

# Termination by an Employer with “Reasonable Notice”

## LEARNING OBJECTIVES

After reading this chapter, students will be able to:

- Explain the development of the implied obligation on employers to provide employees with “reasonable notice” before terminating the employment contract.
- Recognize the difference between the default model of termination of employment contracts in Canada and the United States.
- Identify and explain the factors that judges consider in assessing how much notice is “reasonable.”
- Recognize how changes in the economic and market subsystem can influence how judges assess reasonable notice.

## CHAPTER OUTLINE

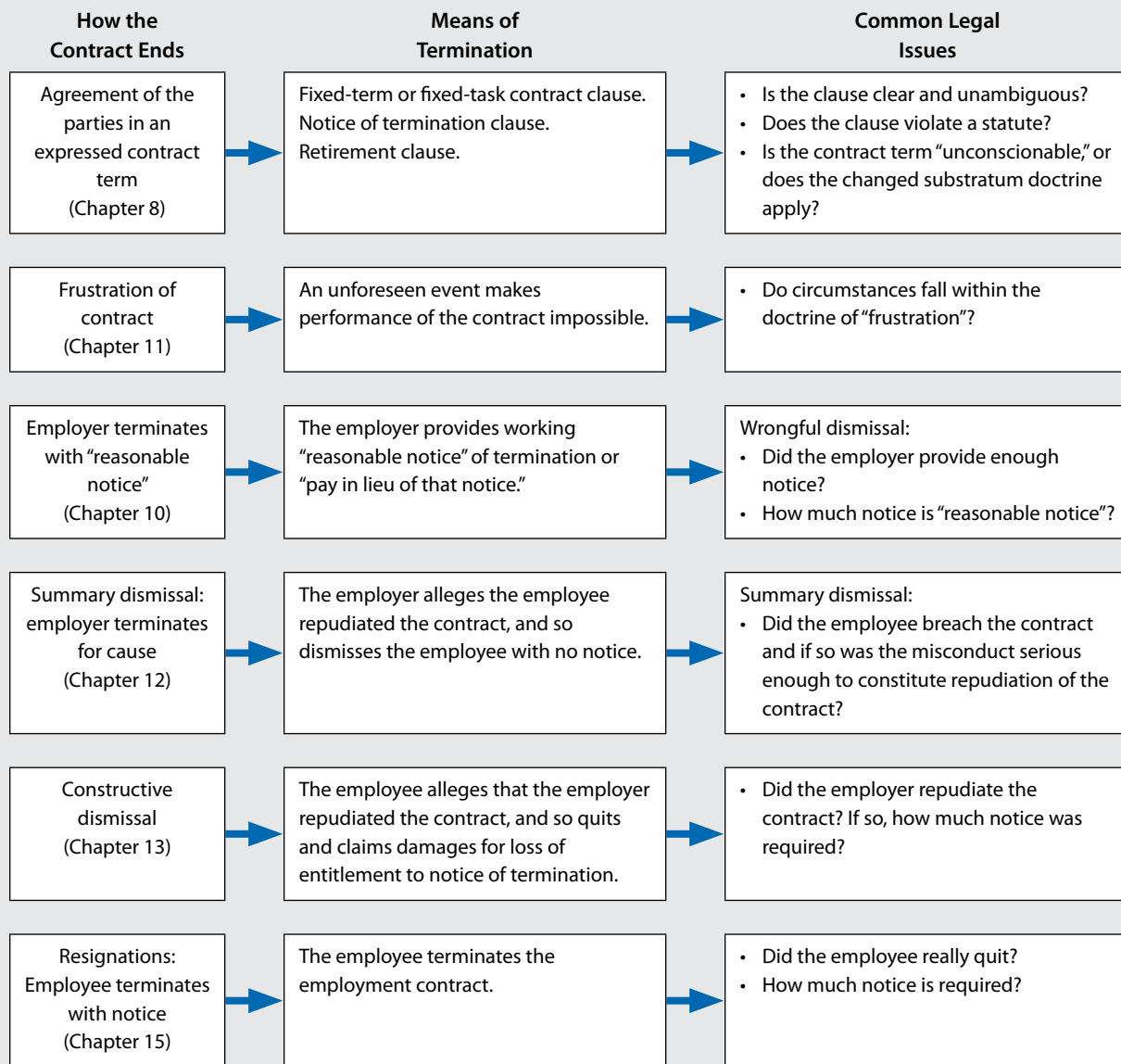
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## I. Introduction

Every employment contract must come to an end. In most cases, the termination of the contract gives rise to no legal disputes. For one reason or another, the parties decide to part ways, and the split is amicable. Maybe the employer even writes a nice reference letter to help the employee find a new job. Sometimes the employee retires, and there is a cake.

However, most work-related disputes that reach the courts deal with issues arising from the termination of contracts. Over the next several chapters, we will explore how the common law regime deals with disputes about the termination of employment contracts. The end of the contract can come about in a variety of ways, as depicted in Figure 10.1, each of which can give rise to potential legal issues. In Chapter 8 we considered how the parties to an employment contract can define the conditions under which the contract terminates in expressed contract language, and how even then disagreements can arise that lead to lawsuits. In this chapter, we will consider the relatively common situation in which an employer terminates an employment contract by providing the employee with “reasonable notice” of termination.

In the common law regime, an employer is presumed to have the right to terminate an employment contract at any time by giving the employee notice of the termination. There are exceptions, some of which we have considered already (fixed-term/fixed-task contracts) and some we will learn later (summary dismissal for cause in Chapter 12). However, most of the time employers terminate employment contracts by providing the employee with notice of that termination. As noted previously, notice can be working notice (the employee just keeps working until the notice period is over) or pay “in lieu of notice” (the employee goes home and the employer pays the employee what they would have earned had they kept working).

**FIGURE 10.1 Methods of Terminating Employee Contracts**

The main legal question that arises is how much notice is required. The contract might provide the answer, as discussed in Chapter 8, in the form of a notice of termination clause, so we should always start by looking at the written contract if one exists. Provided that clause is unambiguous, does not run afoul of employment standards statutes, and is not unconscionable (see Chapter 8), the courts will enforce that clause. However, many employment contracts include no notice of termination clause, or they include a notice clause that is ruled to be unlawful by the courts for reasons discussed in Chapter 8. In these cases, the courts imply a term requiring “reasonable notice” of termination of the employment contract, as we learned in Chapter 9. This chapter examines how the courts determine what constitutes reasonable notice.

The question of whether an employer provided an employee with reasonable notice of termination is probably the most litigated issue in the common law of the employment contract.

## II. Employee Vulnerability and the Rules Governing Termination of Employment Contracts

Let’s begin our discussion with some brief but important observations about how concerns over employee vulnerability have influenced the approach of the courts to the termination of employment contracts. The legal rules that apply to the termination of employment contracts are derived from the rules of contract law more generally. Therefore, contract law concepts (such as **repudiation of contract**) are important, and we will need to learn about them. However, judges have also applied contract law concepts with an eye on the special nature of the employment relationship. A contract for human labour is not the same as a contract for renting or supplying goods, judges have stated, because work is so central to our sense of personal worth and identity. Moreover, workers are often in a position of vulnerability, both at the time the labour contract is initially created and particularly at the time when the contract is terminated.

