



## Mid-level employee awarded 24 months' notice

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In *McKay v. Eaton Yale Ltd.* (November 13, 1996), an Ontario judge has awarded a mid-level employee with no managerial responsibilities the maximum 24 months' notice for wrongful dismissal. In so doing, the court had some interesting things to say about how to interpret the Ontario Court of Appeal's important decision in *Cronk v. Canadian General Insurance Co.* (September 1995).

In determining the appropriate notice period, courts look at four factors: 1) the character of the employment (meaning the employee's status in the company's hierarchy); 2) the employee's length of service; 3) the employee's age, and 4) the availability of similar employment.

As a rule, higher-status employees are entitled to more notice, all other things being equal. Some have expressed the view that the *Cronk* decision means that the "character of employment" factor is the most important one, and that clerical employees are entitled to no more than 12 months' notice. The judge in *McKay* disagreed with each of these propositions, saying that *Cronk* did not alter the method for determining the notice period. In the judge's view, the case law showed that no one factor was more important than the others, although in any individual case, any one of the factors could exert a greater influence on the amount of notice.

Ms. McKay was a 46 year-old employee with over 22 years of service. The character of her employment was neither clerical nor managerial. Although she had only a high school education, she had worked her way up in the company to occupy a highly skilled technical position. While she exercised no supervisory functions, neither was she herself closely supervised. Her particularized skills and lack of formal qualifications meant that securing comparable employment would be extremely difficult.

The judge ruled that the most significant factors for determining notice in this case were the plaintiff's long service and the unavailability of similar employment. Using a benchmark of one month's notice for each year of service, subtracting five months due to McKay's non-managerial status, and then adjusting up because of the unavailability of comparable employment, the judge arrived at the maximum 24 months' notice.

The judge acknowledged that awarding the maximum notice to an employee who was not at a senior management level was unusual. This, however, was an unusual case, the judge stated, and it would be unfair and inequitable to hold that only corporate presidents could ever qualify for the maximum notice period.



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