COURT OF APPEAL FOR ONTARIO

CITATION: Wood v. CTS of Canada Co., 2018 ONCA 758
DATE: 20180919
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Hoy A.C.J.O., Brown and Trotter JJ.A.

BETWEEN

Claudette Wood, Bruce Cook and John Featherstone

Plaintiffs (Respondents)

and

CTS of Canada Co. and CTS Corporation

Defendants (Appellants)

Timothy Pinos, Kristin Taylor and Caitlin Russell, for the appellants

Stephen Moreau and Genevieve Cantin, for the respondents

Heard: May 15, 2018

On appeal from the judgment of Justice John R. Sproat of the Superior Court of Justice, dated September 26, 2017, with reasons reported at 2017 ONSC 5695, 42 C.C.E.L. (4th) 43.

Hoy A.C.J.O.:

I. INTRODUCTION

[1] This appeal arises from the closure of the Streetsville, Ontario manufacturing plant operated by CTS of Canada Co. This resulted in a "mass termination" for purposes of the *Employment Standards Act, 2000*, S.O. 2000, c. 41 (the "ESA").

[2] A class action was brought on behalf of former employees against their common employers, CTS of Canada Co. and its parent corporation CTS Corp. (collectively "CTS"). The class consists of 74 former active employees who did not sign a release with CTS and who were not dismissed for cause.

[3] The parties agreed that the common issues could be resolved on a motion for summary judgment. These issues included the three key issues on this appeal brought by CTS. The issues relate to the requirement under the ESA to give notice to the ESA Director in the case of a mass termination, and the adequacy of the notice of termination given by CTS.

[4] For the reasons that follow, I would allow CTS's appeal in part.

II. OVERVIEW

[5] On April 17, 2014, CTS gave written notice to employees that it was closing its Streetsville plant and that their employment would terminate on March 27, 2015. It subsequently extended the termination date for most employees to June 26, 2015.

[6] The ESA imposes a number of requirements in the case of mass terminations. If an employer terminates 50 or more employees in the same four-week period, the employer must give at least eight weeks' notice of termination: ESA, s. 58(1); *Termination and Severance of Employment*, O. Reg. 288/01, s. 3(1) (the "Regulation"). An employer required to give notice under s. 58 must also

provide the ESA Director with prescribed information in Form 1 and post the Form 1 in the employer's establishment: ESA, s. 58(2). The requirement to provide a Form 1 to the Director is reinforced through s. 58(4). Under s. 58(4), notice required under s. 58(1) is deemed not to have been given until the Director receives the Form 1 information required under s. 58(2).

[7] CTS did not serve and post the Form 1 information until May 12, 2015, 12 days into the mandatory minimum eight-week notice period and more than a year after it gave notice to its employees.

[8] The motion judge concluded that s. 58(2) required CTS to serve and post the Form 1 information when it gave notice to employees on April 17, 2014 (and not eight weeks before the date of termination, as CTS maintained) and that, pursuant to s. 58(4) of the ESA, its notice was not effective until it did so on May 12, 2015. In other words, the motion judge concluded that the failure to file the Form 1 in a timely way had the effect of invalidating the 13 months of working notice CTS provided prior to filing and posting the Form 1 information on May 12, 2015. CTS challenges his conclusion on appeal.

[9] As I will explain, I agree that the motion judge erred in deciding the Form 1 issue. CTS was only required to serve and post the Form 1 information at the beginning of May 2015. Since CTS was 12 days late in serving and posting the Form 1 notice, class members are entitled to a further 12 days' pay in lieu of notice.

[10] The motion judge also concluded that CTS was not entitled to credit for working notice for any week in which an employee worked overtime contrary to the ESA or in which the employee was forced to work overtime that had a significant adverse effect on the ability of the employee to look for new employment. As well, he concluded that in the case of the five employees who worked more than 13 weeks beyond their original separation date, CTS is only entitled to credit for common law working notice from the date of the letter providing them with notice of their actual termination date. I agree with the motion judge's disposition of these two issues.

[11] I address these three issues in turn.

III. DID SECTION 58 REQUIRE CTS TO SERVE AND POST THE FORM 1 NOTICE ON APRIL 17, 2014?

[12] Before turning to my analysis, I will review relevant aspects of the ESA scheme and the motion judge's decision, which turns on an interpretation of s. 58 of the ESA. Section 58 and other relevant provisions are set out in Appendix A for easy reference.

(a) The ESA Scheme

[13] The ESA sets out employment standards – defined in s. 1(1) as "a requirement or prohibition ... that applies to an employer for the benefit of an employee" – that apply to work performed in Ontario: ESA, s. 3(1).

[14] An employer or employee cannot contract out of or waive an employment standard. Section 5(1) makes any such contracting out or waiver void.

[15] Termination and severance pay provisions are set out in Part XV of the ESA from ss. 54 to 67.

[16] Employees are entitled to notice of termination or pay in lieu of notice under the ESA on a sliding scale, which is essentially one week per year of service to a maximum of eight weeks: ESA, s. 57.

[17] On a mass termination, employees have an enhanced right to notice of termination. The length of notice is dependent on the number of employees that are terminated and not on the employee's years of service: ESA, s. 58; Regulation, s. 3(1).

[18] Employers such as CTS, with a payroll in excess of $2.5 million per year, must also pay "severance pay" to employees with five or more years of service. Severance pay is one week's pay for each year of service to a maximum of 26 weeks. Unless the employee otherwise agrees, the employer must actually pay severance pay, and not simply continue to pay wages over the severance pay period: ESA, ss. 64, 65. Most of the class members were entitled to severance pay.

[19] As noted above, under s. 58(2) an employer must provide certain information to the ESA Director in the one-page Form 1 document. The information

includes the name of the employer, the location where the employees work, the number of employees who work at the location and the number whose employment is being terminated, classified by the way in which they are paid, the date or dates on which it is anticipated that their employment will be terminated, and the economic circumstances surrounding the termination: Regulation, s. 3(2).

[20] Before the motion judge, it was common ground that the Form 1 notice must be provided to the Director at the same time as it is posted. Like the motion judge, I will refer to the service on the Director and the posting requirement collectively as "Form 1 notice".

[21] Practical consequences flow from the Form 1 notice: it can trigger the provision of significant government services to affected employees.

[22] On receipt of a Form 1, the Ministry of Labour ("MOL") prepares a Form 1 summary which is forwarded to MOL staff and the Ministry of Advanced Education and Skills Development ("MAESD").

[23] The MAESD then contacts the employer. If the employer indicates that it is aware of the Employment Ontario programs and services that are available to assist employees and has already put in place appropriate types of support services, the employer may decline assistance and the MAESD will not attend the employer's premises. If the employer indicates that it has no adjustment services

in place, as in this case, the MAESD will work with the employer to provide the affected employees with the MAESD services.

