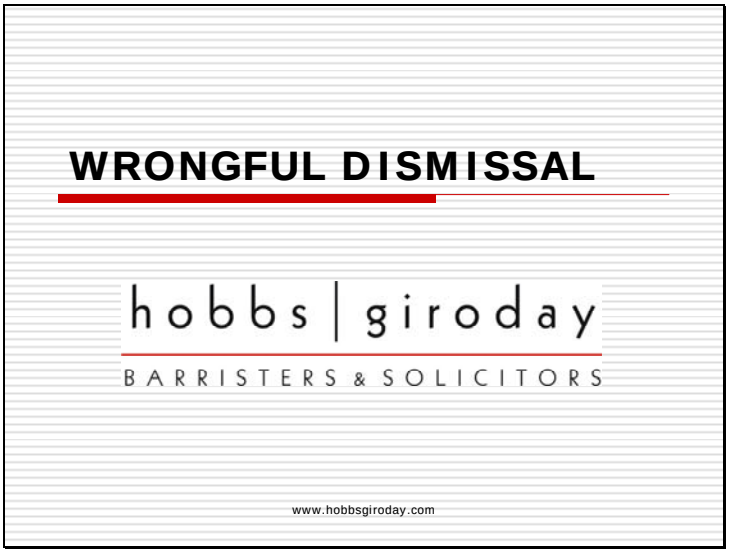
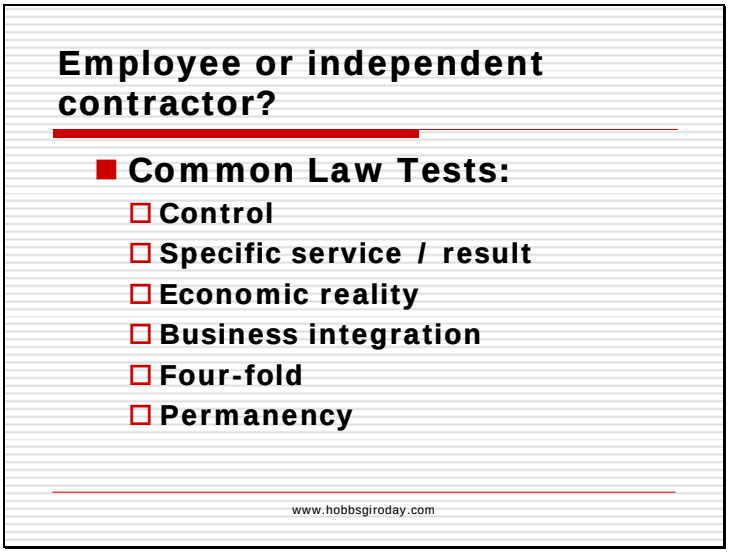
Slide 1


WRONGFUL DISMISSAL
hobbs | giroday
BARRISTERS & SOLICITORS
www.hobbsgiroday.com

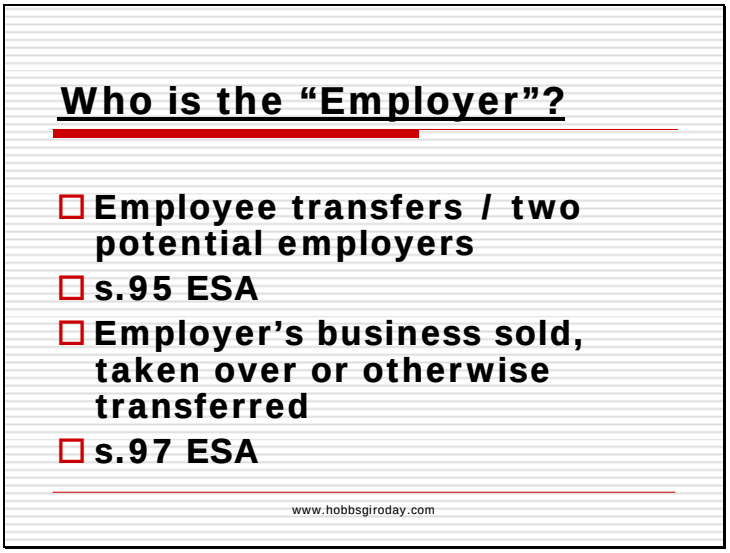
Slide 2

Who is an “Employee”?
s.1 Employment Standards Act
Employee or independent contractor?
www.hobbsgiroday.com

