30-8 D.E.L.D. Issue 8 COM
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

8 COM — WHEN MUST A WRONGFULLY DISMISSED EMPLOYEE ACCEPT ALTERNATE EMPLOYMENT FROM THE SAME EMPLOYER?

Howard A. Levitt

WHEN MUST A WRONGFULLY DISMISSED EMPLOYEE ACCEPT ALTERNATE EMPLOYMENT FROM THE SAME EMPLOYER?

Fillmore v. Hercules SLR Inc., 2016 ONSC 4686 (Ont. S.C.J.)

Background

In *Fillmore v. Hercules SLR Inc.*, 2016 ONSC 4686 (Ont. S.C.J.), the Ontario Superior Court dealt with this question.

The plaintiff, Roy Fillmore, was terminated from his employment with the defendant after 19 years. On the termination date, Fillmore was provided with two letters:

The first letter advised Fillmore that his employment was being terminated, offering him eight weeks' written notice, and 12 weeks' severance in exchange for executing a release (the "Severance Offer").

The second letter offered Fillmore full-time, permanent employment in a new role, for which he would receive his old salary for six months, after which it would be reduced by approximately 20% (the "New Offer").

The plaintiff rejected both offers and sued for wrongful dismissal. The defendant argued that by refusing the New Offer, the plaintiff had failed in his duty to mitigate his damages.

The Law

The court held that Fillmore was reasonable in rejecting the New Offer and awarded him 17 months' pay in lieu of notice.

The court ruled that neither *Evans v. Teamsters, Local 31*, 2008 SCC 20 (S.C.C.), nor *Farwell v. Citair, Inc.*, 2014 ONCA 177 (Ont. C.A.) imposed an obligation on Fillmore to mitigate his damages by accepting the New Offer.

Evans held that in the absence of the employee facing a hostile atmosphere, embarrassment, or humiliation, the court may require an employee to mitigate his/her damages by accepting temporary work with the dismissing employer. *Farwell*, clarifying *Evans*, held that this form of mitigation duty is triggered where the employee is offered "a clear opportunity to work out the notice period" after termination.

First, unlike in *Evans*, the New Offer was not a temporary offer to work through the notice period — it was a new, full-time position with the defendant.

Second, the court interpreted the New Offer as an "offer to accept a demotion", as it was presented together with the Severance Offer. Therefore, like in *Farwell*, Fillmore was given no opportunity to mitigate his damages *after* he rejected both offers and his employment was terminated.

Third, the court rejected the defendant's argument that the New Offer was a reasonable offer of employment that the plaintiff ought to have accepted, because in the words of the court, "had the plaintiff accepted such an offer from a third party employer, he could still seek compensation from the defendant for the difference between his new salary and his old salary during the notice period."

Fourth, likely most importantly, the court expressed a policy concern about placing an "obligation on the plaintiff to effectively risk handing the defendant a Full and Final Release through the back door and under the guise of mitigation efforts." More broadly, the court may be concerned that the employee's duty to mitigate could be used for leverage by employers in settlement negotiations.

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End of Document

30 D.E.L.D. 108
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

108 — 30 D.E.L.D. 108 (Logan v. Numbers Cabaret Ltd.)

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either employee to work and did not paid them severance or compensation in respect of their service — Employees brought action for severance pay seeking 14 months of wages in lieu of notice — Action allowed — Claim presented at 14 months was appropriate award for severance having regard to nature of employees' jobs, their length of service, and their respective ages — Employees however failed to discharge their duty to seek out alternate employment — Owners provided some evidence of abundance of employment opportunities for cooks and waitresses following period in which employees realized they would not be returning to work at restaurant — Employees entitlement to severance did not extend beyond date action was commenced on October 7, 2015 — Employees were entitled to award covering period from March 15 to October 7, 2015 — Cook's award was based on annual salary of $36,000 and award for waitress was based on wage of $10.50 per hour plus $100 per month in tips.

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End of Document

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109 — 30 D.E.L.D. 109 (Schulz v. Beacon Roofing Supply Canada Co.)