Box 10.1 describes important examples of how the Supreme Court of Canada has incorporated concerns over employee vulnerability in the work relationship into the exercise of interpreting employment contracts.<sup>1</sup> The point is not that normal contract law principles are cast aside in employment contract disputes. It is subtler than that. Judges are mindful that, as the more powerful party, employers write most employment contracts, that little negotiation takes place when contracts are created, and that significant economic and social costs are often associated with job loss. This reality sometimes serves as a backdrop when judges are asked to assess whether an employment contract was terminated properly. Judges’ concern about protecting vulnerable employees, particularly in recent decades, has occasionally influenced judicial reasoning and outcomes, no more so than in their interpretations of contractual rules governing the termination of employment contracts.

### BOX 10.1 » TALKING WORK LAW

#### The Supreme Court of Canada and Employee Vulnerability Under Employment Contracts

Comments by Supreme Court of Canada judges have had great influence on the development of the law of employment contracts. In a series of decisions over the past 30 years, the Supreme Court has emphasized the need for the common law of employment contracts to develop with consideration of the inherent vulnerability of employees. This outlook is perhaps most evident in cases relating to termination of the employment contract.

For example, in *Machtinger v. HOJ Industries Ltd.* (see Box 8.6), the court referred to the “policy considerations” that ought to influence judges when interpreting employment contracts and made the following (now often-cited) observations:

[E]mployment is of central importance to our society. As [Chief Justice] Dickson ... noted in *Reference*

*Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 ...:

Work is one of the most fundamental aspects in a person’s life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person’s employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

I would add that not only is work fundamental to an individual’s identity, but also that the manner in which employment can be terminated is equally important.\*

Referring to the purpose of the *Employment Standards Act*, the Supreme Court in *Machtinger* also wrote:

**repudiation of contract:** A breach of contract that demonstrates an intention by the party to treat the contract as at an end and to no longer be bound by the contract.

The harm which the Act seeks to remedy is that individual employees, and in particular non-unionized employees, are often in an unequal bargaining position in relation to their employers. As stated by [Professor] Swinton ...:

[T]he terms of the employment contract rarely result from an exercise of free bargaining power in the way that the paradigm commercial exchange between two traders does. Individual employees on the whole lack both the bargaining power and the information necessary to achieve more favourable contract provisions than those offered by the employer, particularly with regard to tenure.<sup>†</sup>

In *Wallace v. United Grain Growers Ltd.*, decided five years after *Machtinger*, the Supreme Court again emphasized the inequality of bargaining power that defines employment contracts, citing with approval the following often-quoted passage from Oxford law professors Paul Davies and Mark Freedland, *Kahn-Freund's Labour and the Law*:

[T]he relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is not a bearer of

power. In its inception it is an act of submission, in its operation it is a condition of subordination.<sup>‡</sup>

The court then noted the following:

The point at which the employment relationship ruptures is the time when the employee is most vulnerable and hence most in need of protection. In recognition of this need, the law ought to encourage conduct that minimizes the damage and dislocation (both economic and personal) that result from dismissal.<sup>§</sup>

As we work through the next several chapters that explore termination of employment contracts, notice how judges' concern for employee vulnerability has shaped how the common law deals with termination of the employment contract.

\* *Machtinger v. HOJ Industries Ltd.*, [1992] 1 SCR 986 at 1002. See also *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10 at para 83.

† *Ibid.* at 1003.

‡ *Wallace v. United Grain Growers Ltd.*, [1997] 3 SCR 701 at para 92.

§ *Ibid.* at para 95.

### III. A Brief History of the Origins of Implied Reasonable Notice

By the early 1890s, British judges had adopted the presumption that employment contracts were for an indefinite period, unless otherwise indicated in the contract or a statute.<sup>2</sup> This replaced an earlier presumption that employment contracts were for a one-year fixed term, unless otherwise indicated. The 1911 edition of the leading British legal text *Halsbury's Laws of England* summarized the state of employment law as follows: "If no custom nor stipulation as to notice exists, and if the contract of service is not one which can be regarded as a yearly hiring, the service is terminable by reasonable notice."<sup>3</sup>

Canada inherited the British common law of the employment contract, but there was little "employment" and few employment contract lawsuits prior to the 1900s (see Chapter 5). Canada was a vast, underpopulated country with many opportunities for property ownership. When people performed work for others, they tended to do so only long enough to amass sufficient funds to purchase their own land. Although few employment contract lawsuits existed at the time, in 1898 the Supreme Court of Canada clarified that the presumption of annual hire (i.e., a contract duration of one year) did not exist in Canadian employment contracts, and that the matter of contract length was a factual issue to be decided based on the evidence in each case.<sup>4</sup>

In the 1908 decision *Speakman v. City of Calgary*, an Alberta judge ruled that an employee was entitled to reasonable notice of termination, and that the amount of notice depended on a variety of factors, including the employee's "class" and "general standing in the community," and "the probable facility or difficulty the employee would have in procuring other employment."<sup>5</sup> This reference to the "class" of employee may seem dated, but the idea that "lower classes" of workers deserve a lesser period of reasonable notice has played an important role in the development of the law in this area to modern times. So too has an assessment of the "difficulty the employee would have in procuring other employment," as we will discuss shortly.

By the 1920s, the presumption that employment contracts were of indefinite duration and could be terminated by reasonable notice had taken root in Canada. This approach was confirmed in the 1936 decision *Carter v. Bell*, where the Ontario Court of Appeal ruled that “there is implied in the contract of hiring an obligation to give reasonable notice of an intention to terminate the arrangement.”<sup>6</sup> It is important to emphasize again that the implied requirement to give reasonable notice only exists if the parties have not otherwise agreed to a different, lawful notice formula.

## BOX 10.2 » TALKING WORK LAW

### The Divergent Approaches of Canada and the United States: “Reasonable Notice” Versus the “At Will” Employment Contract

An enduring mystery in comparative employment law is why Canada and the United States went in such diametrically opposed directions on the rules surrounding the termination of employment contracts.

Both countries inherited the British common law model. Canada ultimately adopted the presumption of indefinite-term employment contracts terminable by reasonable notice that had emerged in Britain by the late 1800s. However, American courts went in a different direction and developed a presumption that employment contracts have a length of one second, terminable at any moment, with no notice required at all. This type of contract is known as an **“at will” employment contract**.

More than one theory exists on why Canada and the United States have taken such different paths. The predominant theory espoused by American legal scholars is that, until the late 1880s, American courts were either following the British presumption of annual hiring contracts or making no presumption of contract duration at all and treating duration of contract as a factual issue that turned on the facts in each case. Then, in 1877, lawyer Horace Wood published a book concluding that American law followed the presumption that employment contracts were “at will.”<sup>\*</sup> Thereafter, American judges cited Wood’s text as the authority for the “at will” presumption, which requires no notice of termination.

