

Beyond Reasonable Notice: Other Damages for Wrongful Dismissal

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While salary lost as a result of dismissal is of course significant to an employee, the constant growth and diversification of benefits provided by employers has led to an increasing need to develop a comprehensive approach to the question of compensation for loss of benefits.

Employment contracts for an indefinite period can only be lawfully terminated for just cause or with reasonable notice. The measure of damages for wrongful dismissal is guided by the principle which underlies all breach of contract cases, namely that the dismissed employee should be placed in the same position he would have been in if the contract had terminated properly. It is this rule of law that has influenced and should continue to influence judicial consideration of compensation for lost benefits.

Generally this means that an employee being awarded damages for wrongful dismissal should be compensated for the loss of benefits he would have enjoyed during the period of reasonable notice, had that been given by the employer. The loss of some benefits has proved difficult to quantify leading to, in some areas in particular, divergent opinions from Canadian courts on the appropriate measure of damages for the loss of some benefits.

It is submitted that adherence to the concept of putting the dismissed employee in the position he would have been in had he been given reasonable notice and been permitted to work throughout the notice period will, in most cases, lead to the correct result.

In addition to compensation for lost benefits, this paper also addresses the issues of punitive damages in claims for wrongful dismissal.

I. BONUSES

The benefit most comparable to salary is bonus. Bonuses are generally discretionary (in that whether they are paid and the amount in which they are paid is solely up to senior management to determine, based on any criteria it desires to apply from time to time) or based on

a formula of some description and clearly a part of the employee's overall compensation package. In the latter circumstance, determining entitlement to bonus and the amount of the award to be made are quite straightforward once the period of reasonable notice has been established. If the employee would have been entitled to receive a bonus in a particular amount or based on a particular formula during the notice period, then it should be accounted for in the calculation of damages for wrongful dismissal. If the amount of the bonus hinges on performance during the period of reasonable notice - performance which the employee was denied the opportunity to deliver - sufficient evidence should be led as to the employee's past performance and/or the actual operating results achieved by others following the employee's dismissal upon which projections can be made as to the amount of bonus the employee would have earned had she been permitted to work through the reasonable notice period.

A truly discretionary bonus is not one the employee would have had any expectation of receiving within the period of notice and it should accordingly not form a part of a damage award. However, if what once was a discretionary bonus is paid with regularity over a period of time, it may be transformed into an implied term of the employment contract and properly part of a damage claim. The rules regarding bonuses have not changed significantly since Chief Justice McRuer denied compensation for loss of a bonus in *Bardal v. Globe & Mail Ltd.*:

*Three other aspects of damage remain to be considered: the alleged loss of the Christmas bonus, participation in the profit-sharing plan and loss of director's fees. I do not think the plaintiff is entitled to recover under any of these heads. The Christmas bonus was a purely voluntary gift distributed among the employees as a matter of good will between employer and employee.*¹

The test relied upon by the judiciary up to the present date was set out in *Bagby v. Gustavson International Drilling Co.*:

*The test to be applied in determining whether a wrongly dismissed employee is entitled to damages for the loss of bonus is whether the bonus had become an integral part of the wage structure or whether it was merely an ex gratia payment.*²

Therefore, if the payment of a bonus is gratuitous or intermittent and at the sole discretion of the employer, damages for its loss are not usually recoverable by the employee. Whether or not a plaintiff is entitled to compensation will clearly depend on an analysis of the facts in each case to determine whether the bonus in question can be described as "an integral part of the wage structure".

The cases which have applied the *Bagby* test are numerous. However, there are several points of interest in the development of the laws on the issue of compensation for lost bonuses which deserve some mention. The courts will award compensation for loss of a bonus only where it is foreseeable that the employee would have been entitled to that payment had she been given reasonable notice of dismissal. In several cases, plaintiffs have been denied compensation, despite the regularity of the bonus payments, on the grounds that a bonus paid as an incentive for future performance would not have been provided to an employee working out a reasonable notice period. In *Douglas v. Sandwell and Co.*, this issue was addressed:

*But the foundation for payment was incentive to continue to perform efficiently and try harder in the future. There was no contractual base for payment of a bonus to the plaintiff and the incentive reason would have vanished if reasonable notice had been given. Consequently, the amount of possible bonuses is not a factor to be considered by me in assessing damages.*³

