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## **Employees who Resign Retain Rights to Sue for Wrongful Dismissal**

In the recent decision of *Giza v. Sechelt School Bus Service Ltd.*, 2012 BCCA 18 (“*Giza*”), the Court of Appeal for British Columbia (the “Court of Appeal”) held that an employee who quit his job after being given working notice of termination of employment was nevertheless entitled to sue for damages for wrongful dismissal for the period of reasonable notice in excess of the notice given.

Mr. Giza had been employed as a school bus driver by the Sechelt School Bus Service Ltd. (“SSBS”) for about five years when SSBS terminated his employment giving him five weeks of working notice. When he received written notice of his termination of employment, Mr. Giza quit his job and then sued SSBS for wrongful dismissal damages.

The Court of Appeal held that although Mr. Giza repudiated the employment contract by failing to work out his notice period, he was not deprived of the right to sue SSBS for wrongful dismissal. His right to sue arose when SSBS breached the contract of employment by failing to provide Mr. Giza with reasonable notice of termination of employment as required at common law. Mr. Giza did not lose that right to sue when he quit his job.

The Court of Appeal held that reasonable notice in the case of this sixty one year old employee would have been six months. The Court of Appeal further held that he was entitled to damages for this period but less the period of working notice. In other words, while Mr. Giza should have worked the period of notice, his quitting did not deprive him of damages for the period of reasonable notice in excess of the working notice given.

From this case employers should take note that if they dismiss an employee without providing sufficient common law reasonable notice and the employee subsequently resigns the employee retains the right to sue for wrongful dismissal damages. The employee will be entitled to damages in an amount equal to the difference between the notice offered by the employer and the period of reasonable notice at common law.

Further, if there are conditions which would make it intolerable for the employee to continue working during the notice period offered by the employer, the employee may be entitled to damages for the entire common law notice period with no deduction for the period of notice offered by the employer.



Another caution arising from this case is that the employer understood that five weeks of reasonable notice was adequate after consulting with the Employment Standards Branch. The Employment Standards Branch is only concerned with the *Employment Standards Act* not an employer's obligations at common law which are almost always for a longer period of notice.

This case is also an example of a relatively lengthy notice period of in excess of one month per year of service, being awarded to an employee earning less than \$20 per hour in a blue collar non-managerial position. However, the employee was 61 years old and is an example of the lengthy notice periods being awarded to older employees, even those with short service.

For more information, please contact **Deborah Cushing** at [dcushing@lawsonlundell.com](mailto:dcushing@lawsonlundell.com) or 604.631.9282 or one of the team members listed below.

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