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§15:10 PLEADINGS

EMPLOYMENT — **Wrongful dismissal** — **General** — Employee was employed as inside sales person with employer pursuant to employment contract and was later promoted to assistant branch manager — Employee's employment was terminated when employer closed branch — Employee brought notice of civil claim followed by amended notice of civil claim alleging employer breached employment agreement without just cause and without notice — Employee included claims for reasonable notice, short-term disability benefits, and overtime pay pursuant to claim for breach of contract and *Employment Standards Act* (B.C.) — Employee also made claims for sexual harassment and discrimination contrary to *Human Rights Code* (B.C.), and aggravated and punitive damages for manner in which she was terminated — Employer brought application to strike paragraphs of amended claim — Application granted — Paragraphs asserting entitlement under Act to overtime pay for certain hours worked in excess of eight hours per day and 40 hours per week were struck — Claim for overtime pay under Act should have been advanced through procedures and within time limits set out in Act and could not succeed — Employee's claim that employer failed to abide by provisions of Code must come under the provisions of Code and were struck — Paragraphs alleging harassment were unrelated to employee's dismissal and were struck — No causative relationship between allegations in support of the claim for aggravated and punitive damages and employee's termination was suggested, and way employer was dishonest or callous in manner it dismissed employee was not addressed — Paragraphs in amended claim related to aggravated and punitive damages were struck.

Schulz v. Beacon Roofing Supply Canada Co. (2016), 269 A.C.W.S. (3d) 692, 2016 BCSC 1475, 2016 CarswellBC 2254, [2016] B.C.W.L.D. 6299, [2016] B.C.W.L.D. 6188, [2016] B.C.W.L.D. 6278 (B.C. S.C.)

End of Document

30 D.E.L.D. 110
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
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§6:10.20.1 CHARACTER AND CONTEXT

§6:10.30 — REASONABLE EXCUSE

§6:50.120 — ACTIONS OF AN EMPLOYER

§8:80.110.2 — SPECIFIC CONDUCT WARRANTING AN INCREASED NOTICE PERIOD

§9:10.20 — VALUATION OF REMUNERATION

§15:70 — APPEAL

EMPLOYMENT — **Wrongful dismissal** — **Cause** — Plaintiff employee's employment with defendant employer was terminated after eight years after he e-mailed copy of private placement memorandum ("PPM") to friend who was also in investment business — PPM was unsolicited document sent to employee by investment promoter, which contained information that could be found in publicly available sources — Employer claimed that employee breached its code of business conduct ("Code") — Employee commenced action for wrongful dismissal — Trial judge found employee's employment was terminated without legal cause and that appropriate notice period was 15 months — Trial judge concluded employee's release of PPM did not violate Code, finding that Code's prohibition against

disclosing "investment information" to third parties did not apply — Judge held prohibition was aimed at protecting confidential information and that PPM did not create obligation on employer or employee to treat document as confidential — Employer appealed — Appeal dismissed — Trial judge carefully reviewed provisions of Code and made findings supported by evidence — Focus of judgment was to explore scope of employer's confidentiality obligations — Ultimately, employer withdrew its assertion of confidentiality — Trial judge found that employer did not have obligation to hold PPM in confidence, despite wording in PPM and covering letter sent to employee which asserted claim to confidentiality, since document was sent unsolicited and there was no evidence of established industry practice that PPM was to be treated as confidential — Judge's conclusions were supported by evidence and entitled to deference.

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Position	Age	Salary	Length of Service	Notice
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Lin v. Ontario Teachers' Pension Plan Board (2016), 269 A.C.W.S. (3d) 494, 2016 ONCA 619, 2016 CarswellOnt 12704 (Ont. C.A.)

End of Document

30 D.E.L.D. 111
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
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111 — 30 D.E.L.D. 111 (Lin v. Ontario Teachers' Pension Plan Board)

Howard A. Levitt

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§6:10.20.1 CHARACTER AND CONTEXT

§6:10.30 — REASONABLE EXCUSE

§6:50.120 — ACTIONS OF AN EMPLOYER

§8:80.110.2 — SPECIFIC CONDUCT WARRANTING AN INCREASED NOTICE PERIOD

§9:10.20 — VALUATION OF REMUNERATION

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Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
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End of Document

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Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

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End of Document

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Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
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112 — 30 D.E.L.D. 112 (Paquette v. TeraGo Networks Inc.)