This approach was adopted in *Sandelson v. International Vintners Ltd.*⁴

Where the bonus is discretionary but has been paid consistently to a group of employees, courts will look at whether those other employees received a bonus during the period at issue in order to determine whether the dismissed employee is entitled to compensation: *Brock v. Matthews Group Ltd.*⁵ Further, courts will consider historical patterns, trade usage and general principles of fairness in determining the amount to which the employee is entitled. If the employee has normally received a bonus similar to that of other employees, the court may use this amount. If

the amount varied, although considered an integral part of the remuneration package, the court may take an average of previous years: *Herbison v. Intercontinental Packers Ltd.*⁶

II. PENSIONS

In *Durrant v. British Columbia Hydro & Power Authority*,⁷ Mr. Justice Cohen set out the applicable rule for the calculation of damages arising from lost pension benefits:

1. If the pension had already vested at the date of termination, the plaintiff is entitled to the difference between the value of the pension at the date of termination of employment and the projected value of the pension at the conclusion of the period of reasonable notice.
2. If the plaintiff's pension had not vested at the date of termination but would have vested during the period of reasonable notice, the plaintiff is entitled to the difference between the projected value of the pension at the conclusion of the period of reasonable notice and the contributions which the employee was entitled to recover at time of termination.
3. If the plaintiff's pension had not yet vested at the date of termination of employment and would not have vested during the period of reasonable notice, no damages arise from a loss of the pension rights.

The notion that the measure of damages for lost pension benefits ought to be the difference between their value at the date of termination of employment and their value at the end of the reasonable notice period was first enunciated by Chief Justice McRuer in *Bardal v. Globe & Mail Ltd.*:

*If he had been continued in the service for another year, pursuant to proper notice, the defendant's contribution would have been on a higher basis. The matter of what the dollar value of the plaintiff's pension would have been had he been employed for another year is a matter for actuarial calculation. This aspect of the case was not developed in argument. It is, however, quite clear that had the plaintiff been given proper notice according to the implied term of the contract he would have had another year's service with the defendant which would have increased his pension allowance.*⁸

This method of valuation has been employed in the majority of relevant cases to date. In both *Ansari v. B.C. Hydro & Power Authority*⁹ and *Rivers v. Gulf Canada Ltd.*,¹⁰ the courts relied on the reasoning in *Bardal*,¹¹ to find that in order to compensate the employee for the actual losses suffered, the damage award ought to reflect the higher value of the pension at the end of the reasonable notice period.

The employer's contribution to the pension fund on the employee's behalf during the period of notice has also been employed as a measure of damages.¹² However, recent case law and texts support the argument that this approach is inappropriate as it fails to reflect the actual loss suffered by the employee. Howard Levitt in *The Law of Dismissal in Canada* (1985) cites *Dauphinee*,¹³ as an example of a case which uses the estimated value of the employer's contribution during the notice period in determining damages:

It is submitted that this is incorrect and the better view as to what constitutes appropriate damages is the actual loss suffered by the employee on the basis of the higher value that the pension would have had at the end of the period of reasonable notice, based on the employee's age and life expectancy, as determined by expert evidence and annuity charts, less the employee's actual contributions over the notice period.

David Harris in *Wrongful Dismissal*¹⁴ agrees with this thinking:

The real issue that arises in most terminations involves what impact a reasonable period of notice should have upon the pension plan as a component of damages. The argument may be made that had the plaintiff been given a reasonable notice period, the pension plan would have been funded by both the employer and employee contributions, where applicable, which

would thus result in a higher entitlement at the normal retirement date. The discrepancy between the actual entitlement and the higher projected figure should be capitalized by employing annuity tables based on the anticipated life span at retirement date. This figure would then present a loss reasonably flowing from the termination.

The alternative is simply to award the amount of exact dollar contributions that would have been made by the employer to the plan throughout the notice period.