Many American scholars have since argued that Wood was in fact wrong, or at

least not completely accurate, in his description of the law as it existed in the late 1800s.<sup>†</sup> Other scholars have rejected as “myth” the claim that the courts adopted the “at will” presumption because of a mistaken assumption that Wood was correct. They argue that Wood was indeed correct, and American courts had always treated employment contracts as “at will.”<sup>‡</sup> Why the courts did so is a matter of debate among these scholars. One argument is that the courts wanted to protect employers from attempts by the growing number of mid-level managers in the late 19th century to claim their contracts included some form of job security, either in the form of a fixed duration or a notice of termination requirement.<sup>§</sup>



*A threshing crew takes a break from their toil on a Saskatchewan farm, 1911.*

**“at will” employment contract:** An employment contract in which either party may terminate the contract at any time, for any or no reason, with no notice to the other party. This is the default model in the United States. In Canada, employment standards legislation requires notice of termination and therefore prohibits at will contracts for employees covered by the legislation.

Another theory asserts that “free” workers or employers in 19th-century America made little demand for longer-term contracts or notice requirements. Due to labour shortages in agriculture, most workers preferred the flexibility of being able to leave at any time for a higher paying job or because they had earned enough to purchase their own land.\*\* Employers were also happy not to have contractual obligations to keep workers when there was no work. This theory does not explain why Canadian courts adopted the reasonable notice rule under essentially the same labour market conditions.

Another theory argues that US judges adopted “at will” to relieve the courts from having to deal with employment contract cases.# “At will” simplified employment contract law, reducing the need for court intervention.

Finally, some scholars have argued that the British and Canadian courts adopted the reasonable notice rule as a means of controlling unions. If a contract included a requirement for employees to provide the employer with reasonable notice that they were quitting, then a sudden strike (walking off the job) was a breach of the contract. As a result, a notice requirement gave courts the option of punishing employees who struck as well as union organizers who encouraged workers to strike through the tort of “inducing breach of contract,” which we consider in Chapter 16.†† According to this theory, American unions used the “sudden strike” weapon far less frequently than British and Canadian unions and workers. As a result, little need existed for American employers and the courts to rely on notice provisions in contracts as a weapon to restrain the burgeoning labour movement.

The “at will” rule in the United States has been subject to constant criticism over the years for leaving workers vulnerable

and without any job security. Many statutory and even judge-made restrictions on the rule have been developed over the years. Some scholars have argued that American law should move toward the Canadian/British system of requiring notice.‡‡ Others have supported the “at will” approach as being best for the economy and “individual liberty.”§§

\* H. Wood, *A Treatise on the Law of Master and Servant Covering the Relation, Duties, and Liabilities of Employers and Employees* (Albany, NY: John D. Parsons Jr., 1877) at 272: “the rule is inflexible, that a general or indefinite hiring is *prima facie* a hiring at will, and if the servant seeks to make it out a yearly hiring, the burden is upon him to establish it by proof.”

† See P. Shapiro & J. Tune, “Implied Contract Rights to Job Security” (1974) 26 *Stan L Rev* 335; S. Jacoby, “The Duration of Indefinite Employment Contracts in the United States and England: An Historical Analysis” (1982) 5 *Comp Lab LJ* 85; and B. Etherington, “The Enforcement of Harsh Termination Provisions in Personal Employment Contracts: The Rebirth of Freedom of Contract in Ontario” (1989–90) 35 *McGill LJ* 459.

‡ See, e.g., D. Ballam, “Exploding the Original Myth Regarding Employment-at-Will: The True Origins of the Doctrine” (1996) 17 *Berkeley J Emp & Lab L* 91; and J. Fienman, “The Development of the Employment-at-Will Rule Revisited” (1991) 23 *Ariz St LJ* 733.

§ Fienman, *ibid.*

\*\* Ballam, *supra* note ‡ at 128-30.

# A. Morriss, “Exploding Myths: An Empirical and Economic Reassessment of the Rise of Employment at Will” (1994) 59:3 *Mo L Rev* 683.

†† Etherington, *supra* note † at 472-73; Jacoby, *supra* note † at 120-26.

‡‡ R. Arnow-Richman, “Mainstreaming Employment Contract Law: The Common Law Case for Reasonable Notice of Termination” (2013) 66 *Fla L Rev* 1513.

§§ R. Epstein, “In Defense of the Contract at Will” (1984) 51 *U Chicago L Rev* 947.

#### IV. How Modern Canadian Courts Assess an Employer’s Duty to Provide Reasonable Notice of Termination

A lawsuit by an employee alleging that an employer terminated an employment contract without providing the employee with reasonable notice is known as a **wrongful dismissal** lawsuit. How much notice is “reasonable,” and on what basis do judges make that decision? One option is to imagine what the parties themselves would have thought was reasonable, had they considered the issue, when they were making the contract. This approach was taken in the 1961 case of *Lazarowicz v. Orenda Engines Ltd.*, in which the Ontario Court of Appeal stated:

Opinions might differ as to what was reasonable, but in reaching an opinion a reasonable test would be to propound the question, namely, if the employer and the employee at the time of the hiring had addressed themselves to the question as to the notice that the employer would give in the event of him terminating the employment, or the notice that the employee would give on quitting, what would their respective answers have been?<sup>7</sup>

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**wrongful dismissal:** A type of lawsuit by an employee against a former employer alleging that the employer terminated their contract without complying with the implied term in the contract requiring “reasonable notice.”

The court of appeal is saying here that the requirement to provide reasonable notice is a contract term implied “in fact” (see Chapter 9). On this approach, judges must (metaphorically) hop in a time machine and go back to the time of the formation of the contract to ask what the parties would have agreed to had they bothered to write down a term explaining how much notice should be given to the other party in the event of a termination of the contract.<sup>8</sup> Judges still sometimes refer to the supposed intentions of the parties when they determine the amount of reasonable notice.<sup>9</sup>

### A. The “Bardal Factors”

However, the approach in *Lazarowicz* raises the obvious question: How does the judge know what the parties would have agreed to back when they bargained the contract? In most cases, as we have discussed before, the employer would probably draft a notice of termination clause that suits its own interests, and the employee would simply sign on the dotted line. Therefore, a judge might reasonably conclude that if the parties had bothered to write a notice term down, they would have written one requiring no notice at all—like an American “at will” contract—or at least very little notice.

Although that outcome is fine from a purely contract law perspective, it would also leave employees with little or no opportunity to plan for the end of the contract by starting to look for new work. Most Canadian judges have preferred to approach the calculation of reasonable notice from a policy perspective, seeking to balance the interest of employers in workplace flexibility and employees’ interest in having a “cushion” to plan for the transition between jobs.<sup>10</sup> That approach has been captured by the application of the **Bardal factors**.