Howard A. Levitt

30 D.E.L.D. 112 (Paquette v. TeraGo Networks Inc.)

§15:70 — APPEAL

EMPLOYMENT — **Wrongful dismissal** — **Notice** — Employee had worked for defendant employer for 14 years and 4 months when he was dismissed without cause — Employee was 49 years old at time of his dismissal, and was upper-middle management with specialized skills in computer technology and project management with base annual salary of $125,000 — Employee also received bonuses and benefits — Termination letter offered employee 30 weeks of his bases salary, with no consideration of bonus, in lieu of notice — When employee refused employer's severance offer, he was paid $20,032.06 representing eight weeks' salary in satisfaction of his termination notice and severance pay entitlements under *Canada Labour Code* — Employee commenced action for wrongful dismissal — Employee's motion for summary judgment in wrongful dismissal action was granted — Trial judge found at time of motion employee remained unemployed although he said he had applied for 96 positions since his termination — Trial judge found that having regard to employee's age and skills, his various roles for employer and history of that relationship, length of his employment, availability of comparable or suitable employment, and economic climate in Alberta, appropriate reasonable notice period was 17 months — Trial judge found employee was awarded $157,051.33 for pay in lieu of notice and $6,216.57 for lost benefits — Trial judge found employee was not entitled to payment of bonus because he would not be active employee during notice period and therefore did not qualify — Trial judge found employee made reasonable efforts to mitigate to date of motion — Employee appealed — Appeal allowed — Employee was entitled to bonuses during notice period, which had not been considered in amount awarded at trial — By narrowly focusing analysis on whether active employment term was ambiguous, trial judge applied incorrect principle and decision was reviewable on correctness standard — Entitlement to bonus payments did not depend on whether employee was notionally or actively employed after employment was terminated but on compensation and benefits to which he would have been entitled but for wrongful termination — Trial judge ought to have commenced his analysis from premise that damages were based on complete compensation package including bonuses, and then examined whether bonus plan specifically limited or restricted that right — Term that required active employment when bonus was paid was not sufficient to deprive employee terminated without reasonable notice of claim for compensation for bonus as part of wrongful dismissal damages.

Position	Age	Salary	Length of Service	Notice
Upper-MiddleManagement	49	$125,000	14 years,4 months	17 months

Paquette v. TeraGo Networks Inc. (2016), 269 A.C.W.S. (3d) 495, 2016 ONCA 618, 2016 Carswell-Ont 12633 (Ont. C.A.)

End of Document

30 D.E.L.D. 112
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
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End of Document

30 D.E.L.D. 113
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

113 — 30 D.E.L.D. 113 (Strudwick v. Applied Consumer & Clinical Evaluations Inc.)

Howard A. Levitt

30 D.E.L.D. 113 (Strudwick v. Applied Consumer & Clinical Evaluations Inc.)

§8:80.110 MANNER OF DISMISSAL — "WALLACE DAMAGES"

§9:10.510 — PUNITIVE DAMAGES

§9:10.560 — AGGRAVATED DAMAGES

§15:70 — APPEAL

EMPLOYMENT — **Wrongful dismissal** — **Damages** — Employee worked for 15 years for employer — At time of her May 2011 dismissal, employee earned $12.85 hourly — In October 2010, employee suddenly became completely deaf — Almost immediately thereafter, employer's general manager and immediate supervisor commenced campaign of abuse against employee designed to force her into resignation — In addition to publicly belittling, harassing and isolating employee in ways related to her disability, employer denied employee any accommodation of her disability and took steps to increase difficulties she faced resultant of not being able to hear — Termination was public and insubordination and wilful misconduct by employee was alleged — Employee did not receive outstanding pay until labour services agency intervened — Employee commenced action for damages for wrongful dismissal and related claims arising from abuse — Employer did not defend action and was noted in default — After unsuccessful attempt to have noting in default set aside, hearing took place to assess damages and judgment was granted in employee's favour in aggregate amount of $113,782.79 including prejudgment interest plus $40,000 in costs — Employee appealed damages assessment, including damages awarded under heads