*This option was presented to Mr. Justice Verchere of the British Columbia Supreme Court in *McKilligan v. Pacific Vocational Institute*, (1979), 14 B.C.L.R. 109: 12 B.C.L.R. 193: varied (1981), 28 B.C.L.R. 324 (C.A.). He opted for the latter alternative. It is submitted that this decision ignores the reality of the actual loss suffered.*

As previously noted, if the pension has not vested prior to termination of employment and will not vest during the period of reasonable notice, the dismissed employee is not entitled to any damages for lost pension benefits. The Supreme Court of Canada confirmed this principle in *Vorvis v. Insurance Corporation of British Columbia*.¹⁵ In the lower court decision, the plaintiff's contention that the defendant could not deprive him of his right to a pension had been rejected, and it was held that the plaintiff was not entitled to any damages for loss of pension benefits since the pension would not have vested within the notice period.¹⁶

However, judges have awarded damages for lost pension benefits even though the pension would not have vested during the notice period and it is not clear that the employee was entitled to a refund of contributions under the plan.¹⁷

In an *obiter* statement, Mr. Justice Halvorsen in *McIntosh v. Saskatchewan Water Corporation* expressed a willingness to extend the notice period to allow the pensions of long-term employees to vest:

It is further argued that the plaintiff should receive more salary in lieu of notice because his pension would vest if he had three years' service with the defendant. That is, I am asked to give the plaintiff wages for a term exceeding nine months so he will qualify for a vested

*pension. Such an approach would be justified in a situation where a long-term employee was fired just before his pension rights became rooted. That is not the case here.*¹⁸

These cases appear clearly to be deviations from the general rule, which has been followed by the majority of judges in the past decade in awarding damages for lost pension benefits.

III. INSURANCE PLANS

Various methods have been used by the courts over the past decade or so to calculate damages for the loss of insurance and medical plans. For example, the amount of the employer's share of the premiums has been used¹⁹ as has the estimated cost of replacement by the dismissed employee of the coverage previously provided by the employer.²⁰

However, the law appears to have settled down on this issue in recent years. A dismissed employee appears to be entitled to damages for loss of this sort of benefit only where :

1. the employee has actually replaced the coverage; or
2. the employee has not replaced the coverage but has suffered actual loss during the notice period which would have been covered by the insurance plan had it remained in place.

In both circumstances, a plaintiff will be compensated only for the cost of replacement coverage during the notice period or actual losses incurred during that same period.²¹

This rule was clearly enunciated by Madam Justice McLachlin in *Wilks v. Moore Dry Kiln of Canada*:

*The question is not what the defendant has gained by the dismissal, but what the plaintiff has lost. This loss must be established on the evidence. If the plaintiff fails to show that he has paid out or lost money or has otherwise suffered by reason of the absence of fringe benefits, his claim cannot succeed.*²²

The Court in *Wilks* found support for this contention in an earlier case, *McKilligan v. Pacific Vocational Institute*,²³ in which the British Columbia Court of Appeal denied damages for the loss of a group life insurance policy on the grounds that the dismissed employee did not purchase replacement coverage during the notice period nor did he die. This principle was most recently affirmed by the British Columbia Supreme Court of Canada in *Vorvis v. I.C.B.C.*,²⁴ and was followed throughout the 1980's in numerous other cases.²⁵

A related issue of some note and controversy is whether an employee who becomes disabled after termination of employment, but before the end of the notice period subsequently determined to be appropriate, should have disability benefits deducted from damages awarded for the wrongful dismissal. In *Dunlop v. B.C. Hydro and Power Authority*²⁶ and *McKay v. Camco Inc.*²⁷ the respective courts held that the damages payable by the employer should not be reduced by disability benefits received by the employee after his dismissal. The majority in *McKay* reasoned that the plaintiff's rights to disability payments and to damages for breach of contract arose at different times and served different purposes. Moreover, if disability benefits were deductible from damages, the right to reasonable notice would be frustrated since the disability prevented the plaintiff from seeking alternate employment. The notice period was deemed to have been interrupted at the time of the injury and resumed after the plaintiff's entitlement to disability benefits had expired.

In his decision in *Prince v. T. Eaton Co.*,²⁸ Mr. Justice Lysyk was dealing with the case of a dismissed employee who became disabled during the notice period. His lordship noted:

Mr. Charton does not seek recovery for the cost of replacement insurance. Indeed, such insurance was not available to him. He does seek compensation for loss arising out of occurrence of the contingency that he would have been insured against had he been required or permitted to work out the 42-week period of reasonable notice.