[24] In the case of CTS, at a minimum, a representative of the MAESD would have attended at CTS's premises and outlined supports and services available through Employment Ontario.

[25] The Employment Ontario Program Guide includes the following information:

> (a) Counsellors can help prepare a resume and provide tips for a successful job interview.
>
> (b) Counsellors can provide information as to the local job market and what jobs are in high demand.
>
> (c) The Second Career Program provides eligible laid off workers with up to $28,000 to train for certain occupations that are in high demand.
>
> (d) Counsellors can provide information on starting a business and the Ontario Self-Employment benefit.
>
> (e) Counsellors can provide information on apprenticeship programs including financial assistance programs.
>
> (f) Reading, writing and math skills assessment and training are available.
>
> (g) English and French language training is available.

[26] An Ontario government website describes a program, the Adjustment Advisory Program, which makes an advisor available to employees terminated in a mass termination to provide career, financial and personal counselling, and to assist in registering for other services.

[27] While CTS brought in "Right Management" at its expense to conduct outplacement workshops prior to the plant closure, CTS acknowledged that Right Management did not provide any of the above government services.

(b) The motion judge's reasons

[28] The motion judge concluded that CTS was required to give notice of termination under s. 58(1) on April 17, 2014. Section 58(1) provides as follows:

> (1) Despite section 57, the employer shall give notice of termination in the prescribed manner and for the prescribed period if the employer terminates the employment of 50 or more employees at the employer's establishment in the same four-week period. [Emphasis added.]

[29] The "prescribed period" for the purposes of s. 58(1) is set out in s. 3 of the Regulation:

> 3(1) The following periods are prescribed for the purposes of subsection 58(1) of the Act:
>
> > 1. Notice shall be given at least eight weeks before termination if the number of employees whose employment is terminated is 50 or more but fewer than 200.
>
> ...

[30] Thus, while the prescribed period in this case is eight weeks, the motion judge concluded that notice of termination was required more than a year before the plant was scheduled to close. At paras. 57 and 59, he stated:

> On April 17, 2014 CTS gave notice to 77 employees that their employment would terminate March 27, 2015. It

> follows that on April 17, 2014, CTS had to comply with s. 58(1) of the ESA and provide notice of the mass terminations "in the prescribed manner and for the prescribed period."
>
> ...
>
> In my view, the plain meaning of the ESA is that an employer gives s. 58(1) notice one time. An employer in the position of CTS can give that notice eight weeks prior to the termination date or at such earlier date as the employer chooses. In this case, CTS chose the earlier date of April 17, 2014. I do not see how CTS can get around the fact that it instituted a mass termination on April 17, 2014 and had to comply with s. 58(1) on that date.

[31] In reaching that conclusion he referred to other subsections, including s. 58(2), (4) and (5):

> (2) An employer who is required to give <u>notice</u> under this section,
>
> (a) shall provide to the Director the prescribed information in a form approved by the Director; and
>
> (b) shall, <u>on the first day of the notice period</u>, post in the employer's establishment the prescribed information in a form approved by the Director.
>
> ...
>
> (4) The <u>notice required under subsection (1)</u> shall be deemed not to have been given until the Director receives the information required under clause (2)(a).
>
> (5) The employer shall post the information required under clause (2)(b) in at least one conspicuous place in the employer's establishment where it is likely to come to the attention of the affected employees and the employer shall keep that information posted throughout <u>the notice period required under this section</u>. [Emphasis added.]

[32] On his reading, all the references to “notice” and “notice period” in s. 58 referred to the notice given, or the notice period that commenced, on April 17, 2014. At paras. 60-61, he explained:

> I think it inescapable that:
>
> *The "notice" referred to in the introductory sentence to s. 58(2) must be the “notice of termination” required by s. 58(1); and
>
> *When s. 58(2)(b) refers to the Form 1 posting on “the first day of the notice period”, it is the same notice period referred to in s. 58(1) and the introductory words of para. 58(2).
>
> Section 58(1) and (2) refer to one and the same notice period. In the case of CTS that is the notice period that commenced April 17, 2014. It follows from this reasoning that the “notice” referred to in s. 58(4) and the “notice period required” as referred to in s. 58(5) also refer to the notice period that commenced April 17, 2014.

[33] The motion judge rejected CTS’s argument that the s. 58(4) reference to “the notice required” and the s. 58(5) reference to “the notice period required”, should be read as referring to the statutory notice period only. The term “statutory notice period” is defined as follows in s. 1(1):

> (1) In this Act ... “statutory notice period” means,
>
> (a) the period of notice of termination required to be given by an employer under Part XV, or
>
> (b) where the employer provides a greater amount of notice than is required under Part XV, that part of the notice period ending with the termination date specified in the notice which equals the period of notice required under Part XV;

[34] At para. 66, the motion judge reasoned that "[i]f the intention had been to refer to [the] statutory notice period, it would have made sense to use the defined term 'statutory notice period'".

[35] The motion judge also found, at paras. 67-68, that legislative history supported the conclusion that Form 1 notice is required on the first day of the notice period actually provided by the employer. From 1987 until 2000 when the current version of the ESA came into force, the ESA made clear that Form 1 notice was required on the first day of the "statutory notice period". When the ESA was revised in 2000, the 1987 obligation to give Form 1 notice "on the first day of the statutory notice period" was changed to an obligation to give Form 1 notice on "the first day of the notice period". The motion judge explained that in *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867, Iacobucci J. stated that "there is a presumption that amendments to the wording of a legislative provision are made for some intelligible purpose, such as to clarify the law." The motion judge also noted that Iacobucci J. endorsed the proposition that changes are intended to be purposive unless there is evidence that only "language polishing" was intended, but rejected CTS's submission that the change in language with respect to the Form 1 notice was simply "language polishing".

[36] At para. 69, the motion judge took note of s. 60(1) of the ESA, which provides:

> During a notice period under section 57 or 58, the employer,
>
> (a) shall not reduce the employee's wage rate or alter any other term or condition of employment;
>
> (b) shall in each week pay the employee the wages the employee is entitled to receive, which in no case shall be less than his or her regular wages for a regular work week; and
>
> (c) shall continue to make whatever benefit plan contributions would be required to be made in order to maintain the employee's benefits under the plan until the end of the notice period.

[37] The statutory freeze of an employee's conditions of employment in s. 60(1) applies "[d]uring a notice period under section 57 or 58". Section 60(1) does not utilize the defined term "statutory notice period". Therefore, the motion judge held the notice period under ss. 57 and 58 is the notice period actually given, which cannot be less than the statutory minimum.

