



## Hard truth about financial hardship: no excuse for unreasonable notice

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The recent decision of [\*Michela v. St. Thomas of Villanova Catholic School\*](#) (Michela) by the Ontario Court of Appeal clarified that an employer's financial circumstances are not a relevant consideration in determining the period of reasonable notice to which a wrongfully dismissed employee is entitled.

This was a wrongful dismissal action brought by three (3) teachers previously employed by St. Thomas of Villanova Catholic School (the School) for periods ranging from eight (8) to twelve (12) years. Each was notified of their termination at the end of the school year in June. Each sought a reasonable notice period of 12 months. The Court of Appeal decision reversed a summary judgment in which the motion judge limited the reasonable notice period to six (6) months due in large part to the financial circumstances of the School.

On a motion for summary judgment, the motion judge focused primarily on the effect of a lengthy notice period on the employer, finding that the school would be unable to reduce its financial deficit if a twelve (12) month notice period was determined to be reasonable. In addition, the motion judge reasoned that a period of six (6) months would end at the Christmas season, a point at which the motion judge presumed that teaching positions may become available. From the motion judge's perspective, this supposed availability of alternative positions further supported the reduced reasonable notice period. The teachers appealed the decision, and each sought a reasonable notice period of twelve (12) months.

### Decision

In finding in favour of the teachers, the Court of Appeal confirmed the factors which are to be considered when calculating notice periods such as character of employment, length of service, age, and availability of similar employment (Bardal Factors) – having regard to the employee's experience, training and qualifications.

The Court highlighted that the Bardal Factors focus on the circumstances of the employee rather than those of the employer. The Court of Appeal further noted that the motion judge had incorrectly considered an employer's financial circumstances as part of the "character of employment" in reasoning that a private school could not provide the same security of employment as a more established, better-funded institution. Instead, the Court of Appeal clarified that the "character of employment" factor speaks to the level of responsibility and expertise required for the position, and may be of declining importance in comparison to the other Bardal Factors.

The Court explained that while general economic conditions might affect the availability of alternative employment, such external factors should not unreasonably increase the notice period, nor should they serve to decrease the notice required on account of the employer's financial hardship.

With regard to the availability of alternative teaching positions that might become available six (6) months from the date of termination, the Court of Appeal found that the motion judge's reasoning was purely speculative and did not support a reduced notice period.

### **Our Views**

The *Michela* decision removes any uncertainty in respect of the notion that an employer's obligation to provide reasonable notice or pay in lieu thereof is lessened in times of financial difficulty. The Court of Appeal for Ontario has now been totally clear that financial hardship of an employer is not a relevant consideration in determining the period of reasonable notice.

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