of aggravated and punitive damages — Employer cross-appealed for reduction of costs award — Appeal allowed and cross-appeal dismissed — Motion judge erred in holding that there was complete overlap between aggravated damages claim and damages awarded for wrongful dismissal, violation of *Human Rights Code* (Ont.) and tort of intentional infliction of mental distress — Given extreme bad faith and unfair treatment exhibited by employer in manner in which it dismissed employee and its impact on her, finding of complete overlap was incorrect — In respect of aggravated damages, in immediate lead-up to her dismissal, employee was confronted in front of other employees, yelled at, informed of her termination for senseless reason, and presented with paperwork designed to deprive her of legal rights — Abuse did not cease after termination, as government intervention was required before employer paid employee funds owing at time of dismissal and company tendered record of employment that delayed employee's entitlement to employment insurance — Motion judge erred in viewing employer's failure to conceal misconduct or failure to profit from misconduct as mitigation of employer's blameworthiness and in over-emphasizing impact of damage award on company — Aggravated damages were awarded in amount of $70,000, reduced by $8,400.18 for Wallace factor to prevent overlap, and punitive damages were awarded in amount of $55,000.

Strudwick v. Applied Consumer & Clinical Evaluations Inc. (2016), 269 A.C.W.S. (3d) 287, 2016 ONCA 520, 2016 CarswellOnt 10413 (Ont. C.A.)

End of Document

30 D.E.L.D. 113
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

113 — 30 D.E.L.D. 113 (Strudwick v. Applied Consumer & Clinical Evaluations Inc.)

Howard A. Levitt

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End of Document

30 D.E.L.D. 114
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

114 — 30 D.E.L.D. 114 (Fillmore v. Hercules SLR Inc.)

Howard A. Levitt

30 D.E.L.D. 114 (Fillmore v. Hercules SLR Inc.)

§8:80.10 SPECIALIZATION AND STATUS

§8:80.80 — AGE

§8:80.100 — LENGTH OF SERVICE

§10:40 — WHEN OFFER CAN BE REJECTED

§10:70.20 — LESSER POSITION

EMPLOYMENT — **Wrongful dismissal** — **Mitigation** — Employee was terminated from his employment after being employed for 19 years and 3 months — Employee was employer's director of purchasing with annual salary of $81,962.49, matching 5% contribution to registered pension plan and participation in employer's standard extended health benefits plan — Employee was offered eight weeks' written notice and 12 weeks' severance — Employee also received offer of supervisor service position at salary of $60,000 which he did not accept — Employee brought motion for summary judgment for damages for wrongful dismissal — Motion granted — Employee did not hold classic managerial position but his position was senior and specialized as he was employer's only director of purchasing in Ontario — Employee's age, length of service and position all warranted consideration in determining appropriate notice — Appropriate reasonable notice period was 17 months — Had plaintiff accepted employer's new offer of employment, employer would likely have argued that employee had given up his right to seek additional compensation — Employee

did not fail to discharge his duty to mitigate by refusing new offer of employment — As notice period extended past date of decision, trust in favour of employer was impressed upon funds awarded to employee for balance of notice period, and employee was required to account for any future mitigation income.

Position	Age	Salary	Length of Service	Notice
DirectorofPurchasing	51	$81,962.49	19 years,3 months	17 months

Fillmore v. Hercules SLR Inc. (2016), 269 A.C.W.S. (3d) 296, 2016 ONSC 4686, 2016 CarswellOnt 11560 (Ont. S.C.J.)

End of Document

30 D.E.L.D. 114
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

114 — 30 D.E.L.D. 114 (Fillmore v. Hercules SLR Inc.)