[38] At para. 70, the motion judge acknowledged that the MOL's July 2000 Consultation Paper[1] indicated that the government proposed only "minor changes" to the ESA Part XV termination and severance pay provisions. In his view, changing the date when an employer is required to provide a one-page Form 1 to the Director could certainly be regarded as minor.

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[1] Ministry of Labour, *Time for Change: Ontario's Employment Standards Legislation* (Consultation Paper) (Queen's Printer for Ontario, 2000) (the "Consultation Paper").

[39] At para. 71, he also acknowledged that the MOL's policy and interpretation manual for the ESA[2] supported CTS's position. The Manual states that if the employer provides greater notice of mass termination than is required, the Form 1 is to be filed "by the first day of the statutory portion of the notice period." He noted that it was at least possible that the Manual was not properly revised in 2000 and that the current MOL online guide simply refers to Form 1 notice being required on the "first day of the notice period".

[40] The motion judge outlined, at paras. 72 and 73, "bedrock principles" that he said supported his conclusion on when Form 1 notice must be provided:

> In any event, what I regard as extremely important, much more than any policy manual, are the bedrock premises and principles endorsed time and time again by the Supreme Court of Canada:
>
> (a) Employees, particularly at the time of termination, are vulnerable;
>
> (b) Employees are probably not aware of their legal rights and, in my view, it follows that equally they are probably not aware of the nature and extent of government support available and not aware of or in possession of many job hunting skills.
>
> (c) In the event of ambiguity, the statutory interpretation which provides the greater benefit to employees is to be preferred.
>
> (d) In the event of ambiguity, a statutory interpretation which encourages [employers] to comply with the

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[2] Ministry of Labour Employment Practices Branch, *Employment Standards Act, 2000 Policy and Interpretation Manual*, 2d ed. (Scarborough: Carswell, 2001) (the "Manual").

> minimum statutory requirements and which provides a benefit to a greater number of employees is to be preferred.
>
> These bedrock principles are all served by the conclusion that Form 1 notice is required at the time the employer gives notice of a mass termination.

[41] The motion judge commented that it would be much more beneficial for employees who required an upgrade to their math, writing or reading skills, or who wished to consider apprenticeship programs under the Second Career program, to have 12 months to do so and not simply the eight-week statutory notice period. He reasoned that it would be perverse if CTS could gain the benefit of a long period of working notice but not have to take the simple step of providing Form 1 notice, which would have allowed the employees to benefit from the government services that are triggered by Form 1 notice.

[42] In his view, the interpretation of s. 58 was clear and required Form 1 notice on April 17, 2014. Further, he stated that even if s. 58 were ambiguous, the ambiguity must be resolved in favour of the employees.

(c) Analysis

[43] The respondents repeat the arguments made to, and accepted by, the motion judge, and reflected in the motion judge's analysis.

[44] I come to a different conclusion than the motion judge. On my reading of s. 58, Form 1 notice must be given on the first day of the statutory notice period. I reach this conclusion taking into account the purpose of the ESA and the wording

of s. 58 read in context. My interpretation is also consistent with legislative history, extrinsic documents referred to by the trial judge, and case law governing the interpretation of employment standards legislation.

(i) The Purpose of the ESA

[45] The purpose of the ESA is to protect the interests of employees by requiring employers to comply with certain minimum standards, including minimum periods of notice of termination: *Machtinger v. HOJ Industries*, [1992] 1 S.C.R. 986, at p. 1003. Its objective is not to impose requirements on employers in excess of the statutory minimums. Tying the requirement to provide Form 1 notice to the Director to when an employer gives what it intends to be common law reasonable notice, in excess of the statutorily-required minimum notice period, is not consistent with the object of the Act of requiring employers to comply with certain minimum standards.

(ii) Textual Analysis

[46] Nor is such a requirement consistent with the language of s. 58.

[47] In my view, the motion judge's conclusion that CTS was obligated to file the Form 1 notice on April 17, 2014 is rooted in his erroneous determination, at para. 57 of his reasons, that CTS was required to comply with s. 58(1) on April 17, 2014. Only if CTS were required to comply with s. 58(1) on April 17, 2014 could the phrases "[t]he notice required under [s. 58(1)]" in s. 58(4) and "the notice period

required under this section" in s. 58(5) be interpreted as meaning the actual period of working notice given by CTS, rather than the statutorily-required minimum notice period of eight weeks.

[48] Respectfully, CTS was not <u>required</u> to comply with s. 58(1) on April 17, 2014. Section 58 does not require an employer to give notice to its employees as soon as it decides that it will effect what would be a mass termination. Under s. 58(1), what CTS was required to do was give notice "for the prescribed period", which was eight weeks. Although CTS was permitted to and may have chosen to give notice to the employees, under s. 58(1), and the Director, under s. 58(2), earlier, it was only required to give notice by the first day of the statutory notice period.

[49] If one considered only ss. 58(1) and (2), the motion judge's conclusion that the reference to "the first day of the notice period" in s. 58(2) means the first day of the notice period actually given by the employer is arguable. However, it is well established that the words of the statute are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the statute, the object of the statute, and the intention of the legislature: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 (S.C.C.), at para. 21.

[50] As the motion judge recognized, the words "the first day of the notice period" in s. 58(2) must be read in context. In particular, they must be interpreted in light of the words "[t]he notice <u>required</u> under [s. 58(1)]" in s. 58(4) and "the notice period

required under this section" in s. 58(5) (emphasis added). Because CTS was not required to give notice under s. 58(1) on April 17, 2014, "the notice period required under this section" in s. 58(5) must mean the statutorily-required eight-week notice period. It follows that "[t]he notice required under [s. 58(1)]" in s. 58(4) also means the statutorily-required eight-week notice period.

[51] Further, elsewhere in Part XV of the ESA, where the word "required" is used in conjunction with "notice" or "notice period", it is clear that the notice referred to is the statutorily-required notice period: see ESA, ss. 61(1), 62(1) and 65(4).

[52] One of the respondents' key arguments is that had the intention been to require Form 1 to be given on the first day of the "statutory notice period", the term "statutory notice period" would have been used in s. 58(2). To repeat the definition of "statutory notice period" in s. 1(1), it means:

> (a) the period of notice of termination required to be given by an employer under Part XV, or
>
> (b) where the employer provides a greater amount of notice than is required under Part XV, that part of the notice period ending with the termination date specified in the notice which equals the period of notice required under Part XV;

[53] Under the first part of the definition, "statutory notice period" includes the periods of notice required under ss. 57 and 58, which fall under Part XV (Termination and Notice of Severance). Under the second part of the definition,

the definition clarifies that in the case when greater notice is given that the statutory notice falls at the end of the greater period.