*Bardal v. Globe & Mail Ltd.* described the factors judges are to consider in calculating reasonable notice. Justice McRuer ruled that in assessing how much notice is “reasonable,” judges should use their judgment, keeping in mind a number of key criteria, which are presented in Box 10.3. Although the *Bardal* decision was issued by a lower level of court than *Lazarowicz*, the *Bardal* approach was later approved by appellate courts, and it has become the leading Canadian authority in guiding judges on the assessment of reasonable notice.<sup>11</sup>

## BOX 10.3 » CASE LAW HIGHLIGHT

### Factors to Consider in Assessing Reasonable Notice

#### *Bardal v. Globe & Mail Ltd.*

1960 CanLII 294 (Ont. Sup Ct J)

**Key Facts:** Bardal was an advertising manager with 16.5 years of service when his contract was terminated. His employment contract was silent (it said nothing) about how much notice was required to terminate the contract.

**Issue:** How much notice of termination was the employer obligated to provide Bardal?

**Decision:** The court ruled that one year was “reasonable notice” considering how long Bardal had been employed, his

position, and other factors. Here is the passage from that decision, which is now cited in most Canadian cases in which the length of reasonable notice is being assessed:

There can be no catalogue laid down as to what is reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant.

**Bardal factors:** Criteria considered by Canadian courts in assessing the length of time required by the implied obligation to provide “reasonable notice” of termination of an employment contract. The name comes from the leading decision called *Bardal v. Globe and Mail Ltd.*, decided in 1960.

The *Bardal* approach makes no mention of the “intention of the parties.” Factors such as “availability of similar employment” and “length of service” are not even known at the time the parties are negotiating the contract.<sup>12</sup> The *Bardal* factors require judges to survey the situation at the time of the termination and to calculate a reasonable period of notice based on what they see and think is fair and reasonable in the circumstances, considering a list of factors.<sup>13</sup> The Ontario Court of Appeal has described the process of determining reasonable notice as “an art not a science” and therefore “there is no one ‘right’ figure for reasonable notice. Instead, most cases yield a range of reasonableness.”<sup>14</sup>

### B. Summary of the Bardal Factors

The purpose of requiring employers to provide the employee with reasonable notice is to give the employee an opportunity to prepare for job loss and to seek new employment.<sup>15</sup> Therefore, the factors listed in the *Bardal* decision are intended to act as a proxy for assessing how long it might reasonably take the dismissed employee to find comparable alternative employment considering the employee’s circumstances. Reasonable notice assigns part of the social and economic costs of unemployment to employers, hopefully reducing the extent to which dismissed workers need to draw on public assistance schemes like Employment Insurance and welfare. This does not mean that the period of notice will match the precise time it actually takes the employee to find a new job. Rather, judges are supposed to consider the factors listed in *Bardal* and then decide “what appears to be logical, judicious, fair, equitable, sensible, and not excessive,” according to the judge.<sup>16</sup> Table 10.1 provides a quick, cross-country sample of some recent wrongful dismissal lawsuits and the amounts of reasonable notice ordered. There is also an exercise at the end of the chapter that allows you to estimate reasonable notice periods.

**TABLE 10.1 Recent Examples of Reasonable Notice Periods Order in Canada**

Case Name	Details	Reasonable Notice Ordered
<i>Saikaly v. Akman Construction Ltd.</i> , 2019 ONSC 799	Office manager, 12 years’ service, age 60	24 months
<i>Spalti v. MDA Systems Ltd.</i> , 2018 BCSC 2296	Sales executive, 13.5 years’ service, age 55	16 months
<i>Coppola v. Capital Pontiac Buick Cadillac GMC Ltd.</i> , 2011 SKQB 318	Account manager, 23 months’ service, age 38	6 months
<i>Bohnet v. Rebel Energy Services Ltd.</i> , 2018 ABPC 131	Manager, rentals division, 3.5 years’ service, age 47	4 months
<i>Salkeld v. 7-Eleven Canada, Inc.</i> , 2010 MBQB 157	Sales clerk, 27 years’ service, age 50	14 months
<i>Welch v. Ricoh Canada Inc.</i> , 2017 NSSC 174	Service technician, 25 years’ service, age 47	18 months
<i>MacKinnon v. Helpline Inc.</i> , 2015 NBQB 159	Manager/coordinator, 16 years’ service, age 51	18 months

#### 1. Length of Service

The most important factor in assessing the length of reasonable notice is the employee’s length of service.<sup>17</sup> The longer an employee’s service with an employer, the longer the period of reasonable notice required to terminate the employment contract. One judge explained that “a long-term employee has a moral claim which has matured into a legal entitlement to a longer notice



period.”<sup>18</sup> In practice, Canadian courts have imposed a “soft cap” on reasonable notice of a maximum of 20 to 24 months, and only in exceptional cases involving very long-service employees do courts order greater than 24 months’ notice.<sup>19</sup> The majority of awards are for 12 months’ notice or less.

Some judges have tried to simplify the exercise of assessing notice periods by applying a general “rule of thumb” approach based on one month’s notice for each year of employment, and then adjusting upward or downward if special factual circumstances are involved.<sup>20</sup> However, appellate courts have rejected that approach for the reason presented in the 1999 Ontario Court of Appeal case of *Minott v. O’Shanter Development Company Ltd.*: “a rule of thumb that an employee is entitled to one month’s notice for every year worked should not be applied. To do so would undermine the flexibility that must be used in determining the appropriate notice period.”<sup>21</sup> Employment lawyer Barry Fisher examined hundreds of Canadian reasonable notice cases and found evidence of the “rule of thumb” measure for employees dismissed within their first three years of employment, but little evidence of that pattern for employees with longer service.<sup>22</sup>

## 2. Age of the Employee

The courts have noted that middle-aged and older workers often have a more difficult time finding alternative employment than younger workers.<sup>23</sup> This observation appears to be reflected in reasonable notice awards. In a study of reasonable notice periods ordered by courts of appeal, Professor Kenneth Thornicroft (University of Victoria) found that the age of the employee is significant for employees over the age of 50, but not as important for employees younger than 50.<sup>24</sup> He found that employees over age 50 received an additional three months’ notice.

## 3. Character of the Employment

Managerial workers have traditionally been granted longer periods of notice than non-managerial workers. This distinction dates back to the British class system, in which the courts assumed that higher-ranking members of society deserve greater employment contract protections. Recall the words of the Alberta court in the 1908 *Speakman* case, cited above, about the length of notice being affected by the employee’s “class” and “general standing in the community.” In modern times, the distinction between managerial and non-managerial employees has been justified on the theory that managerial employees will have a harder time finding similar alternative employment than will lower-level employees.<sup>25</sup> This presumption took the form of a court-created soft cap on reasonable notice periods whereby non-managerial employees would usually not be entitled to a reasonable notice period longer than 12 months, whereas managerial employees could receive up to 24 months.

