

Case In Point

Appeal Court Confirms that Employer's Financial Circumstances Not a Factor in Determining Reasonable Notice

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Are an employer's financial circumstances a relevant consideration in determining the period of reasonable notice to which a wrongfully dismissed employee is entitled?

This is the question the Court of Appeal for Ontario was asked to decide in [Michela v. St. Thomas of Villanova Catholic School](#), where the motion judge had reduced damages in lieu of reasonable notice owing to the plaintiff employees because of the poor financial position of their former employer. The Court answered the question in the negative – an employer's financial circumstances are not a relevant consideration in calculating a reasonable notice period.

The three employees in this case were dismissed from employment as teachers with their employer, a school. Following the dismissal, the employees filed a claim for wrongful dismissal and sought damages for pay in lieu of reasonable notice. The employer initially took the position that the teachers were employed on fixed term contracts and were not entitled to reasonable notice.

The matter proceeded by way of summary judgment. The motion judge found the teachers were in fact employed for indefinite periods (a finding which was not appealed) and were therefore entitled to reasonable notice at common law. With respect to the appropriate notice period, the motion judge held that the poor financial circumstances of the employer was a component of the plaintiffs' "character of employment" and therefore a relevant consideration in fixing the reasonable notice period. Accordingly, the notice periods were reduced from the plaintiffs' proposed 12 months' notice to 6 months.

The plaintiffs appealed and took that the position that the financial health of their former employer was irrelevant in determining the appropriate reasonable notice period. The Court of Appeal agreed. It confirmed the relevant factors in determining the reasonable notice period are those set out in *Bardal*, which focus on the circumstances of the employee, not the employer: age, years of service, the character of employment and the availability of similar employment.

The Court accepted that an employer's financial circumstances may well be the reason for a termination and therefore the event which gives rise to an employee's right to reasonable notice. However, financial circumstances are not relevant in determining what that notice period will be – "they justify neither a reduction in the notice period in bad times nor an increase when times are good."

Because there has been some confusion in the case law with respect to the relevance of an employer's financial situation on the calculation of the notice period, the Court stated:

[22] It is important to emphasize, then, that an employer's poor economic circumstances do not justify a reduction of the notice period to which an employee is otherwise entitled having regard to the *Bardal* factors. [...]

[23] Thus, even assuming that the respondent was suffering financial difficulties when it dismissed the appellants, the motion judge erred in concluding that the period of notice to which the appellants were entitled should be reduced as a result. That conclusion is neither required by the case law nor consistent with the nature and purpose of an employee's right to notice.

With this decision, the Court has clarified any prior uncertainty in the case law as to whether an employer's financial circumstances are an appropriate consideration in the reasonable notice analysis: they are not.