Slide 3


Employee or independent contractor?
Common Law Tests:
Control
Specific service / result
Economic reality
Business integration
Four-fold
Permanency
www.hobbsgiroday.com

Slide 4


Who is the "Employer"?
Employee transfers / two potential employers
s.95 ESA
Employer's business sold, taken over or otherwise transferred
s.97 ESA
www.hobbsgiroday.com

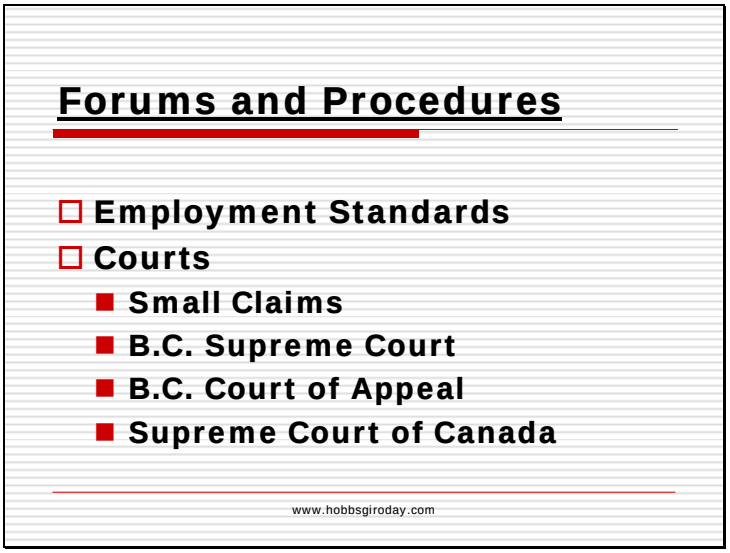
Slide 5

The Employment Contract
Common law obligations derived from the contract
Written terms
Contra proferentum
www.hobbsgiroday.com

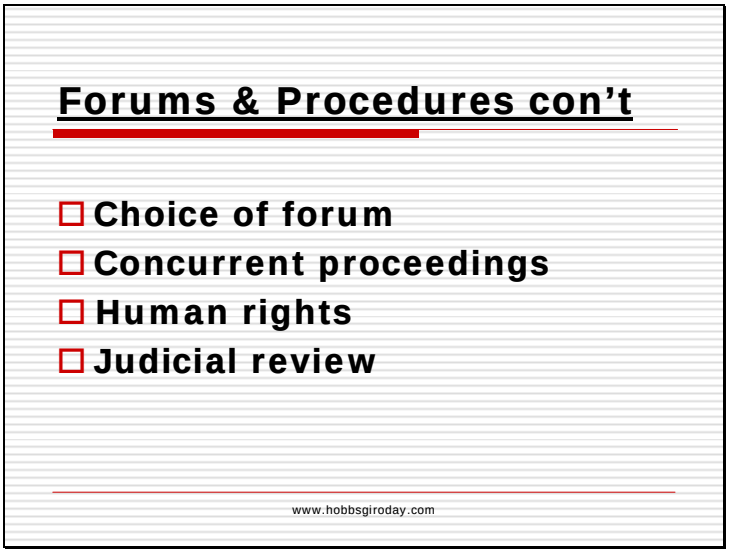
Slide 6

The Contract cont'd
Implied terms
Freedom of contract vs public policy
Reasonable notice of termination
Discretionary rights must be exercised reasonably and in good faith
Tort law
www.hobbsgiroday.com

Slide 7


Forums and Procedures
Employment Standards
Courts
Small Claims
B.C. Supreme Court
B.C. Court of Appeal
Supreme Court of Canada
www.hobbsgiroday.com

