# Recruiting Risks: How Inducement Impacts Employer Liability For Notice Periods



**Employers who actively recruit individuals from secure, well-established positions may face heightened liability for providing extended common law notice if the employment relationship does not work out. Courts often consider inducement—a situation where an employee is persuaded to leave a stable role for a new opportunity—a key factor in determining notice periods.**

**This was underscored in a recent British Columbia case where a recruited employee was awarded 12 months' notice, largely influenced by the circumstances of their recruitment. To mitigate such risks, employers are advised to include clear and enforceable contractual terms that limit the employee's entitlement to common law notice upon termination.**

A recent case serves as a reminder that when employers actively recruit potential employees from secure positions, they *may* be assuming additional exposure for common law notice in the event the relationship does not work out. Below we provide a brief overview of the law on inducement and discuss a recent British Columbia decision.

Absent an enforceable contractual clause to the contrary, when an employer terminates an employee without just cause, they will generally be liable to provide or pay notice in excess of the minimum legislated termination notice. This is based on the factors set out in *Bardal v Globe & Mail Ltd.,* [1960] O.W.N. 253 which are:

1. The character of employment;
2. The length of service;
3. Age; and
4. The availability of similar employment, having regard to the experience, training, and qualifications of the employee.

Where the employer is found to have induced the employee to quit a secure well-paying job elsewhere, the amount of common law notice the employee is entitled to will likely be higher than what it would otherwise be. In the seminal case of *Wallace v United Grain Growers Ltd.,* [1997] 3 SCR 701, the Supreme Court of Canada suggested that courts should consider awarding additional compensation for the reliance and expectation interests of the terminated employee.

In Alberta, the Court of Appeal discussed the impact of inducement on notice entitlements. In *Alberta Computers.com Inc v Thibert*, 2021 ABCA 213, the Court

reaffirmed previous precedents and principles, finding that an employer inducing an employee to change jobs impacts the assessment of what is reasonably expected by the parties. In that case, the Court of Appeal found that the trial judge made no error in assessing the reasonable notice period by considering not only the employee's length of actual employment with Alberta Computers, but also that he was induced to leave his previous secure and well-paying position. The Court noted that this approach could be considered compensation for the time it took the employee to restore himself to an employment position comparable to what he left.

In considering whether inducement occurred based on an employer's recruitment efforts, courts will consider 6 factors:

1. The reasonable expectations of both parties;
2. Whether the employee sought out work with the prospective employer;
3. Whether there were assurances of long-term employment;
4. Whether the employee did due diligence before accepting the role by conducting their own inquiry into the company;
5. Whether the discussions between the parties amounted to more than the persuasion or normal "courtship" that occurs between an employer and a prospective hiree; and
6. The length of time the employee remained in the new position, the element of inducement tending to lessen with the longevity of the employment.[1]

In the recent decision of *Ferweda v. Mercer Celgar Limited*, the British Columbia Supreme Court considered this issue. In this case, the employee was recruited to leave his secure position to join the Defendant employer. He had expected to stay with his previous employer until he turned 61. The Defendant successfully recruited him with promises of better pay and benefits. He was also told he would be hired for 'long term'. He began working there in January 2018. In September 2020, he was terminated without cause. At the time of his termination, he was 55. The Court found that the Defendant employer created expectation on the part of the employee that opportunity with employer was such that it would be advantageous to leave secure long-standing employment and take job which was expected to be long-term. The Court considered the *Bardal* factors and the impact of inducement and awarded 12 months' notice. The Court noted that, if it were not for the inducement, they would have been inclined to award only 5 months' notice.

The importance of the inducement in deciding the notice period requires a factual inquiry and is in the discretion of the court. If employers want to limit the potential exposure that comes with recruiting employees from other positions, it can be done by entering into an agreement with new employees that includes strong and enforceable language limiting the employee's entitlement to common law notice.

To protect your business from the risks associated with recruiting employees from secure positions, ensure your employment contracts include clear, enforceable terms that limit common law notice entitlements.

**Link to decision: *Ferweda v. Mercer Celgar Limited*, 2024 BCSC 844**

**Footnote**

1. *Thibert* citing *Firatli v Kohler Ltd.,* [2008] O.J. No. 2763

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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