However, in recent years this distinction has been questioned. The leading case that affirmed the practice of treating managerial and non-managerial employees differently is the 1995 Ontario Court of Appeal case of *Cronk v. Canadian General Insurance Co.*<sup>26</sup> Cronk was a 55-year-old clerk who was dismissed after more than 29 years’ service. She argued that the period of reasonable notice should be 20 months, far more than the usual cap of 12 months applied by the courts for non-managerial employees. The lower court judge (Justice James MacPherson) concluded that it could not be assumed that non-managerial employees would always have an easier time finding alternative employment. He believed that Cronk would have a difficult time finding another job given her age and lack of transferrable skills. He ordered 20 months’ reasonable notice.<sup>27</sup>

The employer appealed, and the Ontario Court of Appeal overruled Justice MacPherson. It reaffirmed the “established principle that clerical employees are generally entitled to a shorter notice period than senior management or specialized employees who occupy a high rank in the

organization.”<sup>28</sup> The court of appeal ruled that it would be too disruptive to employers to change the presumption that non-managerial workers receive less notice:

The result arrived at [by Justice MacPherson] has the potential of disrupting the practices of the commercial and industrial world, wherein employers have to predict with reasonable certainty the cost of downsizing or increasing their operations, particularly in difficult economic times. As well, legal practitioners specializing in employment law and the legal profession generally have to give advice to employers and employees in respect of termination of employment with reasonable certainty.<sup>29</sup>

The court of appeal ruled that Cronk was entitled to 12 months’ notice, the maximum amount of notice “in her category.”

However, a few years later, cracks again began to appear in the distinction. In the case of *Minott v. O’Shanter Development Company Ltd.*, the Ontario Court of Appeal awarded a non-managerial maintenance worker 13 months’ reasonable notice.<sup>30</sup> That employee had only 11 years’ service, compared with Cronk’s 29 years. In explaining the different outcomes, the court of appeal stated that *Cronk* dealt only with clerical workers and did not establish an upper limit for all non-managerial employees. The court of appeal also questioned whether having a cap for non-managerial workers “detracts from the flexibility of the *Bardal* test and restricts the ability of courts to take account of all factors relevant to each case and of changing social and economic conditions.”

Finally, the issue came before the Ontario Court of Appeal again in the 2011 case of *Di Tomaso v. Crown Metal Packaging Canada LP*, which is discussed in Box 10.4. Justice MacPherson, now sitting on the court of appeal, wrote the decision.

## BOX 10.4 » CASE LAW HIGHLIGHT

### Should Managerial Employees Get More Reasonable Notice Than Non-Managerial Employees?

*Di Tomaso v. Crown Metal Packaging Canada LP*  
2011 ONCA 469

**Key Facts:** Di Tomaso had worked 33 years as a non-managerial mechanic for Crown Metal Packaging Canada LP and was 62 years old at the time of his dismissal. The lower court judge awarded him 22 months’ notice. The employer appealed and argued that as a non-managerial employee, Di Tomaso was only entitled to a maximum of 12 months’ notice, as per the ruling in the *Cronk* case. (In a funny twist, Justice James MacPherson was by this time sitting on the court of appeal and wrote the decision for the court in *Di Tomaso*.)

**Issue:** Should the amount of reasonable notice be capped at 12 months for a non-managerial employee?

**Decision:** No. No automatic cap exists on reasonable notice damages for non-managerial employees. Justice MacPherson cited *Minott* as authority for this conclusion. He then repeated what he stated in his original *Cronk* ruling: that there is no logical reason why the courts should assume that “unskilled employees deserve less notice because they have an easier time finding alternative employment. The empirical validity of that proposition cannot simply be taken for granted.” Each case must be assessed on its own with consideration of the facts and without reliance on presumptions about whether managerial employees will have a harder time finding alternative employment.

The court of appeal upheld the lower court decision to award 22 months’ notice to Di Tomaso.

In the *Di Tomaso* decision, the court of appeal noted that the “character of employment” was of “declining relative importance” in assessing reasonable notice in Canada. Judges in Ontario are no longer to assume that non-managerial employees will automatically get new jobs quicker as a justification for awarding lesser reasonable notice periods, as recently confirmed by the Ontario Court of Appeal in a case called *Oudin v. Le Centre Francophone de Toronto*:

The parties exerted a significant amount of energy disputing the true nature of the plaintiff’s employment and the precise degree to which he could be characterized as “managerial.” It would appear that there remains a suspicion among some that higher-level employees automatically receive greater notice periods than lower level employees. That suspicion is misplaced. Some highly placed managers are highly marketable and can reasonably expect to be placed quite quickly while some unskilled workers may find unemployment uncomfortably long if they find themselves in a community with few options. Character of employment is a factor, but is only one of several factors and there is no presumption that lower level employees necessarily have an easier time seeking re-employment than higher level employees.<sup>31</sup>

Since the *Di Tomaso* decision, courts have been more inclined to award periods of notice longer than 12 months to non-managerial employees, particularly in Ontario but in other provinces as well.<sup>32</sup> While in theory the approach adopted in *Di Tomaso* could also lead courts to order lower notice awards for managerial employees, there is little evidence that this is happening (at least so far).

### BOX 10.5 » TALKING WORK LAW

#### The Law of Work Framework: Gender and Reasonable Notice

Is it a coincidence that the clerical employee in *Cronk* was a woman, and the employees in both the *Di Tomaso* and *Minott* decisions were men? The employee’s gender is not listed as a factor in *Bardal*, and judges rarely list the employee’s gender as a relevant factor in assessing the length of reasonable notice. However, in a recent study, Professor Thornicroft found that women receive smaller reasonable notice awards:

Although an employee’s gender should not be a relevant factor in assessing reasonable notice, I found a negative correlation between female gender and size of award. Female plaintiffs constituted slightly more than 20% (26 individuals) of the employees in my study, and the results suggest that female employees received about 1.5 to 1.7 months’ less notice than comparable male employees.\*

In the lower court decision in the *Cronk* case (considered above), Justice MacPherson ordered 20 months’ notice for a 56-year-old female clerk. In his reasons, he noted that women have a more difficult time finding employment than men as well as balancing family and career:

The London Life Freedom 55 television commercial paints an attractive picture of the 55-year-old professional woman chucking it all and retreating, with Mustang convertible and surfboard in the rear, to a tropical paradise for a long and deserved retirement. Alas, for most women this commercial is a fantasy. The statistically average Canadian woman struggles to find a job, she receives about 60-70 per cent of the wages received by men doing the same work, she strives to balance family and career, she worries about losing her job, and if she does lose it she desperately seeks to obtain a new job. Edna Cronk

was 55 years old when she was fired. But after long years of clerical work at a very modest salary, it is almost certain that she was not able to contemplate the Freedom 55 Mustang convertible and surfboard. She needs another job.†

Justice MacPherson’s comments and his decision in the *Cronk* case demonstrate how a judge can be influenced by developments and changing attitudes within the broader social, cultural, and religious subsystem, introduced in Chapter 2. Justice MacPherson recognized that women play a greater role than men in Canadian society in caring for family and that this commitment is reflected in women’s labour market experiences. This understanding was the basis for his rejection of the historical assumption that a woman in a non-professional job will more easily find new employment than a man in a managerial position. Justice MacPherson’s ruling in *Cronk* was overruled by the Ontario Court of Appeal in 1995, but in the 2011 case of *Di Tomaso* (see Box 10.4) the same court appears to have been persuaded by Justice MacPherson’s perspective. In wrongful dismissal cases, it is now relevant for an assessment of reasonable notice to consider whether a female employee’s potential to find new employment is affected by her need to balance the demands of family and work. This evolution in wrongful dismissal law reflects heightened social awareness of the challenges women face in meeting both work and family obligations. Only time will tell whether the gender gap in reasonable notice awards found by Professor Thornicroft will decrease.

