THIS EXAMINATION CONSISTS OF 8 PAGES

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THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

LAW 419C/519

Individual Employment Law

Section 1

Professors McLean and Mitha

**TOTAL MARKS**: 100

**TIME ALLOWED**: 3 HOURS

(Students can type or write their exam answers during the reading time)

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**NOTE:** 1. This is an open book examination.

 2. This exam consists of **6** questions. ANSWER ALL QUESTIONS.

 3. Assume the laws of British Columbia and the federal laws of Canada apply in all circumstances. You may ignore any limitation period extensions or suspensions enacted because of the Covid-19 pandemic.

**QUESTION 1 (25 POINTS)**

Bob Gainey, age 55, joined Stronger Faster Fitness (“SFF”) in 2014 as its Vice President, Sales. SFF operates fitness centers in all major Canadian cities and also has an online fitness training division which produces fitness videos which clients can subscribe to and view online from their homes.

In his position, Bob was responsible for overseeing the marketing and sales activities of SFF for all of Canada. Based in the company’s head office in Burnaby, Bob supervised a staff of approximately 55 sales and marketing employees. As a senior member of SFF’s leadership team, Bob received an annual salary of $250,000.00, plus standard health benefits.

In 2018, Bob began hosting and producing the “Faster and Finer” podcast, which bizarrely developed a cult following. By early 2020, the podcast had over 100,000 subscribers and Bob was regularly featured in television and social media profiles on behalf of SFF.

Approximately 12 months into the Covid-19 pandemic, several Covid-19 vaccines were developed, tested and approved for use in Canada. Shortly thereafter, SFF introduced a vaccination policy which required any client attending a fitness center to demonstrate proof of vaccination. The day after the introduction of the policy, Bob took to his personal Twitter account and posted several tweets: [[1]](#footnote-2)

****Within several hours, Bob’s tweet had been liked over 80,000 times, largely by people vehemently opposed to any vaccine mandates for Covid-19.

The next morning, SFF’s President, Sammi-Jo Smalls, received a call from All-News Network, asking her for comment on why SFF’s VP of Sales was opposing vaccines. Sammi had no idea what the reporter was talking about and telephoned Bob. Bob told her that a couple of his tweets had received “Lots of likes, but it’s nothing to worry about.” Sammi instructed Bob to delete the tweets immediately which Bob refused to do.

Later that day, a group of healthcare workers who were clients of SFF launched an online petition to boycott SFF. Within hours, the petition had 15,000 signatures and Sammi was receiving multiple requests for comment from media organizations about why SFF supported anti-vaccination efforts.

Sammi called Bob again and asked if the tweets had been taken down. Bob told Sammi he was not going to do that told her “What I do with my personal Twitter account is none of your business!” Sammi told Bob that if the tweets were not taken down by 5:00 p.m. that day he would be terminated. At 5:30 p.m., Sammi confirmed the tweets were still posted and sent Bob a termination letter by email, confirming that his employment had been terminated immediately for just cause.

One week later, SFF received a demand letter from Bob’s lawyer, claiming that Bob had been wrongfully dismissed and advising that Bob would be suing SFF shortly. Sammi calls you looking for advice.

**(a) Do you believe SFF had just cause to terminate Bob’s employment?**

 **Explain why or why not? (15 points)**

**(b) If SFF did not have just cause, what damages can Bob recover under the**

 **common law? (10 points)**

**QUESTION 2 (5 POINTS)**

Howard Meeker is employed with Super You in Victoria, British Columbia. He works as a counsellor, specializing in counselling couples.

In early 2022, he noticed problems with his vision and, unfortunately, by December of 2022, his vision had deteriorated to that point that he could no longer read without visual assistance.

In January of 2023, Howard met with a specialist who recommended the Magnifier 3000, a portable magnifier (about the size of an Ipad) which Howard could use to magnify text for reading. As a relatively new product, the Magnifier 3000 retailed for $4,500.00.

Howard asked Super You to provide him with a Magnifier 3000 for use at work and the owner refused, saying that while the company could afford it, supplying Howard with the magnifier would “set a bad precedent” for the company.

Unable to read anything in the workplace, Howard began a medical leave on January 14, 2023.

**(a) What remedies under statute might Howard have against Super You?**

**QUESTION 3 (25 POINTS)**

Lara Stadler has been offered employment with Leafy Greens LP, a manufacturer of vertical farming systems based in Langley, British Columbia. She has been given an employment contract and has asked you to review it for any issues of concern.