[54] Interestingly, the term "statutory notice period" is only used once in the ESA – in s. 63(1). Unlike s. 58, which deals with the notice required in the case of a mass termination, s. 63(1) deals with what constitutes severance for the purpose of entitlement to severance pay, not termination pay. Under s. 63(1)(e), an employee who resigns is considered to have been severed and is entitled to severance pay if: (1) the employer gives the employee notice of termination in accordance with ss. 57 or 58; (2) the employee gives the employer written notice at least two weeks before resigning; or (3) the notice of resignation is to take effect during the "statutory notice period".

[55] In my view, the respondents' argument – that the failure to use the term "statutory notice period" in s. 58(2) indicates that the intention was not to refer to the prescribed eight-week notice period – must fail. Sections 57 and 58, which set out "the period of notice of termination required to be given by an employer under Part XV" do not use the term "statutory notice period" because, by definition, those sections set out the statutory notice periods.

[56] Also, as I have already explained, s. 58(2) must be read in the context of s. 58 as a whole. Under s. 58(2)(b), the employer is required to post the prescribed information "on the first day of the notice period", while under s. 58(5) that

information must be kept posted "throughout the notice period required under this section"(emphasis added), which takes you back to s. 58(1). Under s. 58(1), "notice" must be given for the "prescribed period", which in this case is eight weeks.

[57] In summary, on a textual reading, while an employer may choose to give notice to employees in accordance with s. 58(1) and to the Director in accordance with s. 58(2) in excess of the prescribed minimum statutory notice period, the requirement to provide notice to the Director only arises at the beginning of the prescribed minimum statutory notice period. As I will address below, the consequence of failing to file the Form 1 notice in a timely manner is also tied, by virtue of s. 58(4), to the minimum period of notice required under s. 58(1).

(iii) The Statutory Freeze in s. 60(1)

[58] As noted above, the motion judge referred to s. 60 in his analysis of s. 58: para. 69.

[59] On appeal, the respondents rely on the wording of s. 60(1) and (2) in arguing that where the notice actually given exceeds the statutorily-required notice period, "[t]he notice required under [s. 58(1)]" in s. 58(4) means the notice actually given. In their submission, "a notice period under section 57 or 58" in the opening flush of s. 60(1), "the notice period" in s. 60(1)(c) and "notice" in s. 60(2) all refer to the period of notice actually given.

[60] For ease of reference, ss. 60(1) and (2) provide:

> (1) During a notice period under section 57 or 58, the employer,
>
> > (a) shall not reduce the employee's wage rate or alter any other term or condition of employment;
> >
> > (b) shall in each week pay the employee the wages the employee is entitled to receive, which in no case shall be less than his or her regular wages for a regular work week; and
> >
> > (c) shall continue to make whatever benefit plan contributions would be required to be made in order to maintain the employee's benefits under the plan until the end of the notice period.
>
> (2) For the purposes of clause (1)(b), if the employee does not have a regular work week or if the employee is paid on a basis other than time, the employer shall pay the employee an amount equal to the average amount of regular wages earned by the employee per week for the weeks in which the employee worked in the period of 12 weeks immediately preceding the date on which notice was given. [Emphasis added.]

[61] I accept that s. 58 must be read in context, with reference to related statutory provisions, such as s. 60, and the scheme of the ESA more generally. However, s. 60 does not alter my conclusion that the employer's obligation to provide Form 1 notice under s. 58(2) arises at the beginning of the statutorily-prescribed minimum notice period (in this case, eight weeks).

[62] First, the wording at issue in s. 58 is different from the wording in ss. 60(1) and 60(2) that the respondents rely on. Crucial to my textual analysis of s. 58, above, is the reference in s. 58(4) to "[t]he notice required under [s. 58(1)]" and the

reference in s. 58(5) to “the notice period required under this section” (emphasis added).

[63] Second, the respondents do not provide any judicial authority supporting their proposed interpretation of “a notice period under section 57 or 58” in s. 60(1), or “the notice period” in s. 60(1)(c), or “notice” in s. 60(2), as meaning the period of notice actually given, which they say in turn supports their interpretation of s. 58.

[64] The panel sought additional written submissions on this court’s decision in *Wood v. Fred Deeley Imports Ltd.*, 2017 ONCA 158, 134 O.R. (3d) 481. Contrary to the respondents’ submissions, *Deeley* is not authority for the proposition that “a notice period under section 57 or 58” in s. 60(1) means the notice period actually given. The main issue in *Deeley* was whether a termination clause in an employment agreement between the parties was unenforceable because it contravened the ESA. The employer paid Ms. Wood her salary and benefits during her working notice; the issue of whether the ESA had prohibited the employer from reducing Ms. Wood’s wage rate or altering her benefits during the period of working notice was not before the court. However, to the extent that *Deeley* touches upon the issue in *obiter*, I read it as indicating the “the notice period under section 57 or

58" referred to in the opening flush of s. 60(1) is the statutorily-required notice period: see paras. 20-21.[3]

[65] This case is similar to *Deeley* in that the question of whether s. 60(1) restricts the "freeze" to the statutory notice period is not before this court. The issue on this appeal is the requirement to file the Form 1 notice with the Director under s. 58(2), and the consequences of failing to provide such notice in a timely manner under 58(4). The interpretation of the scope of s. 60's "freeze" effect is a question that should be left for another day, when that issue is squarely before the court and fully argued.

(iv) Legislative History and Extrinsic Documents

[66] I have also considered legislative history. As the respondents point out, when the new ESA was enacted in 2000, the language in the 1987 iteration of the legislation requiring Form 1 notice "on the first day of the statutory notice period" was changed to an obligation to give Form 1 notice on "the first day of the notice period". The language requiring the employer to keep the information posted "throughout the statutory notice period" was changed to an obligation to keep the

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[3] Interestingly, the 2017 version of the MOL's Manual states that "[t]he obligations set out in [s. 60(1)] apply only to the statutory notice period. Where an employer gives notice that is greater in length than the statutory notice, these obligations will not apply to the part of the notice period that precedes the statutory notice period." Similarly, the MOL document entitled "Termination and Severance", which forms part of the MOL online guide referred to by the motion judge, describes the s. 60 "freeze" as applying during the statutory notice period. I discuss both the MOL Manual and "Termination and Severance" document in more detail below.

information posted "throughout the notice period required under this section." As the motion judge noted, in *Ulybel* Iacobucci J. endorsed the proposition that legislative changes are intended to be purposive unless there is evidence that only "language polishing" was intended.