\* K.W. Thornicroft, “The Assessment of Reasonable Notice by Canadian Appellate Courts from 2000 to 2011” (2013) 1 CLEJLJ 1 at 29.

† *Cronk v. Canadian General Insurance Co.*, 1994 CanLII 7293 (Ont. Sup Ct J) at para 20.

#### 4. Availability of Similar Employment

The final factor listed in *Bardal* was the “availability of similar employment, having regard to the experience, training and qualifications of the servant.” That factor refers to the labour market into which the dismissed employee will be entering in the search for a new job, as well as the particular skill set the employee brings to the job search. An employee with skills that are in wide demand (like a cashier, for example) would be expected to have an easier time finding alternative employment in their field than someone with very specialized skills not widely in demand (like an astronaut).

Judges have wrestled with how much weight to give labour market conditions in assessing reasonable notice. If reasonable notice is a proxy for how much time it should take a dismissed employee to find similar alternative employment, should employees be awarded longer periods of notice in poor economic times, and shorter periods when jobs are plentiful? The courts do not tend to order shorter periods of notice in periods of economic boom, but the “duty to mitigate” discussed in Chapter 14 may result in the employee receiving less money in reasonable notice damages if they get a new job quickly. The courts have more difficulty sorting out how to deal with employees dismissed during poor economic conditions. There are competing arguments.

On the one hand, an employee dismissed in an economic downturn will likely have a harder time finding new employment than an employee dismissed in strong economic times. This view has led some judges to award longer notice periods during depressed economic periods. For example, in the case of *Lim v. Delrina (Canada) Corp.*, an accountant was dismissed in 1992, a particularly bad time for the accounting profession. An Ontario court found that the depressed economic time was a relevant factor in assessing the length of notice required. The court ruled that three months’ notice would have been awarded in normal circumstances, but then it added one additional month’s notice “given the well known depressed economic conditions of the time.”<sup>33</sup>

On the other hand, employers may also be fighting for their survival in poor economic times, and reducing their payroll might be necessary to avoid bankruptcy. In the 1982 case of *Bohemier v. Storwal International Inc.*, an Ontario court ruled that notice periods must consider the interests of *both* employers and employees.<sup>34</sup> Extending notice periods in bad economic conditions could unreasonably restrict employers’ ability to reduce the workforce at a reasonable cost and would amount to the employer effectively insuring the employee against poor market conditions. Some judges interpreted *Bohemier* as authority for the proposition that notice periods should not be extended in difficult economic times or, more controversially, that notice periods should be reduced when the employer is facing economic difficulties.<sup>35</sup>

### BOX 10.6 » CASE LAW HIGHLIGHT

#### Should the Employer’s Financial Situation Be Considered in Assessing the Length of Reasonable Notice?

##### *Michela v. St. Thomas of Villanova Catholic School*

2015 ONCA 801

**Key Facts:** Three teachers at a private school had been employed for between 8 to 13 years pursuant to a series of one-year fixed contracts. In 2013, the employer informed them that due to falling enrolments at the school, their contracts would not be renewed. The employer claimed the employees were not entitled to notice of termination because they had been

employed on a one-year fixed-term contract that had simply come to an end. The employees argued that they had really been employed continuously pursuant to an indefinite-term contract that included an implied term requiring reasonable notice of termination. The lower court judge applied the reasoning from the case *Ceccol v. Ontario Gymnastics* (Box 8.4) and ruled that the one-year fixed-term contracts were ambiguous since they also suggested that the relationship would continue beyond one year, which they did. Considering all of the facts,

the court ruled that the teachers were employed under an indefinite-term contract and entitled to reasonable notice. The judge ruled that reasonable notice would be 12 months applying the normal *Bardal* factors, but he then reduced the amount to 6 months on the basis that the employer was in financial peril due to falling student numbers. He ruled that the “character of employment” included consideration of the employer’s circumstances. The employees appealed that ruling.

**Issue:** Are the employer’s financial circumstances relevant to assessing the period of reasonable notice?

**Decision:** No. The court of appeal discussed the meaning of “character of employment”:

It suffices to say that the character of the employment, like the other *Bardal* factors, is concerned with the circumstances of the wrongfully dismissed employee. It is not concerned with the circumstances

of the employer. An employer’s financial circumstances may well be the *reason* for terminating a contract of employment—the event that gives rise to the employee’s right to reasonable notice. But an employer’s financial circumstances are not relevant to the determination of reasonable notice in a particular case: they justify neither a reduction in the notice period in bad times nor an increase when times are good. ...

*Bohemier* does not hold, and this court has never held, that an employer’s financial difficulties justify a reduction in the notice period. It does no more than to hold that difficulty in securing replacement employment should not have the effect of increasing the notice period unreasonably. ...

The court of appeal ordered the lower court judge’s original assessment of 12 months’ notice be reinstated.

Judges do still occasionally extend the notice period by a small amount when an employee is terminated during a serious economic downturn.<sup>36</sup> However, in the 2015 decision described in Box 10.6, the Ontario Court of Appeal clarified that the employer’s economic circumstances are not a relevant factor in assessing reasonable notice.<sup>37</sup>

### C. Other Factors Affecting the Length of Reasonable Notice

The courts have said that the list of factors in *Bardal* is not exhaustive, meaning that judges could add new factors affecting the length of reasonable notice. One factor that has been added to the list is **inducement**. The courts have extended the period of reasonable notice when an employee had been induced to quit an existing job with promises of secure employment and is then dismissed from the new job. This is what happened in the case of *Wallace v. United Grain Growers Ltd.*, in which the Supreme Court of Canada stated:

[M]any courts have sought to compensate the reliance and expectation interests of terminated employees by increasing the period of reasonable notice where the employer has induced the employee to “quit a secure, well-paying job ... on the strength of promises of career advancement and greater responsibility, security and compensation with the new organization.”<sup>38</sup>

Inducement may justify a longer notice period when the employee’s decision to quit a secure job is accompanied by expectations of future job security that do not turn out to be accurate and that can be attributed to words or conduct of the recruiting company.<sup>39</sup>

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**inducement:** A factor considered in assessing the length of reasonable notice that should be awarded to an employee whose employment contract is terminated by employer A after employer A encouraged or enticed the employee to quit a prior job with company B to come to work for employer A.

