation letter may not be worth the paper it's written on. One also will learn that a sale of a business will cause the employment contract to be terminated. Also dealt with is the situation of a subsidiary and the acts of the controlling corporation, and the potential liability of the controlling corporation in circumstances of a termination by the subsidiary. Mr. Harris also deals with the defences open to an employer under the heading "Just Cause". A reading of the author's comments and the cases referred to may lead the reader to the conclusion that this is a very limited defence indeed.

Mr. Harris devotes the major part of his treatise to the matter of damages (36 pages). He has included a useful summary providing the case name, position affected, age, length of service and period of notice. Under this heading of "Damages", the author deals with the duty to mitigate, the onus of proof upon the employer, and provides an illustration of the principles to be applied in the case where the terminated employee commences a business of his own after termination. Under the heading "Related Action For Damages" Mr. Harris

deals with the theory of liability of the tort of inducing a breach of contract.

In the fourth category "Income Tax Considerations", Mr. Harris deals with the recent cases and the provisions of The Income Tax Act. This, of course, is a very real concern to both employer and employee, and the current state of the law seems to be that if the payment is made as result of either a successful lawsuit or threatened litigation, the payment will not be categorized as an income receipt in the hands of the employee. By the same token, however, it may well be that the employer may deduct the payment as an expense.

Mr. Harris also deals with "The Significance of Writing In Contracts", the need for compliance with the Statute of Frauds, and how these written agreements are generally restrictively interpreted against the employer. In the final chapter, Mr. Harris deals with what he calls "Practical Considerations" including treatment of "The Corporate Conglomerate", the "Director's Personal Liability", some useful comments on "Settlement Negotiations", and ending with the title "Jury Notice".

This is altogether a very readable book, with its collection of recent judicial pronouncements, and helpful hints as to methods that should be employed in reaching a settlement between the parties. It is a must for the lawyer who is called upon to advise in these areas; whether in endeavouring to settle the terms of the employment relationship prior to employment, in anticipation of termination, in concluding whether a termination has in law occurred, or in dealing with the legal results flowing from such termination.

Alan D. Hunter
with the firm of
Code Hunter
Calgary, Alberta