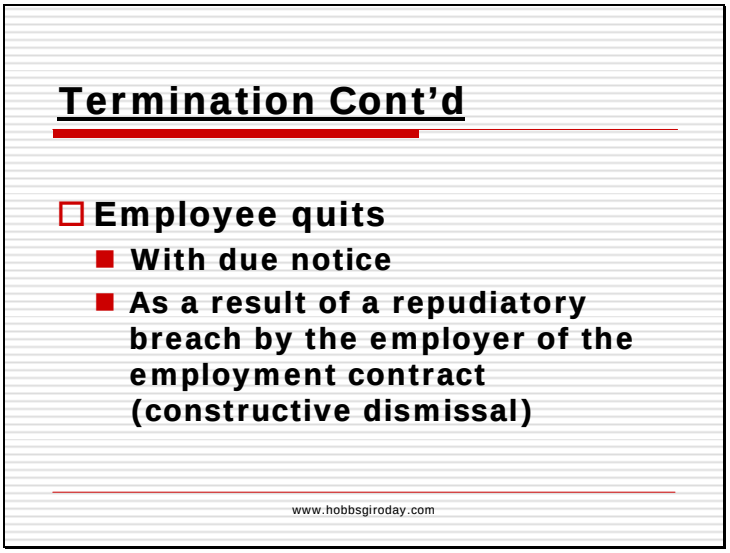
Slide 8


Forums & Procedures con't
Choice of forum
Concurrent proceedings
Human rights
Judicial review
www.hobbsgiroday.com

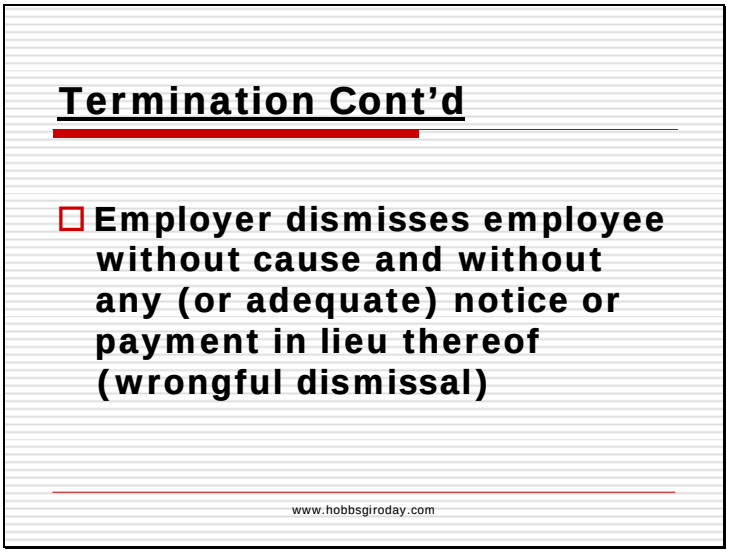
Slide 9

Termination of Employment
By agreement
By employer terminating employee with requisite notice, or severance payment in lieu thereof
Termination with just cause
www.hobbsgiroday.com

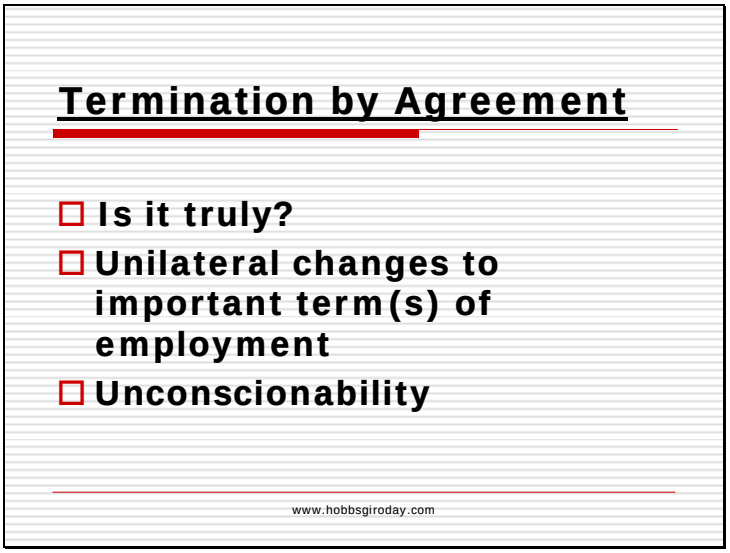
Slide 10


Termination Cont'd
Employee quits
With due notice
As a result of a repudiatory breach by the employer of the employment contract (constructive dismissal)
www.hobbsgiroday.com