If there is no overriding express provision, the contract of employment is taken to contain an implied term that each party must give reasonable notice of termination to the other. The implied term is not a term to the effect that the employer may give pay in lieu of notice: see Dunlop v. British Columbia Hydro & Power Authority (1988), 23 C.C.E.L. 96, (1989 2 W.W.R. 518, 32 B.C.L.R. (2d) 334 at 338 (C.A.). Compensation for the period of notice is not limited to severance pay in lieu of salary. As stated above, it extends to actual monetary loss sustained from deprivation of fringe benefits that would otherwise have been enjoyed during the notice period.

On the principles established by the authorities, I conclude that Mr. Charlton is entitled to compensation for disability benefits unless his claim is barred by express provision(s) in his contractual arrangements with Eaton's or for some other reason [which His Lordship subsequently found it was not].²⁹

Most insurers will not provide disability insurance coverage during a period of reasonable notice unless the employee is actively employed by the employer, so the consequence of decisions like *Prince* (and it is not being suggested that *Prince* is incorrect) is that employers face potentially huge damages in similar situations.

The same logic applies to other common components of group benefit coverage, including life insurance, where death of the employee during the notice period should give a right to payment of the face amount of the life insurance policy, and medical and dental coverage, where damages will either be the actual cost of replacement coverage or the amounts paid out by the employee for which she would have had insurance coverage had she worked the notice period.

IV. CPP AND UIC PREMIUM

Wrongfully dismissed employees are entitled to receive as damages the amount the employer would have contributed by way of premium towards the Canada Pension Plan during the period of notice. Damages for this loss are routinely awarded on the basis that the plaintiff may not receive maximum CPP entitlement in the absence of these contributions. Arguably, a more appropriate remedy would be to require the employer to pay the premiums that should have

been paid during the notice period directly to the former employee's account at the Canada Pension Plan.

Damages for lost UIC contributions that would have been made by the employer during the notice have been awarded without any careful consideration of the actual loss incurred by the plaintiff as a result of the termination of the contributions.³⁰ Although the *Unemployment Insurance Regulations*,³¹ provide for court awards and out-of-court settlements paid by the employer on or after March 31, 1985 to be treated as earnings for the purpose of determining benefit entitlement, this fact has not generally been taken into consideration by the judiciary. Its significance is that there is no loss to the employee as a result of the failure of the employer to pay its premiums during the notice period. In a few recent cases, recovery of UIC premiums has been denied where there was no proof of harm to the dismissed employee as a result of the lack of contributions.³² However, this remains one area where the general principle that only actual loss is compensated does not appear to underline the rationale for awarding damages.

V. VACATION PAY

Wrongfully dismissed employees have generally been considered entitled to vacation pay which would have accrued to them during the notice period. This was confirmed in *Durrant v. British Columbia Hydro & Power Authority*,³³ and *Vorvis v. I.C.B.C.*³⁴ Justice Maczko in *Webster v. British Columbia Hydro and Power Authority*,³⁵ put the onus on the plaintiff to prove that he would have taken no vacation during the notice period and would have received vacation pay in addition to his salary in order to be entitled to vacation pay for the notice period. This case is an exception to the general practice of automatically awarding an allowance for vacation pay based on salary, and is arguably the better way of considering the issue, at least for salaried employees.

VI. STOCK OPTION AND RESALE AGREEMENTS

The plaintiff may be compensated for a lost opportunity to buy shares under a stock option plan or for the premature resale of shares to the company upon termination. Each case will turn on its own facts and particularly on the specific terms of any written or verbal agreement. Two earlier cases, *Lawson v. Dominion Securities Corporation*, and *Wells v. Mack Maritime Limited*,³⁶ held that the loss of dividend income during the reasonable notice period yielded by shares resold to the employer was recoverable, but the increase in capital value that would have accrued to those shares during that period was not a proper claim since capital loss is generally not awarded in wrongful dismissal actions.