[67] In my view, the explanatory note of Bill 147, which introduced the current version of the ESA, is evidence that only "language polishing" was intended. The explanatory note of Bill 147 indicates that, "[t]he wording in the notice of termination and severance pay provisions of the current Act has been revised to improve clarity." I equate "clarity" with "language polishing".

[68] I also refer to the Consultation Paper since the trial judge relied on it, although I would not give it much weight. The Consultation Paper, which was released prior to the introduction of Bill 147, describes the changes to the termination provisions in the ESA as part of its objective to modernize and clarify the existing employment standards act. Specifically, the Consultation Paper stated:

> The government is proposing to make no major changes to the notice of termination and severance provisions in the act. A number of minor changes would be made to ensure greater consistency in definitions and application of the termination and severance provisions.

[69] If the ESA had been changed to require an employer to give Form 1 notice when it gives common law reasonable notice of termination, it would not have been

a minor change. The proof is that this alleged change gave rise to this class proceeding.

[70] My interpretation is also consistent with the MOL's Manual, which was published in September 2001 when the ESA came into force and was drafted for that piece of legislation. The Manual describes itself as "the primary reference source of the policies of the Director of Employment Standards respecting the interpretation, administration and enforcement of the [ESA]". Carswell continued to publish the Manual until 2016 and an electronic version remains available to the public on request. The record on this appeal includes a copy of the Manual published in 2017. That version of the Manual continues to state that the "notice period" in s. 58(2) and the "notice period required under this section" in s. 58(5) correspond to the "statutory notice period". The motion judge stretches too far when he reasons that it is possible that Manual was simply not properly revised in 2000.

[71] The motion judge correctly notes that in a shorter document entitled "Termination and Severance", which is a component of an online guide prepared by the MOL to assist employers and employees, the MOL indicates that the employer must post the Form 1 "on the first day of the notice period" and does not state that the Form 1 must be posted on the first day of the statutory notice period. However, elsewhere the document indicates that the s. 60(1) "freeze" applies during the statutory notice period. As indicated above, the s. 60(1) freeze period is

"a notice period under section 57 or 58". Hence, reading the document as a whole, it is clear that the MOL regards "the first day of the notice period" as the first day of the statutory notice period. This document does not suggest that the Manual was not properly revised in 2000. Rather, it demonstrates that the MOL has consistently taken the view that "[t]he notice required under [s. 58(1)]" in s. 58(4) is the statutorily-required notice period.

[72] Thus, the legislative history of the ESA and the MOL's interpretation of the statutory provisions at issue in this appeal support my conclusion that an employer's obligation to file a Form 1 notice arises only at the beginning of the minimum statutory notice period.

(v) *Rizzo* and Statutory Interpretation in the Employment Context

[73] Finally, my interpretation is consistent with the principles of statutory interpretation endorsed by the Supreme Court of Canada in the employment context. At para. 72 of his reasons, the motion judge includes among these that in the event of ambiguity, the statutory interpretation which provides the greater benefit to employees is to be preferred. In my view, the motion judge's flawed application of that principle drove his interpretation of the ESA.

[74] The principle that "the statutory interpretation which provides the greater benefit to employees is to be preferred" can be traced to *Rizzo*, which involved the interpretation of an earlier version of Ontario's employment standards legislation.

The question in *Rizzo* was whether the termination of employment caused by the bankruptcy of an employer gave rise to a claim provable in bankruptcy for termination and severance pay. In other words, the issue in *Rizzo* was whether former employees were entitled to the minimum benefits provided for by the ESA.

[75] While the plain language of the relevant sections of the ESA suggested that termination pay and severance pay were payable only when the employer terminated the employment, and not when the employment was terminated on bankruptcy by operation of law, the Supreme Court concluded otherwise. The Supreme Court held that in coming to a different conclusion, this court had erred in focusing too much on the plain meaning of the sections, paying insufficient attention to the scheme and object of the ESA or the intention of the legislature, and failing to read the relevant words in context.

[76] In a key passage at para. 36, Iacobucci J. wrote:

> Finally, with regard to the scheme of the legislation, since the ESA is a mechanism for providing minimum benefits and standards to protect the interests of employees, it can be characterized as benefits-conferring legislation. As such, according to several decisions of this Court, it ought to be interpreted in a broad and generous manner. <u>Any doubt arising from difficulties of language should be resolved in favour of the claimant.</u> [Emphasis added.]

[77] This principle does not apply here. Section 58 is not ambiguous. Interpreting s. 58 in a broad and generous manner, it is clear that "[t]he notice required under [s. 58(1)]" in s. 58(4) is the statutorily-required eight-week notice period. However,

even if it could be said that doubt arises from difficulties of language in s. 58, *Rizzo* does not require a different result.

[78] Read in context, *Rizzo* does not direct that any doubt arising from difficulties of language should be resolved in favour of the employee, even where to do so would be inconsistent with the scheme of the ESA, its object, and the intention of the legislature. As *Machtinger* states, and *Rizzo* acknowledges, the object of the ESA is the provision of minimum benefits and standards to employees. In *Rizzo*, the Supreme Court interpreted the provisions of the ESA at issue to ensure the provision of the minimum statutory benefits to former employees.

[79] However, *Rizzo* does not require an interpretation in favour of employees that runs counter to the basic principles of statutory interpretation: see *Novaquest Finishing Inc. v. Abdoulrab*, 2009 ONCA 491, 95 O.R. (3d) 641, at paras. 59-60. The respondents in this case argue for an interpretation of the ESA that is inconsistent with the scheme and object of the ESA; that cannot be reasonably supported on a textual analysis; and that would increase the benefits to which former employees are entitled beyond the statutory minimums established by the ESA.

[80] For these reasons, I conclude that the motion judge erred in finding that the Form 1 notice had to be given on April 17, 2014.

(d) The consequence of late delivery of the Form 1 notice

[81] The motion judge held, at para. 84, that the effect of s. 58(4) was that the notices of termination sent prior to CTS giving Form 1 notice were deemed for all purposes not to have been given. He went on to conclude that CTS was not entitled to credit for working notice based on contract law principles.

[82] In my view, the consequence of failing to give adequate Form 1 notice is spelled out in s. 58(4). It makes it clear that the consequence of breaching s. 58(2)(a) is that "[t]he notice required under [s. 58(1)]" – not any greater period of notice – is deemed not to have been given until the Director receives Form 1 notice. It is unnecessary to touch on contract law principles. Correctly interpreting "[t]he notice required under [s. 58(1)]" as the eight-week, statutorily-required minimum notice, that eight-week minimum notice is deemed not to have been given by CTS until May 12, 2015.

[83] CTS acknowledges that since it provided the Form 1 to the Director 12 days later than the beginning of the statutory notice, it is not entitled to credit for 12 days of notice for each member of the class. Thus, the employees are each entitled to 12 days of pay.