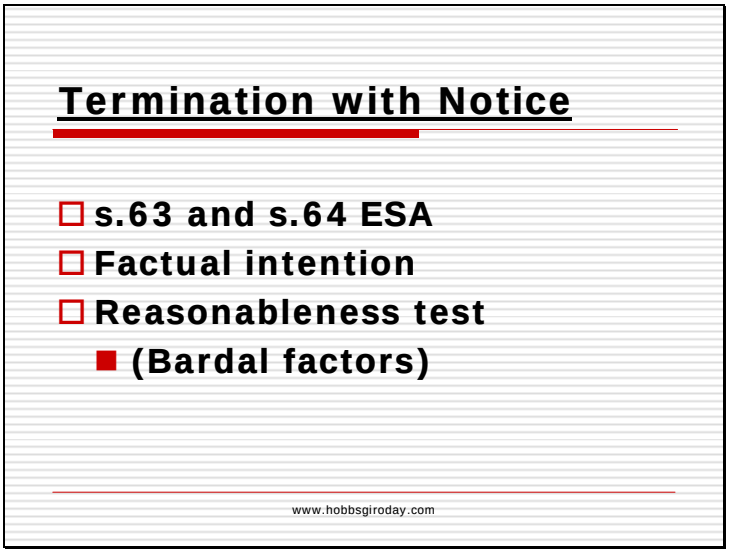
Slide 11


Termination Cont'd
Employer dismisses employee without cause and without any (or adequate) notice or payment in lieu thereof (wrongful dismissal)
www.hobbsgiroday.com

Slide 12


Termination by Agreement
Is it truly?
Unilateral changes to important term(s) of employment
Unconscionability
www.hobbsgiroday.com

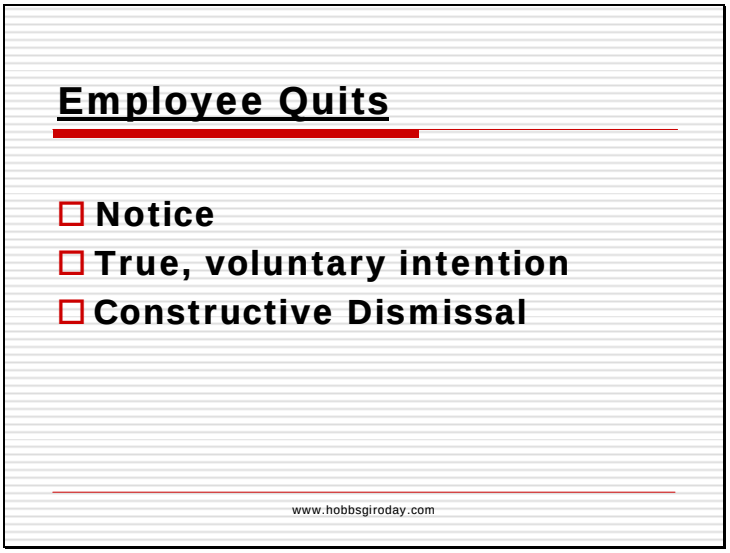
Slide 13


Termination with Notice
s.63 and s.64 ESA
Factual intention
Reasonableness test
(Bardal factors)
www.hobbsgiroday.com

Slide 14

Dismissal for Cause
Procedural fairness
Illness or disability
Economic difficulty
www.hobbsgiroday.com

Slide 15


Employee Quits
Notice
True, voluntary intention
Constructive Dismissal
www.hobbsgiroday.com