Dear Lara,

Welcome to the team. You will start in your new role of Produce Development Lead on April 15, 2023.

 1. You will work from home 3 days per week. Please ensure that you have at

 least a high-speed internet connection with unlimited data – we find that our

 spreadsheets tracking growing and watering are very data-heavy!

2. You will report to Ken Dryden, Vice President of Growth. We reserve the right to change your reporting relationships, job location, duties and compensation as may be required from time to time.

3. Our growing systems are highly specialized and confidential. For that reason, if you leave your employment for any reason, you agree not to work within 50 kilometers of our head office for any company growing vegetables or fruit using indoor greenhouse technology for a period of 1 year.

4. For the first two years of your employment, you will receive 5% of your base salary which can be used to fund your time off. After two years of employment, you can take up to 3 weeks’ time off each year.

5. Each year, you may take up to 5 days of unpaid sick leave. After 5 days, we require written confirmation from a physician to continue your sick leave.

6. As a Development Lead, you receive an annual salary of $124,000.00 per year, paid monthly. This salary will compensate you for all hours worked.

7. If you wish to resign your employment, we require that you give us 8 weeks’ written notice. We can terminate your employment at any time for just cause or, in our discretion, at any time without cause by providing you with the following payments:

 a. 2 weeks if you have worked for 1 year or more;

 b. 8 weeks if you have worked for 3 years or more; and

 c. 15 weeks if you have worked for 5 years or more.

8. We recognize all 9 statutory holidays in British Columbia, and you will receive those days off with pay.

9. Each year, the first 50 employees of the company who require maternity and parental leave will be entitled to take up to 52 weeks of leave. After 50 employees have taken leave, all remaining eligible employees will receive 40 weeks of leave.

10. If you have been employed with us for over 2 years, if you are selected for jury duty, you will receive 25% of your base salary while serving on a jury.

11. You agree that if the company needs to remove you from the workplace to investigate any incident related to your employment, it can suspend you. You will only receive pay for the first 5 days of any suspension.

12. In the event of a crop loss or other serious incident, we may have to temporarily lay you off from your position. If we do, your layoff will not last for more than 13 weeks.

13. All our employees are required to take a random drug screening test before starting employment. If you test positive for a prohibited drug, this offer of employment will be rescinded.

14. You confirm that the contents of your resume and job application are completely accurate and correct. If we learn that this is not the case, you agree we may terminate your employment for just cause.

15. Finally, we save the best for last: as one of our first 500 employees, you are entitled to receive an annual bonus based on company sales and your individual performance. The amount of that bonus shall not exceed 60% of your base salary and will be paid by April 30 of the following year.

Please sign and return a copy of this letter by May 1, 2023.

Thanks!

**(a) Identify any concerns, including omissions, with the contract.**

**QUESTION 4 (20 POINTS)**

Manon Rheaume has worked with Padstack Enterprises Inc. since January 3, 2016 as a press operator, based in Kelowna, British Columbia. She helps produce hockey equipment and receives an annual salary of $86,000.00 per year, plus health and dental benefits.

Padstack Enterprises Inc. is owned by the Orr family. The Orr family is renowned as one of the province’s richest families, operating dozens of businesses. The Vice President of Human Resources for Padstack, Cindy Orr, serves in the same role for Cheddar and Manon’s General Manager, Peter Orr, is an officer and director of both companies.

In 2020, Manon’s supervisor delivered a letter to her advising that, effective April 1, 2020, Cheddar Wheel Ltd. would be taking over payroll and benefits for Padstack. Manon asked her supervisor what that meant and her supervisor said “Nothing, the benefits and payroll are just being administered and paid by Cheddar for some reason.”

On March 5, 2023, Bobby Orr, President of both Cheddar and Padstack, announced that due to declining sales, Padstack would be closing, effective March 31, 2023. In an email to all 78 employees in the Kelowna branch, including Manon, he stated:

“For years, Padstack has made some of the finest hockey equipment in the world. Unfortunately, the weakness of the Canadian dollar and low-cost imports from China have lead us to the position we are in today.

Your employment will end on March 31, 2023 and, sadly, due to the poor company performance, we are not in a position to pay you any termination pay. You will be paid up to your last day of employment.”

The next day, the Globe and Mail reported that all ten senior executives of Cheddar would each be receiving substantial bonuses of at least $300,000 on June 1, 2023 given Cheddar’s “record profits in 2023!”