IV. DID THE MOTION JUDGE ERR BY INVALIDATING PARTS OF THE WORKING NOTICE PERIOD AS A RESULT OF OVERTIME HOURS?

(a) The motion judge's reasons

[84] The motion judge accepted that CTS's strategy was to ramp up production at the Streetsville plant in order to "bank" an inventory of parts which could be supplied to customers after the closure of the Streetsville plant and until it had manufacturing capacity in Mexico.

[85] The motion judge noted that s. 17(1)(b) of the ESA provides that "no employer shall require or permit an employee to work more than ... 48 hours in a work week" but that s. 17(3) creates an exception if the employee has agreed in writing to work additional hours and the employer has obtained the approval of the Director allowing the employee to work more than 48 hours per week.

[86] There was evidence that a group of hourly paid production employees worked approximately 55 hours a week during the notice period, contrary to s. 17(1)(b) of the ESA. The employees were not pressured to work and wanted to make more money.

[87] There was also evidence 18 key employees were forced to work overtime up to 60 hours a week. They were told that their job required that they stay and work overtime and that they had no option.

[88] The motion judge agreed with the New Brunswick Court of Appeal in *Medis Health and Pharmaceutical Services Inc. v. Bramble* (1999), 214 N.B.R. (2d) 111 (C.A.), that, in determining whether the employer is entitled to credit for working notice, it is relevant to consider the quality of the opportunity given the employee to find new employment.

[89] The motion judge wrote, at paras. 111 to 113:

> Take the extreme example of an employer in the position of CTS that had employees work 16 hours a day during their notice period in order to attain its corporate objectives. That employer surely could not claim credit for working notice. To do so would be tantamount to saying, "You had eight hours a day to look for new employment and if you frittered it away sleeping, that was your choice".
>
> The onus is on CTS to prove that it provided reasonable advance notice of termination. I have concluded that there is both a quantitative and a qualitative component as to what is "reasonable". To look for work, an employee needs both a reasonable aggregate notice period and a reasonable amount of time in the week. Requiring or condoning employees to work in excess of ESA maximums was not only unreasonable, it was unlawful. CTS has not discharged its onus to prove that it provided for "reasonable" working notice during any week in which an employee worked in excess of ESA maximums. It follows that CTS is not entitled to credit for working notice for any week in which a plaintiff, not exempt from the ESA overtime provisions, worked in excess of the maximums.
>
> There will have to be an individual assessment as to whether any of the 18 employees referred to are exempt

> from the ESA overtime provisions.[4] If any are exempt, I conclude that CTS is not entitled to credit for working notice for any week in which the overtime worked had a significant adverse effect on the ability of the employee to look for new employment. Being forced to work overtime to that extent renders the CTS working notice unreasonable. [Footnote added.]

(b) The appellants' submissions

[90] The appellants argue that the motion judge erred in considering the quality of the opportunity given to the employees to find new employment. They submit that the "quality of the opportunity" is not a relevant factor in the determination of reasonable notice. To hold otherwise, they argue, would among other things be in conflict with *Taylor v. Dyer Brown* (2004), 73 O.R. (3d) 358 (C.A.), where this court found that the determination of reasonable notice is the same regardless of whether working notice or pay in lieu of notice is provided. They also argue that the motion judge's decision has the potential of creating a windfall for employees who can accept and be compensated for overtime, but then seek to invalidate their working notice after the fact.

[91] In the alternative, they challenge the motion judge's finding of fact that 18 key employees were "forced" to work overtime up to 60 hours per week.

---

[4] "[A] person whose work is supervisory or managerial in character" is exempt from ss. 17-19 of the ESA, including the overtime requirements: O. Reg. 285/01, s. 4(1)(b).

(c) Analysis

[92] I reject the appellants' submissions.

[93] I agree with the motion judge that in determining whether the employer is entitled to credit for working notice, it is relevant to consider the quality of the opportunity given to the employee to find new employment. As *Bramble* explains, at para. 80, the primary objective of reasonable notice is to provide the dismissed employee with an opportunity to obtain alternate employment: see also *Evans v. Teamsters Local Union No. 31*, 2008 SCC 20, [2008] 1 S.C.R. 661, at para. 28; and *Taylor*, at para. 14.

[94] That said, inherent in the concept of working notice is the requirement that the employee continue to work during the notice period. The fact that the normal demands of the employee's position leave the employee with less time to look for alternate work than if the employee were not working does not warrant denying the employer credit for a portion of the period of working notice. Normally, an employee will be able to seek an alternate position, even though he or she continues to work. Indeed, the fact that the employee is employed when job searching may in some circumstances better position the employee in approaching prospective employers.

[95] However, exceptional workplace demands on the employee during the notice period that negatively affect his or her ability to seek alternate work, if not

consensual, may warrant disentitling an employer to credit for some or all of the period of working notice provided. In my view, overtime worked in violation of the ESA constitutes such an exceptional demand and cannot be considered "consensual". As noted above, s. 5(1) of the ESA makes any contracting out or waiver of an employment standard void. Thus, an employee's consent to work overtime in violation of the ESA is not effective.

[96] Contrary to the appellants' submission, considering the quality of the opportunity given to the employee to find new employment in determining the period of reasonable notice is not contrary to *Taylor*.

[97] In *Taylor*, an employer first gave an employee notice of termination, providing her with 18 months' working notice. The employer subsequently gave a second notice to the employee, providing for her immediate dismissal with six months' pay in lieu of notice. The trial judge found that only the first notice was valid, but awarded the employee 12 months' pay in lieu of notice.

[98] This court rejected the proposition that an employee entitled to 18 months' working notice is entitled to a shorter period of notice, when calculating payment in lieu of notice, because it is easier for an employee to find alternate work when not fulfilling the terms of working notice. It explained that payment in lieu of notice compensates an employee for the employer's breach of its contractual obligation to provide notice of termination. Thus, the period of notice to which the employee

is entitled determines the amount of pay in lieu of notice. As the employee was entitled to 18 months' notice of termination, the employee was entitled to 18 months' pay in lieu of notice. It was in this context that it stated, at para. 14, that "there is no functional difference at law between working notice and payment in lieu of notice."

[99] Here, the issue is whether the working notice given was reasonable. Considering the quality of the employees' opportunity to find alternate work during the notice period given by the employer is not contrary to *Taylor*.

[100] Nor does the motion judge's decision create a windfall for employees. Had CTS not "forced" the 18 key employees to work overtime, and had it simply complied with the overtime provisions of the ESA by obtaining the hourly paid employees' written agreement to work the additional hours and the Director's approval, the result would have been different.

