

BC COURT OF APPEAL UPHOLDS 5 MONTHS' NOTICE FOR 12 MONTHS OF SERVICE

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A recent decision of the British Columbia Court of Appeal [\[1\]](#) serves as an important reminder to employers that termination obligations, even for very short-term employees, can be significant.

In *Pakozdi v. B & B Heavy Civil Construction Ltd.*, the BC Court of Appeal considered the following facts.

Mr. Pakozdi was employed as a bid estimator for a civil construction company for a period of 12 months. He was terminated without cause and was provided with severance pay roughly equal to two weeks' notice. Mr. Pakozdi was approximately 55 years of age.

Mr. Pakozdi brought a claim against the company for wrongful dismissal and was initially awarded a notice period of five months by the BC Supreme Court trial judge, based on his experience, age, and length of employment.

The trial judge also awarded an additional three months notice, on the basis that Mr. Pakozdi's physical and mental condition would make it more difficult for him to obtain new employment and that this vulnerability was known to the company.

The BC Court of Appeal, in part, allowed the company's appeal and concluded that because the employee was able to perform consulting work after his termination, that there was no basis in law to increase the period of reasonable notice by an additional three months based on health considerations.

However, the BC Court of Appeal did uphold the decision of the trial court judge to award a notice period of five months.

The BC Court of Appeal reviewed a number of other previously decided British Columbia decisions in which notice periods in the range of two to three months were awarded in short-term employment cases. The Court summarized its findings as follows:

In my view, the initial assessment by the trial judge that the applicable notice period is five months is within the range of reasonableness having regard to this jurisprudence, though perhaps on the high

side. Adding three months of the respondent's vulnerability takes the notice period outside the range of reasonableness unless there are very special circumstances that could support this assessment.

The BC Court of Appeal decision in *Pakozdi* amply demonstrates that British Columbia courts may award significant notice periods even for very short term employees.

Employers are legally able to limit liability in without cause terminations by contractually establishing notice and severance entitlements in the employment agreement. However, to be enforceable, contractual notice and severance provisions must at least meet or exceed the applicable employment standards minimum requirements.

In addition, such contract provisions should be negotiated prior to the commencement of employment. Where such provisions are negotiated after the commencement of employment, it is important that consideration be provided, for example, an increase in compensation or benefits.

by N. David McInnes and Hilary D. Henley

[1] 2018 BCCA 23.[ps2id id="1" target=""]

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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