Manon calls you seeking advice.

**(a) What advice would you give to Manon about recovering wrongful dismissal damages under the common law? (10 points)**

**(b) What statutory remedies might be available to Manon under the *Employment Standards Act*? (10 points)**

**QUESTION 5 (10 POINTS)**

Meghan Agosta joined Squad Car Productions Inc. in 2019 in the position of Fleet Manager. Squad Car sells and rents replica emergency vehicles for use in the film and television industry. As Fleet Manager, Meghan directly supervised approximately 85 employees across Canada.

In her role, Meghan earns $115,000.00 per year, receives a vehicle allowance of $800 per month and reported directly to the President of Squad Car.

In February of 2023, Five-O Enterprises Ltd. announced that it was acquiring Squad Car, effective April 1, 2023, by acquiring all of the assets of Squad Car.

On March 10, 2023, Meghan received a letter from Tessa Bonhomme, Vice-President of Inventory Management with Five-O. The letter stated, in part:

Meghan,

We are delighted to offer you employment with Five-O, commencing April 1, 2023. You will be employed in the position of BC Fleet Manager and will supervise all 15 employees in BC. You will report to me directly.

As Manager, you will receive an annual salary of $95,000.00 per year. In addition to our standard benefit plan, all managers participate in our employee share ownership plan. Under this plan, you will receive 25,000 common shares in Five-O on each anniversary date of your employment (presently, the shares are trading at $0.90 on the Toronto Stock Exchange).

We look forward to you joining our team.

On receiving the letter, Meghan was offended and wrote a brief email back:

 Tessa,

I was very disappointed to receive your offer. It is almost insulting and I

am not prepared to consider it.

On April 5, 2023, Squad Car received a demand letter from Meghan’s lawyer, demanding $115,000.00 in common law damages for wrongful dismissal.

**(a) Is Squad Car liable for any common law damages? Explain why or why not?**

**QUESTION 6 (15 POINTS)**

In 2021, Angela James responded to a LinkedIn advertisement seeking experienced computer programmers. After a few email exchanges, she was offered a position with TalkGPT, an artificial intelligence start-up company.

TalkGPT provided Angela with a lengthy email outlining the terms of her position, which stated, in part:

As a leader in new processes, we recognize the importance of independent thinking.

You will make your own schedule: take on the level of work you are comfortable with from week-to-week. Each project you accept will have a fixed fee, ranging from $500 to $2,500. The more complex the project, the higher the payment.

Projects are typically due within 10 days of assignment. You can accept as many (or as few) projects as you want each week, but you must average 5 projects per month. If you do not wish to accept any projects in a given week, we ask that you notify us 3 days before the start of that week so we can plan accordingly.

TalkGPT is a member of the Be-Well Benefit Alliance, an affiliation of software companies who have united to provide comprehensive medical and dental benefits for anyone providing services to the company. You will be eligible to participate in the benefits program after you complete 5 projects.

You are expected to have a computer and home internet connection with sufficient speed to run large software programs. We will provide you with the most up-to-date version of our proprietary AI software to assist you in completing projects.

Your Project Manager will be Hilary Knight. Ms. Knight will review each submitted project and provide feedback and payment approval.

While providing services to TalkGPT, we require that you no work for any other business in the computer software industry.

We look forward to working with you.

After six months of working with TalkGPT, Angela noticed that the projects were taking far longer than she anticipated. Often, she was spending 60-70 hours per week to complete a “simple” project paying $500. More complicated projects required upwards of 80 hours per week to complete.

Last week, Angela met with Hilary to discuss her concerns. Hilary told her TalkGPT did not have time for “unbelievers” and told her that she would no longer receive any projects from TalkGPT.

Angela calls and asks you what recourse she has against TalkGPT?

**(a) Is Angela properly classified as an independent contractor, dependent**

 **contractor or employee? Explain why. (10 points)**

**(b) Based on Angela’s status, is she entitled to any damages as a result of the position being eliminated? If yes, explain how those damages would be assessed. (5 points)**

**END OF EXAMINATION**

1. Descriptive text for Tweet Image: This is a picture of two tweets from the user SFF Bob @bobgainey. Tweet 1 reads “Not sure I’d be putting poison into my veins. A regular program of exercise and a healthy diet can defeat even the most persistent virus #nojabsforme. The second tweet reads “Say no to big pharma! Exercise, eat healthy and get plenty of rest! #nojabsforme #SFF [↑](#footnote-ref-2)