[101] Finally, there is no basis to interfere with the motion judge's finding that CTS "forced" the 18 key employees to work excessive overtime. The motion judge was entitled to prefer the evidence of Mr. Lipton, the CTS Operations and Technical Service Manager. He gave evidence that he told the 18 employees that CTS could force them to work overtime up to 60 hours a week. The motion judge preferred his evidence to the evidence of the CTS executive overseeing the plant shutdown and CTS's Human Resources Generalist that the working overtime was voluntary.

[102] I would not interfere with the decision of the motion judge regarding the 18 key employees who were forced to work overtime and the hourly paid employees who worked overtime in breach of the ESA overtime provisions.

V. WAS THE APRIL 17, 2014 NOTICE OF TERMINATION TO FIVE EMPLOYEES WHO WORKED MORE THAN 13 WEEKS BEYOND THEIR ORIGINAL TERMINATION DATE EFFECTIVE?

[103] I agree with the motion judge that the April 17, 2014 notice of termination was not effective in the case of the five employees who worked more than 13 weeks beyond their original termination date.

[104] Section 6(1) of the Regulation permits an employer to continue to provide temporary work to employees for up to 13 weeks after the termination date specified in the notice of termination given to an employee without giving a further notice of termination:

> 6(1) An employer who has given an employee notice of termination in accordance with the Act and the regulations may provide temporary work to the employee without providing a further notice of termination in respect of the day on which the employee's employment is finally terminated if that day occurs not later than 13 weeks after the termination date specified in the original notice.
>
> (2) The provision of temporary work to an employee in the circumstances described in subsection (1) does not affect the termination date as specified in the notice or the employee's period of employment.

[105] The Regulation contemplates a single period of temporary work that is not to exceed 13 weeks. If temporary work exceeds that duration, fresh notice is required. Such notice must be clear and unambiguous and include the final termination date: *Di Tomaso v. Crown Metal Packaging Canada LP*, 2011 ONCA 469, 282 O.A.C. 134, at paras. 20, 21.

[106] After April 17, 2014, Ms. Aultman and four other employees received a series of letters from CTS, asking for their agreement to continue to work first during, and then subsequently beyond, the 13-week period permitted by the ESA. The parties agreed that the circumstances of Ms. Aultman are similar to the other four employees and that the decision regarding her entitlement would govern the others.

[107] The first letter indicated that Ms. Aultman would be paid $500 if she worked until the end of the 13-week period. In the case of Ms. Aultman, the final letter dated September 18, 2015, advised of a "final extension" of her termination date and asked her to work until October 30, 2015. On September 28, 2015, CTS paid her the $500 she had been offered for agreeing to work for the first 13-week extension.

[108] The motion judge considered *Di Tomaso* and properly held that CTS is entitled to credit for providing working notice to these five employees only from the date of the letter (September 18, 2015, in the case of Ms. Aultman) providing them

with notice of their actual termination date. The cumulative effect of the multiple extensions created uncertainty as to when their employment would terminate and only on receipt of these final letters did the five employees know when their employment would actually terminate.

[109] I reject the appellants' argument that their April 17, 2014 notice remained effective because, unlike in *Di Tomaso* where the employer unilaterally extended the separation date, the five employees were offered the choice of whether or not to accept the extensions and were offered and accepted $500 for agreeing to the first, 13-week extension. The $500 payment was only offered in connection with the initial 13-week extension, which was permitted by the ESA. More importantly, their argument ignores the effect of s. 6(1) of the Regulation.

[110] Section 6(1) of the Regulation permits an employer to provide "temporary" work to an employee for up to 13 weeks after the employee's termination date. The work is "temporary" work after, and does not extend the employee's termination date. It is clear from s. 6(1) of the Regulation that if an employer provides further work to an employee, beyond the 13-week period, the employer changes the employee's termination date and a further notice of termination is required.

VI. DISPOSITION AND COSTS

[111] For these reasons, I would allow the appeal in part. In light of the split result, I would order that there be no costs of the appeal. At the time of the hearing, costs

of the motion below had not been determined. Regarding costs below, I would permit the parties to provide written submissions not in excess of three pages on the issue of the costs of the motion below within ten days. If no such further submissions be provided, I would order that there be no costs of the motion below.

Released: SEP 19 2018

Alexandra M. [illegible]

I agree. [illegible] JA

I agree [illegible] J.A.

APPENDIX A – STATUTES AND REGULATIONS

Employment Standards Act, 2000, S.O. 2000, c. 41

Definitions

1 (1) In this Act,

...

"employment standard" means a requirement or prohibition under this Act that applies to an employer for the benefit of an employee; ("norme d'emploi")

...

"statutory notice period" means,

(a) the period of notice of termination required to be given by an employer under Part XV, or

(b) where the employer provides a greater amount of notice than is required under Part XV, that part of the notice period ending with the termination date specified in the notice which equals the period of notice required under Part XV; ("délai de préavis prévu par la loi")

...

To whom Act applies

3 (1) Subject to subsections (2) to (5), the employment standards set out in this Act apply with respect to an employee and his or her employer if,

(a) the employee's work is to be performed in Ontario; or

(b) the employee's work is to be performed in Ontario and outside Ontario but the work performed outside Ontario is a continuation of work performed in Ontario. 2000, c. 41, s. 3 (1).

...

No contracting out

5 (1) Subject to subsection (2), no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void. 2000, c. 41, s. 5 (1).

...

Limit on hours of work

17 (1) Subject to subsections (2) and (3), no employer shall require or permit an employee to work more than,

(a) eight hours in a day or, if the employer establishes a regular work day of more than eight hours for the employee, the number of hours in his or her regular work day; and

(b) 48 hours in a work week. 2004, c. 21, s. 4.

Exception: hours in a day

(2) An employee's hours of work may exceed the limit set out in clause (1) (a) if the employee has made an agreement with the employer that he or she will work up to a specified number of hours in a day in excess of the limit and his or her hours of work in a day do not exceed the number specified in the agreement. 2004, c. 21, s. 4.

Exception: hours in a work week

(3) An employee's hours of work may exceed the limit set out in clause (1) (b) if,

(a) the employee has made an agreement with the employer that he or she will work up to a specified number of hours in a work week in excess of the limit;

(b) the employer has received an approval under section 17.1 that applies to the employee or to a class of employees that includes the employee; and

(c) the employee's hours of work in a work week do not exceed the lesser of,

(i) the number of hours specified in the agreement, and

(ii) the number of hours specified in the approval. 2004, c. 21, s. 4.

...

No termination without notice

54 No employer shall terminate the employment of an employee who has been continuously employed for three months or more unless the employer,

(a) has given to the employee written notice of termination in accordance with section 57 or 58 and the notice has expired; or

(b) has complied with section 61. 2000, c. 41, s. 54.

