

## Court of Appeal Restores Distinction Between ESA Minimum Notice Requirements and Common Law Notice

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On September 19, 2018, the Ontario Court of Appeal released its decision in *Wood v. CTS of Canada Co.*. The decision restores the important division between common law reasonable notice and the minimum notice provisions of the *Employment Standards Act* (ESA).

On April 17, 2014, CTS of Canada Co. (CTS) gave written notice to its employees that, upon closure of the plant on March 27, 2015, their employment would be terminated. The closure date later was extended until June 26, 2015. On May 12, 2015, CTS filed its Form 1, the prescribed form notice of mass termination with the Ministry of Labour (the Ministry), and posted a copy in the workplace. Section 58 of the ESA stipulates that in cases of “mass termination” employers must provide at least eight weeks’ notice, submit a Form 1 to the Ministry, and post a copy in the workplace.

74 of the terminated employees brought a class action against CTS arguing that CTS should have provided the Form 1 notice at the same time as the actual notice. On a motion for summary judgment, the motions judge found that section 58(2) of the ESA required CTS to serve and post the Form 1 when it gave actual notice on April 17, 2014, and not at the outset of the statutory notice period, eight weeks prior to their actual date of termination. The motions judge concluded that this breach then invalidated the entirety of the more than 14 months of working notice provided.

Associate Chief Justice Hoy, for the Ontario Court of Appeal, overturned the motion judge’s decision on this issue. Applying the statutory interpretation principles, Justice Hoy concluded that the Form 1 must only be filed with the Ministry and posted for the prescribed minimum notice period, in this case 8 weeks. The notice period referred to in section 58(2) is the statutory minimum, not the actual common law notice period that began when plant closure was announced. According to the Court, the purpose of the ESA is to provide *minimum standards* and *minimum* periods of notice, and forcing longer periods of notice was found to be inconsistent with the purpose of the Act. In this case, CTS was 12 days late in filing and posting its Form 1, so an additional 12 days of pay in lieu of notice was required, but the more than 14 months of working notice at common law was preserved.

CTS was represented in this matter by Cassels with a team that included Timothy Pinos, Kristin Taylor, Caitlin Russell and Pamela Hinman.

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