Damages are now generally allowable on the following basis:

1. Where an option to purchase is involved, damages will be the difference between the option price and the market value on the date within the notice period on which the employee could have purchased, multiplied by the number of shares the employee would have purchased, established by the evidence.³⁷
2. Where a resale agreement is involved, damages will be the difference in price between the date the contract was wrongfully terminated and the date it should have been terminated, which may be the date on which the employee took a new job.³⁸
3. Where both an option to purchase and a resale agreement are involved, damages would be the difference between the purchase price and the resale price.³⁹
4. The employee will be entitled to any dividends payable during the period he was entitled to hold the shares.⁴⁰

Generally, where an agreement was to end upon termination of employment, this will be taken to mean lawful termination, since the employer cannot disentitle the employee by his or her own breach.⁴¹ However, the recent decision in *Vorvis*⁴² may have an impact on this rule of

interpretation. Mr. Justice McFarlane of the B.C. Supreme Court found that the clause "terminated for any reason other than retirement or death", which was contained in a pension plan agreement, encompassed both lawful and unlawful termination. This case has not yet been judicially considered in the context of the stock option or resale agreement, however its relevance in this area seems apparent. It must be emphasized that the Court was careful to draw its conclusions on the basis of the wording of one particular clause. A slight difference in the phraseology could make this precedent inapplicable.

VII. MISCELLANEOUS BENEFITS

Generally, the loss of company car, club memberships or allowances for board, lodging or clothing are recoverable only to the extent that the employee derives some personal advantage from the benefit. If the use of the car or clothing is entirely job related, the plaintiff will not be compensated. Further, it is not necessary for the plaintiff to replace the benefit or to prove any economic losses as a result of being deprived in order to be compensated.⁴³ This rule has changed very little over the past decade.

Car allowances paid in respect of business use of an employee's own car will not be compensated because there is no personal use component.

VIII. AGGRAVATED AND PUNITIVE DAMAGES

The issues of whether aggravated and punitive damages can be awarded in cases of wrongful dismissal were before the Supreme Court of Canada in *Vorvis v. I.C.B.C.*, Mr. Justice McIntyre was careful to distinguish between the two types of damages:

Punitive damages, as the name would indicate, are designed to punish. In this, they constitute an exception to the general common law rule that damages are designed to compensate the injured, not to punish the wrongdoer. Aggravated damages [which includes damages for mental distress] will frequently cover conduct which could also be the subject of punitive damages, but the role of aggravated damages remains compensatory.

[...]

Aggravated damages are awarded to compensate for aggravated damages ... they take account of tangible injuries and by definition will generally augment damages assessed under the general rules relating to the assessment of damages. Aggravated damages are compensatory in nature and may only be awarded for that purpose. Punitive damages, on the other hand, are punitive in nature and may only be employed in circumstances where the conduct giving the cause for complaint is of such a nature that it merits punishment.⁴⁴

Mr. Justice McIntyre then reviewed the development of the law over the years through consideration of the relevant cases, including the case that until *Vorvis* had been viewed as the leading decision on the awarding of damages for mental distress, *Brown v. Waterloo Regional Board of Police Commissioners*⁴⁵ in which, in the words of His Lordship, "the award of damages for mental distress was disallowed, but it may be said that the power of the Court to award damages upon that basis in an appropriate case was implicitly accepted."

Mr. Justice McIntyre concluded his review of the authorities with the following comments:

*From the foregoing authorities, I would conclude that while aggravated damages may be awarded in actions for breach of contract in appropriate cases, this is not a case where they should be given. The rule long established in the *Addis and Peso Silver Mines* cases has generally been applied to deny such damages, and the employer/employee relationship (in the absence of collective agreements which involve consideration of the modern labour law regime) has always been one where either party could terminate the contract of employment by due notice, and therefore the only damage which could arise would result from a failure to give such notice.*

I would not wish to be taken as saying that aggravated damages could never be awarded in a case of wrongful dismissal, particularly where the acts complained of were also independently actionable, a factor not present here. As noted by Hinkson J.A. in the Court of Appeal, at p. 46:

*It was not suggested by the plaintiff that Reid's actions in the months prior to his termination constituted a breach of contract. Upon the basis of the reasoning in the *Brown* case, Reid's conduct was not a separate head of damages in the claim for breach of contract.*

His reference to the Brown case was to the words of Weatherston J.A. in Brown v. Waterloo Regional Board of Commissioners of Police, supra p. 736, where speaking for the Court, he said:

If a course of conduct by one party causes loss or injury to another, but is not actionable, that course of conduct may not be a separate head of damages in a claim in respect of an actionable wrong. Damages, to be recoverable, must flow from an actionable wrong. It is not sufficient that a course of conduct, not in itself actionable, be somehow related to an actionable course of conduct.