...

Employer notice period

57 The notice of termination under section 54 shall be given,

(a) at least one week before the termination, if the employee's period of employment is less than one year;

(b) at least two weeks before the termination, if the employee's period of employment is one year or more and fewer than three years;

(c) at least three weeks before the termination, if the employee's period of employment is three years or more and fewer than four years;

(d) at least four weeks before the termination, if the employee's period of employment is four years or more and fewer than five years;

(e) at least five weeks before the termination, if the employee's period of employment is five years or more and fewer than six years;

(f) at least six weeks before the termination, if the employee's period of employment is six years or more and fewer than seven years;

(g) at least seven weeks before the termination, if the employee's period of employment is seven years or more and fewer than eight years; or

(h) at least eight weeks before the termination, if the employee's period of employment is eight years or more. 2000, c. 41, s. 57.

Notice, 50 or more employees

58 (1) Despite section 57, the employer shall give notice of termination in the prescribed manner and for the prescribed period if the employer terminates the employment of 50 or more employees at the employer's establishment in the same four-week period. 2000, c. 41, s. 58 (1).

Information

(2) An employer who is required to give notice under this section,

(a) shall provide to the Director the prescribed information in a form approved by the Director; and

(b) shall, on the first day of the notice period, post in the employer's establishment the prescribed information in a form approved by the Director. 2000, c. 41, s. 58 (2).

Content

(3) The information required under subsection (2) may include,

(a) the economic circumstances surrounding the terminations;

(b) any consultations that have been or are proposed to take place with communities in which the terminations will take place or with the affected employees or their agent in connection with the terminations;

(c) any proposed adjustment measures and the number of employees expected to benefit from each; and

(d) a statistical profile of the affected employees. 2000, c. 41, s. 58 (3).

When notice effective

(4) The notice required under subsection (1) shall be deemed not to have been given until the Director receives the information required under clause (2) (a). 2000, c. 41, s. 58 (4).

Posting

(5) The employer shall post the information required under clause (2) (b) in at least one conspicuous place in the employer's establishment where it is likely to come to the attention of the affected employees and the employer shall keep that information posted throughout the notice period required under this section. 2000, c. 41, s. 58 (5).

...

Requirements during notice period

60 (1) During a notice period under section 57 or 58, the employer,

(a) shall not reduce the employee's wage rate or alter any other term or condition of employment;

(b) shall in each week pay the employee the wages the employee is entitled to receive, which in no case shall be less than his or her regular wages for a regular work week; and

(c) shall continue to make whatever benefit plan contributions would be required to be made in order to maintain the employee's benefits under the plan until the end of the notice period. 2000, c. 41, s. 60 (1).

No regular work week

(2) For the purposes of clause (1) (b), if the employee does not have a regular work week or if the employee is paid on a basis other than time, the employer shall pay the employee an amount equal to the average amount of regular wages earned by the employee per week for the weeks in which the employee worked in the period of 12 weeks immediately preceding the day on which notice was given. 2001, c. 9, Sched. I, s. 1 (13).

. . .

Pay instead of notice

61 (1) An employer may terminate the employment of an employee without notice or with less notice than is required under section 57 or 58 if the employer,

(a) pays to the employee termination pay in a lump sum equal to the amount the employee would have been entitled to receive under section 60 had notice been given in accordance with that section; and

(b) continues to make whatever benefit plan contributions would be required to be made in order to maintain the benefits to which the employee would have been entitled had he or she continued to be employed during the period of notice that he or she would otherwise have been entitled to receive. 2000, c. 41, s. 61 (1); 2001, c. 9, Sched. I, s. 1 (14).

. . .

Deemed active employment

62 (1) If an employer terminates the employment of employees without giving them part or all of the period of notice required under this Part, the employees shall be deemed to have been actively employed during the period for which there should have been notice for the purposes of any benefit plan under which entitlement to

benefits might be lost or affected if the employees cease to be actively employed. 2000, c. 41, s. 62 (1).

....

Termination without notice

65 (4) If an employer terminates the employment of an employee without providing the notice, if any, required under section 57 or 58, the amount of severance pay to which the employee is entitled shall be calculated as if the employee continued to be employed for a period equal to the period of notice that should have been given and was not. 2000, c. 41, s. 65 (4).

...

O. Reg. 288/01: Termination and Severance of Employment

Notice, 50 or more employees

3. (1) The following periods are prescribed for the purposes of subsection 58 (1) of the Act:

1. Notice shall be given at least eight weeks before termination if the number of employees whose employment is terminated is 50 or more but fewer than 200.

2. Notice shall be given at least 12 weeks before termination if the number of employees whose employment is terminated is 200 or more but fewer than 500.

3. Notice shall be given at least 16 weeks before termination, if the number of employees whose employment is terminated is 500 or more. O. Reg. 288/01, s. 3 (1).

(2) The following information is prescribed as the information to be provided to the Director under clause 58 (2) (a) of the Act and to be posted under clause 58 (2) (b) of the Act:

1. The employer's name and mailing address.

2. The location or locations where the employees whose employment is being terminated work.

3. The number of employees working at each location who are paid,

i. on an hourly basis,

ii. on a salaried basis, and

iii. on some other basis.

4. The number of employees whose employment is being terminated at each location who are paid,

i. on an hourly basis,

ii. on a salaried basis, and

iii. on some other basis.

5. The date or dates on which it is anticipated that the employment of the employees referred to in paragraph 4 will be terminated.

6. The name of any trade union local representing any of the employees whose employment is being terminated.

7. The economic circumstances surrounding the terminations.

8. The name, title and telephone number of the individual who completed the form on behalf of the employer. O. Reg. 288/01, s. 3 (2).

(3) The employer shall provide the information referred to in subsection (2) to the Director by setting it out in the form approved by the Director under clause 58 (2) (a) of the Act and delivering the form to the Employment Practices Branch of the Ministry of Labour between 9 a.m. and 5 p.m. on any day other than a Saturday, Sunday or other day on which the offices of the Branch are closed. O. Reg. 288/01, s. 3 (3).

...

Temporary work, 13-week period

6. (1) An employer who has given an employee notice of termination in accordance with the Act and the regulations may provide temporary work to the employee without providing a further notice of termination in respect of the day on which the employee's employment is finally terminated if that day occurs not later than 13 weeks after the termination date specified in the original notice. O. Reg. 288/01, s. 6 (1).

(2) The provision of temporary work to an employee in the circumstances described in subsection (1) does not affect the termination date as specified in the notice or the employee's period of employment. O. Reg. 288/01, s. 6 (2).