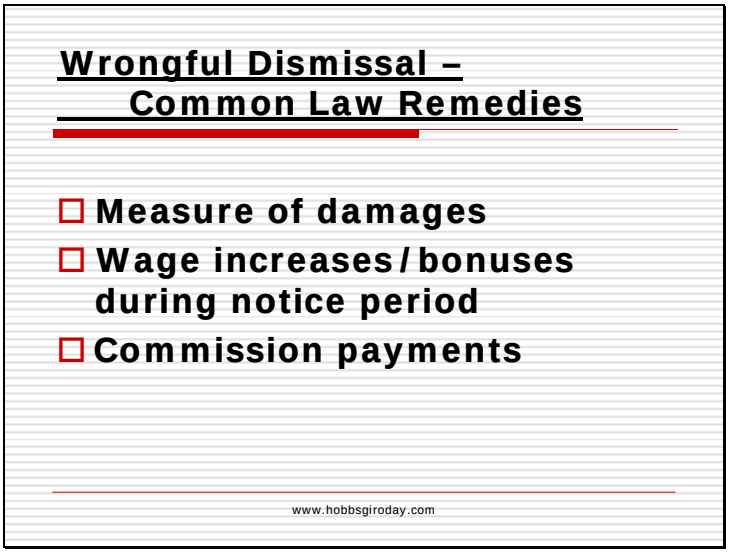
Slide 16

Constructive Dismissal
Unilateral changes to essential nature of the job
Compensation
Modifying job duties
Relocation of workplace
www.hobbsgiroday.com

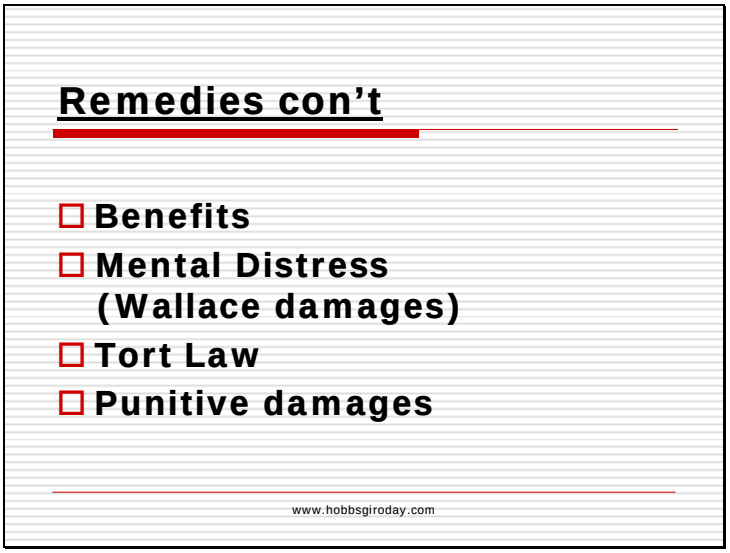
Slide 17

Constructive Dismissal cont'd
Continuing to work under altered terms
Condonation?
Duty to mitigate
www.hobbsgiroday.com

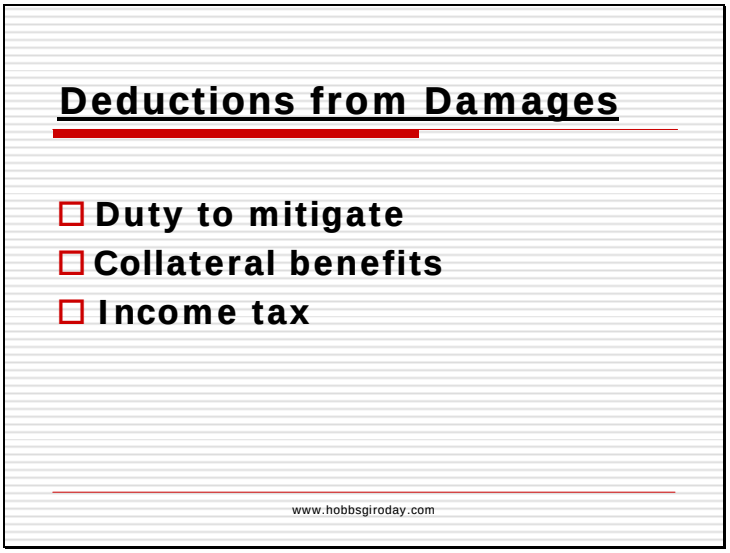
Slide 18


Wrongful Dismissal –
Common Law Remedies
Measure of damages
Wage increases / bonuses during notice period
Commission payments
www.hobbsgiroday.com