Furthermore, while the conduct complained of, that of Reid, was offensive and unjustified, any injury it may have caused the appellant cannot be said to have arisen out of the dismissal itself. The conduct complained of preceded the wrongful dismissal and therefore cannot be said to have aggravated the damage incurred as a result of the dismissal.⁴⁶

Turning to the issue of punitive damages, Mr. Justice McIntyre again reviewed the development of the law and drew the following conclusion:

In my view, while it may be very unusual to do so, punitive damages may be awarded in cases of breach of contract. It would seem to me, however, it will be rare to find a contractual breach which would be appropriate for such an award ... In an action based on a breach of contract, the only link between the parties for the purpose of defining their rights and obligations is the contract. Where the defendant has breached the contract, the remedies open to the plaintiff must arise from that contractual relationship, that "private law", which the parties agreed to accept. The injured plaintiff then is not entitled to be made whole; he is entitled to have that which the contract provided for him or compensation for its loss. This distinction will not completely eliminate the award of punitive damages but it will make it very rare in contract cases.

Moreover, punitive damages may only be awarded in respect of conduct which is of such nature as to be deserving of punishment because of its harsh, vindictive, reprehensible and malicious nature. I do not suggest that I have exhausted the adjectives which could describe the conduct capable of characterizing a punitive award, but at any case where such an award is made the conduct must be extreme in its nature and such that by any reasonable standard it is deserving of full condemnation and punishment.⁴⁷

Courts across Canada have yet to fully consider the implications of this decision of the Supreme Court of Canada, and it is yet to be determined whether what appeared to be a developing

trend to more awards of damages for mental distress will be reversed by the cautionary note sounded by Mr. Justice McIntyre. It would be the rare dismissed employee who is not upset at being fired. Indeed, practitioners often see cases (which never get to court) of employees who have been properly dismissed in the sense of reasonable notice having been given, who are distressed to the point of requiring medical attention. It is submitted that for an award of damages for mental distress to be made, a court must find that the loss seeking to be compensated flows from the wrongful dismissal, rather than simply from the fact of dismissal.

FOOTNOTES

1. *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140 at 146 (Ont. H.C.).
2. *Bagby v. Gustavson International Drilling Co.* (1980), 24 A.R. 181 at 194.
3. *Douglas v. Sandwell and Co.* (1977), 81 D.L.R. (3d) 508 at 514 (B.C.S.C.).
4. *Sandelson v. International Vintners Ltd.* (1987), 18 B.C.L.R. (2d) 86 (S.C.).
5. *Brock v. Matthews Group Ltd.* (1988), 20 C.C.E.L. 110 (Ont H.C.); see also *King v. Harris* (1980), 30 Nfld. & P.E.I.R. 118 (Nfld. T.D.).
6. *Herbison v. Intercontinental Packers Ltd.* (1982), 17 Sask. R. 271 (Q.B.).
7. *Durrant v. British Columbia Hydro & Power Authority* (1990), 49 B.C.L.R. (2d) 263 (C.A.).
8. *Supra* note 1 at 146.
9. *Ansari v. B.C. Hydro & Power Authority* (1986), 2 B.C.L.R. (2d) 33, (1986) 4 W.W.R. 123.
10. *Rivers v. Gulf Canada Ltd.* (1986), 13 C.C.E.L. 131 (Ont. H.C.).
11. *Supra* note 1.
12. *Dauphinee v. Bank of Montreal* (1985), 10 C.C.E.L. 36 (B.C.S.C.): see also *McKilligan v. Pacific Vocational Institute* (1979), 14 B.C.L.R. 109, var'd by (1981), 28 B.C.L.R. 324 (C.A.).
13. *Dauphinee, ibid.* at 207.
14. D. Harris, *Wrongful Dismissal* (rev. & cons.) (Toronto: De Boo 1990) at 4-54.
15. *Vorvis v. Insurance Corporation of British Columbia* (1989), 1 S.C.R. 1085.
16. *Vorvis v. Insurance Corporation of British Columbia* (1982), 134 D.L.R. (3d) 727 at 732.
17. See for example *Dickinson v. Northern Telecom Canada Ltd.* (1985), 7 C.C.E.L. 139 (Ont. Co. Ct.); see also *Wells v. Newfoundland and Labrador Nurses Union* (1986), 57 Nfld. & P.E.I.R. 67 (Nfld. T.D.); and *LeBlanc v. United Maritime Fishermen* (1984), 60 N.B.R. (2d) 341 (Q.B.).
18. *McIntosh v. Saskatchewan Water Corporation* (1988), 23 C.C.E.L. 143 at 144 (Q.B.).