Some attempts to introduce new factors to the list have ultimately failed. For example, the Supreme Court of Canada rejected a line of cases in which lower court judges had reduced the period of reasonable notice when they believed the employee had engaged in misbehaviour that was not quite serious enough to amount to cause for summary dismissal without notice (“near cause”).<sup>40</sup>

#### IV. Chapter Summary

An employer can terminate an indefinite-term employment contract by giving the employee notice. The contract itself might indicate how much notice is required and, provided the amount does not violate applicable employment standards legislation, the expressed contract term would govern. However, absent a legally compliant notice clause, the courts imply a duty to provide “reasonable notice.” This chapter explored the origins and application of “reasonable notice” by common law judges. We learned that the courts are guided by a list of factors set down in the 1960 case of *Bardal v. Globe & Mail Ltd.* This approach gives judges considerable discretion and also adds uncertainty to the termination process, since neither employer nor employee knows for sure how much notice a court could order. However, by reading prior decisions, it is possible to estimate the range of possible notice by considering the factors in *Bardal*.

#### QUESTIONS AND ISSUES FOR DISCUSSION

1. What is the purpose of requiring employers to provide employees with reasonable notice?
2. Does every employment contract in Canada require the employer to provide the employee with reasonable notice of termination? Explain your answer.
3. What rationale has justified the courts granting longer periods of reasonable notice to managerial employees over non-managerial employees? Explain why in recent years courts have begun to question this rationale.
4. Do Canadian courts consider the employer’s financial situation when assessing the period of reasonable notice?
5. Explain the difference between the Canadian and American approach to the termination of employment contracts.

#### APPLYING THE LAW

1. Janice is the human resources manager for ABC Computers Inc., a small computer rental company with 25 employees. The company needs to downsize its workforce and has decided to terminate two non-union employees: Davidov, a 55-year-old technical worker with 15 years’ service, and Chloe, a 28-year-old middle manager with 5 years’ service. Neither employee had signed an employment contract. Janice has asked you to help her decide how much notice she is required to provide each employee.
  - a. Based on what you have learned in this chapter, try to estimate what amount of reasonable notice a court might order for both employees and explain your thinking.
  - b. Now go a website called “Severance Pay Calculator”: <<https://www.severancepaycalculator.com>>. This website is created by a Toronto law firm and it uses a software program that estimates how the courts will apply the *Bardal* factors. Enter the information for both Davidov and Chloe in the program when prompted. You can skip the page that asks about the employee’s salary. What amount of reasonable notice does the severance calculator tell you that a court would order? Were you close in your estimate?
  - c. Finally, turn to Table 20.1 in Chapter 20, which examines how termination of employment contracts is dealt with under employment standards legislation. Locate your province and identify how much notice would be required under the statute to terminate Davidov and Chloe. How does the amount of “reasonable notice” compare with the amount of minimum notice required by employment standards legislation?

## EXERCISE

1. To better understand the factors that influence reasonable notice, try the following exercise:
  - a. Go to the CanLII home page: <<https://www.canlii.org>>.
  - b. In the “Document text” search box, type “reasonable notice.” That search will produce thousands of cases in which employees have sued their former employers for failing to provide reasonable notice of termination. Select three of those cases and read them.
  - c. Prepare a case summary for each case that includes the key facts, the issue, and the decision. In each case summary, be sure to describe the factors the court considered in assessing the amount of reasonable notice required.

## NOTES AND REFERENCES

1. In addition to the cases cited in Box 10.1, see also the following cases, which emphasize employee vulnerability and the power imbalance that defines employment contracts: *Bowes v. Goss Power Products Ltd.*, 2012 ONCA 425; *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313; and *Braiden v. La-Z-Boy Canada Limited*, 2008 ONCA 464.
2. *Lowe v. Walter*, [1892] 8 TLR 358. Much of the history recounted in this chapter is taken from C. Mummé, “That Indispensable Figment of the Legal Imagination: The Contract of Employment at Common Law in Ontario, 1890s–1979” (PhD thesis, York University, 2013).
3. Earl of Halsbury, *The Laws of England*, vol 20 (London: n.p., 1911) at 96.
4. *Bain v. Anderson & Co.*, [1898] 28 SCR 481.
5. *Speakman v. City of Calgary* (1908), 9 WLR 264 (Alta. CA).
6. *Carter v. Bell & Sons (Canada) Ltd.*, 1936 CanLII 75 (Ont. CA). The earlier cases in which “reasonable notice” was applied include *Pollard v. Gibson*, 1924 CanLII 398 (Ont. CA); and *Messer v. Barrett Co. Ltd.* (1926), 59 OLR 566 (SC (AD)). The Supreme Court of Canada confirmed the presumption that Canadian employment contracts require reasonable notice for termination unless otherwise specified in *Machtinger v. HOJ Industries Ltd.*, [1992] 1 SCR 986. See also *Prozak v. Bell Telephone Co. of Canada*, 1984 CanLII 2065 (Ont. CA).
7. *Lazarowicz v. Orenda Engines Ltd.*, 1960 CanLII 151 (Ont. CA).
8. In her concurring judgment in *Machtinger v. HOJ Industries Ltd.*, supra note 6 at 1012–13, Justice McLachlin of the Supreme Court of Canada wrote that the reasonable notice term is implied “in law as a necessary incident” of employment contracts rather than a term implied “in fact.” This would mean that the intention of the parties is not at issue.
9. See *Pelech v. Hyundai Auto Canada Inc.*, 1991 CanLII 920 (BCCA), quashing an award of four months’ notice for a shipping employee and substituting a notice period matching the statutory minimum: “If at the outset of his employment, the employer had been asked what notice must you give if you terminate him, I should think that the answer would have been ‘whatever the law requires.’ If the employee had been asked what notice must you give if you want to leave, he would be surprised to have been told he needed to give more than a week or two.” See also G. England, *Individual Employment Law*, 2nd ed (Toronto: Irwin Law, 2008) at 300–1.
10. England, supra note 9 at 311. See also *Medis Health and Pharmaceutical Services v. Bramble*, 1999 CanLII 13124 (NBCA).
11. The *Bardal* approach was approved by the Supreme Court of Canada in *Machtinger v. HOJ Industries Ltd.*, supra note 6, and by various provincial courts of appeal: *Wiebe v. Central Transport Refrigeration (Man.) Ltd.*, 1994 CanLII 6406 (MBCA); *Giza v. Sechelt School Bus Service Ltd.*, 2012 BCCA 18; and *Di Tomaso v. Crown Metal Packaging Canada LP*, 2011 ONCA 469.
12. This point is made by Justice McLachlin in *Machtinger v. HOJ Industries Ltd.*, supra note 6 at 1009.
13. *Panimondo v. Shorewood Packaging Corporation*, 2009 CanLII 16744 (Ont. Sup Ct J).
14. *Minott v. O’Shanter Development Company Ltd.*, 1999 CanLII 3686 (Ont. CA) at para 62.
15. *McKay v. Camco Inc.*, 1986 CanLII 2544 (Ont. CA) at 267; and *Cronk v. Canadian General Insurance Co.*, 1995 CanLII 814 (Ont. CA).
16. *Erskine v. Viking Helicopter Ltd.* (1991), 35 CCEL 322 (Ont. Gen Div) at 326.
17. K.W. Thornicroft, “The Assessment of Reasonable Notice by Canadian Appellate Courts from 2000 to 2011” (2013) 17 CLEJ 1 at 29.
18. *Ansari v. B.C. Hydro & Power Auth.*, 1986 CanLII 1023 (BCSC) at 39.