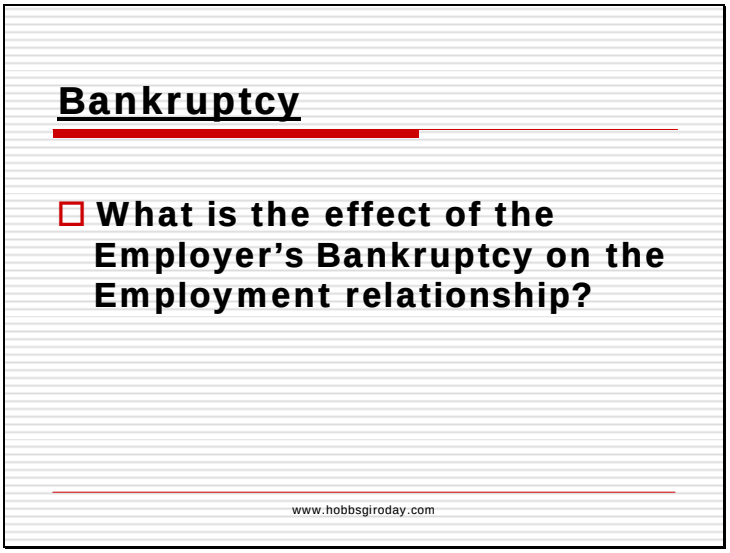
Slide 19


Remedies con't
Benefits
Mental Distress (Wallace damages)
Tort Law
Punitive damages
www.hobbsgiroday.com

Slide 20


Deductions from Damages
Duty to mitigate
Collateral benefits
Income tax
www.hobbsgiroday.com

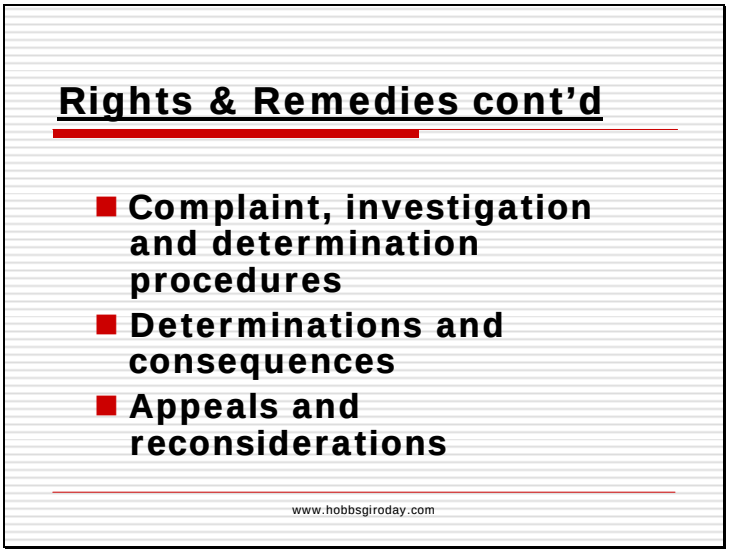
Slide 21


Bankruptcy
What is the effect of the Employer's Bankruptcy on the Employment relationship?
www.hobbsgiroday.com

Slide 22

ESA Rights and Remedies
Termination notice
Termination for just cause
Substantial alterations to terms of employment
www.hobbsgiroday.com

Slide 23


Rights & Remedies cont'd
Complaint, investigation and determination procedures
Determinations and consequences
Appeals and reconsiderations
www.hobbsgiroday.com

Slide 24

Should you hire a lawyer?
ESA / Small Claims vs other Forums
Initial Consultation
Fee Arrangements
Limited Retainers
www.hobbsgiroday.com

Slide 25

Questions?
We would be pleased to answer any questions you may have.
www.hobbsgiroday.com