19. See for example *Brown v. Sansom Equipment Limited* (1982), 41 N.B.R. (2d) 707 (Q.B.).
20. See for example *supra* note 2 and *supra* note 3.
21. *Herbison v. Intercontinental Packers Limited* (1982), 17 Sask. R. 271 (Q.B.).
22. *Wilks v. Moore Dry Kiln of Canada* (1981), 32 B.C.L.R. 149 at 152 (S.C.).
23. *McKilligan v. Pacific Vocational Institute* (1981), 28 B.C.L.R. 324 (C.A.).
24. *Supra* note 16.
25. See for example *Chantler v. Applied Power* (1982), 1 C.C.E.L. 141 (Ont. H.C.); *Wuorinen v. British Columbia (Workers' Compensation Board)* (1983), 1 C.C.E.L. 29 (B.C.S.C.); *Bell v. Izaak Walton Killam Hospital for Children* (1986), 14 C.C.E.L. 276 (N.S.S.C.T.D.); *Gregory v. New Brunswick* (1989), 97 N.B.R. (2d) 144 (Q.B.).
26. *Dunlop v. B.C. Hydro and Power Authority* (1988), 23 C.C.E.L. 96, 32 B.C.L.R. (2d) 334, (1989) 2 W.W.R. 518 (B.C.C.A.).
27. *McKay v. Camco Inc.* (1986), 24 D.L.R. (4th) 90 (Ont. C.A.).
28. *Prince v. T. Eaton Co.* (1990), 47 B.C.C.R. (2d) 310, 32 C.C.E.L. 174.
29. *Ibid.* at 185.
30. *Supra* note 16; *supra* note 2; *Kozak v. Aliments Krispy Kernels Inc.* (1988), 22 C.C.E.L. 1 (Ont. Dist. Ct.); *Findlay v. Kershaw Manufacturing Canada Ltd.* (1989), 29 C.C.E.L. 10 (Ont. H.C.).
31. *Unemployment Insurance Regulations*, C.R.C. 1978, c. 1576.
32. *Giles v. Wheaton Pontiac Buick GMC Ltd.* (1987), 87 C.L.L.C. 14,031 (B.C.S.C.); see also *MacEachern v. Nova Scotia (Attorney General)* (1987), 83 N.S.R. (2d) 57, 19 C.C.E.L. 16 (N.S.S.C.T.D.).
33. *Supra* note 7.
34. *Supra* note 16.
35. *Webster v. British Columbia Hydro and Power Authority* (1990), 31 C.C.E.L. 224 (B.C.S.C.).
36. *Wells v. Mack Maritime Limited* (1975), 21 N.S.R. (2d) 434.

37. See for example *Colasurdo v. CTT Inc.* (1988), 18 C.C.E.L. 264 (Ont. H.C.); *Lowthers v. MacIntyre* (1986), 76 N.S.R. (2d) 332 (S.C.); *Dixon v. Merland Explorations Limited* (1984), 30 Alta. L.R. (2d) 310 (Q.B.).
38. *Rooney v. Reed Ltd.* (1978), 20 O.R. (2d) 665 (H.C.).
39. *Wennick v. Technical Marketing Associates Ltd.* (1989), T.L.W. 935-002 (Ont. H.C.); *Carey v. F. Drexel Col Ltd.* (1974), 4 W.W.R. 492 (B.C.S.C.).
40. *Brock*, *supra* note 5.
41. *Ibid.*
42. *supra* note 16.
43. *Wood v. B.B.C. Brown Boveri Canada Inc.* (1986), 2 A.C.W.S. (3d) 165 (B.C.C.A.).
44. *Supra* note 15 at 1098.
45. *Brown v. Waterloo Regional Board of Police Commissioners* (1983), 150 D.L.R. (3d) 729 at 1102.
46. *Ibid.* at 1104.
47. *Ibid.* at 1107.