19. *Wallace v. United Grain Growers Ltd.*, [1997] 3 SCR 701; and *Webster v. British Columbia (Hydro and Power Authority)*, 1992 CanLII 1087 (BCCA) at 109.
20. *McKay v. Eaton Yale Ltd.*, 1996 CanLII 8234 (Ont. Sup Ct J); and *Bullen v. Protor & Redfern Ltd.*, 1996 CanLII 8135 (Ont. Sup Ct J).
21. *Minott v. O'Shanter Development Company Ltd.*, supra note 14. See also *Kerfoot v. Weyerhaeuser Company Limited*, 2013 BCCA 330; and *Capital Pontiac Buick Cadillac GMC Ltd v. Coppola*, 2013 SKCA 80.
22. B. Fisher, "Revisiting Reasonable Notice Periods in Wrongful Dismissal Cases: 2006 Edition," online (pdf): <[http://barryfisher.ca/papers/Revisiting\\_Reasonable\\_Notice.pdf](http://barryfisher.ca/papers/Revisiting_Reasonable_Notice.pdf)>.
23. *McKinney v. University of Guelph*, [1990] 3 SCR 229 at para 92; Thornicroft, supra note 17 at 27.
24. Thornicroft, supra note 17 at 20. See also K.W. Thornicroft, "Severance Pay and the Older Worker: Negotiated Versus Litigated Outcomes Under Canadian Common Law" (2015) 52-4 Alb L Rev 779.
25. *Bohemier v. Storwal International Inc.*, 1983 CanLII 1956 (Ont. CA); *Cronk v. Canadian General Insurance Co.*, supra note 15; and *Ansari v. B.C. Hydro & Power Auth.*, supra note 18.
26. *Cronk v. Canadian General Insurance Co.*, supra note 15.
27. *Cronk v. Canadian General Insurance Co.*, 1994 CanLII 7296 (Ont. Sup Ct J).
28. *Cronk v. Canadian General Insurance Co.*, supra note 15.
29. *Ibid.*
30. *Minott v. O'Shanter Development Company Ltd.*, supra note 14.
31. *Oudin v. Le Centre Francophone de Toronto*, 2015 ONSC 6494 at para 61.
32. Cases in which non-managerial employees received greater than 12 months' notice include the following: *Di Tomaso v. Crown Metal Packaging Canada LP*, 2011 ONCA 469 (22 months); *Strudwick v. Applied Consumer & Clinical Evaluations Inc.*, 2016 ONCA 520 (20 months); *AMEC Americas Limited v. MacWilliams*, 2012 NBCA 46 (20 months); *Systad v. Ray-Mont Logistics Canada Inc.*, 2011 BCSC 1202 (18 months); *Patterson v. IBM Canada Limited*, 2017 ONSC 1264 (18 months); *Skov v. G&K Services Canada Inc.*, 2017 ONSC 6752 (18 months); and *Welch v. Ricoh Canada Inc.*, 2017 NSSC 174 (16 months).  
Thornicroft, supra note 17 at 20-21, notes that between 2000 and 2011, "character of employment" continued to influence the length of reasonable notice periods. Clerical/labour employees received from 1.4 to 3.6 months' less notice than higher level employees. However, the period of that study mostly pre-dates the move toward placing less influence on "character of employment" discussed in the series of cases mentioned in the chapter.
33. *Lim v. Delrina (Canada) Corp.*, 1995 CanLII 7271 (Ont. SC) at para 31. Other cases that have considered poor economic conditions as a factor justifying extended notice periods include *Squires v. Corner Brook Pulp & Paper Ltd. and Manuel*, 1994 CanLII 10373 (Nfld. SC); *Hunter v. Northwood Pulp and Timber Ltd.*, 1985 CanLII 443 (BCCA); *Anderson v. Haakon Industries (Canada) Ltd.*, 1987 CanLII 2406 (BCCA); *Valley Forest Products Ltd. v. Dey*, 1995 CanLII 5582 (NBCA); *Sicard v. Timminco Ltd.* (1994), 3 CCEL (2d) 50 (Ont. Gen Div); *Garcia v. Crestbrook Forest Industries Ltd.*, 1993 CanLII 1412 (BCCA); and *Hampton Securities Limited v. Dean*, 2018 ONSC 101.
34. *Bohemier v. Storwal International Inc.*, supra note 25.
35. See, e.g., *Shuya v. Azon Canada Inc.*, 1995 CanLII 9084 (Alta. QB); *Heinz v. Cana Construction Co.*, 1987 CanLII 3203 (Alta. QB); *Erskine v. Viking Helicopter Ltd.*, supra note 16; and *Gristey v. Emke Schaab Climatecare Inc.*, 2014 ONSC 1798.
36. See authorities at supra note 33.
37. *Michela v. St. Thomas of Villanova Catholic School*, 2015 ONCA 801; and *Nielsen v. Sheridan Chevrolet Cadillac Ltd.*, 2016 ONSC 1843.
38. *Wallace v. United Grain Growers Ltd.*, supra note 19 at paras 83, 85.
39. *Ibid.*; see also *Alcatel Canada Inc. v. Egan*, 2006 CanLII 108 (Ont. CA); *Craig v. Interland Window Mfg. Ltd.*, 1993 CanLII 1821 (BCSC); *Nicholls v. Columbia Taping Tools Ltd.*, 2013 BCSC 2201; *Wright v. Feliz Enterprises Ltd.*, 2003 BCSC 267 (it is not inducement if the employee and employer were equally interested in forming a new relationship); *Pollock v. Cotter*, 2005 BCSC 1799; *Greenlees v. Starline Windows Ltd.*, 2018 BCSC 1457; and *Dias v. Paragon Gaming EC Company*, 2010 ABPC 390.
40. See *Dowling v. Halifax (City)*, [1998] 1 SCR 22. See also *Cicalese v. Saipem Canada Inc.*, 2018 ABQB 835; and *Porter v. Fleischer*, 2011 BCSC 389.