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End of Document

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End of Document

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Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
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End of Document

30 D.E.L.D. 115
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

115 — 30 D.E.L.D. 115 (Ethica Clinical Research Inc. c. Michaud)

Howard A. Levitt

30 D.E.L.D. 115 (Ethica Clinical Research Inc. c. Michaud)

§15:320 JUDICIAL REVIEW

EMPLOYMENT — **Wrongful dismissal** — **Cause** — Employer hired employee as data analyst in 2003 and promoted her in 2006 — Employee started lengthy disability leave in 2011 due to stress — In March 2012, employee's psychiatrist recommended gradual return to work with 23 adjustments needed — Employer requested details as to employee's functional limitations — Employee, rather than respond to survey, submitted new medical certificate — In June 2012, employer wrote to employee's solicitors to attempt to understand why 10-week gradual reinstatement and 23 conditions were no longer required — Employer asked employee to undergo medical examination with employer selected physician — Parties jointly paid insurance premiums during relevant period — Employee filed complaint that she was wrongfully dismissed — Employee started new employment in June 2013 and sent letter of resignation to employer in July 2013 — Commission des Relations du Travail found that employer's request for medical examination constituted wrongful dismissal — Employer applied for judicial review from CRT's decision — Application granted — CRT decision quashed — Complaint dismissed — Applicable standard of review was reasonableness — CRT found that employer was entitled to ask for additional information but then wrongfully found that exercise of such right was wrongful dismissal — CRT found that certain evidence was not relevant when in fact it demonstrated that employer did not dismiss employee but tried to understand how to accommodate employee — Employer continued to pay employee's insurance premiums — Employee was clearly not dismissed — Decision process was not intelligible or logical — CRT decision was not reasonable.

Ethica Clinical Research Inc. c. Michaud (2016), 269 A.C.W.S. (3d) 691, 2016 QCCS 2807, 2016 CarswellQue 5496, EYB 2016-267008, D.T.E. 2016T-514, J.E. 2016-1243 (C.S. Que.)

End of Document

30 D.E.L.D. 116
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

116 — 30 D.E.L.D. 116 (Suzuki and Shamattawa First Nation, Re)

Howard A. Levitt

30 D.E.L.D. 116 (Suzuki and Shamattawa First Nation, Re)

§2:40.10 PRELIMINARY ISSUES: APPLICABILITY OF THE CODE

LABOUR AND EMPLOYMENT LAW — Employment standards legislation — Administration and enforcement — Jurisdiction — Miscellaneous — Complainant worked as teacher with First Nation Education Authority — Education Director informed complainant it would not be renewing his contract — First Nation chief and council directed complainant to leave First Nation on teachers' charter aircraft on certain date — Employee brought complaint under *Canada Labour Code* alleging unjust dismissal — Complaint dismissed — Adjudicator lacked jurisdiction to consider complaint under Code — There was no dismissal — Complainant's contract was for fixed term and was not renewed.

Suzuki and Shamattawa First Nation, Re, 2016 CarswellNat 3933 (Can.Adjud.(CLC Part III))

30 D.E.L.D. 117
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

117 — 30 D.E.L.D. 117 (Chénier et Transport Branchaud inc., Re)

Howard A. Levitt

30 D.E.L.D. 117 (Chénier et Transport Branchaud inc., Re)

§2:90.20 PROGRESSIVE DISCIPLINE

LABOUR AND EMPLOYMENT LAW — **Labour law** — **Discipline and termination** — **Kinds of discipline** — **Progressive discipline** — Employee was driver — Employee was dismissed — Employee brought unjust dismissal complaint under *Canada Labour Code* — Complaint allowed — Employer was ordered to pay $5,000 — Evidence demonstrated that employee wasn't without fault but disciplinary measure was disproportionate to misconduct — Dismissal did not respect principle of progressive discipline — Employer could not discipline employee twice for same incident.

Chénier et Transport Branchaud inc., Re, 2016 CarswellNat 4624 (Can.Adjud.(CLC Part III))

End of Document

30 D.E.L.D. 118
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

118 — 30 D.E.L.D. 118 (Banque de Montréal et Hamel (Wrongful Dismissal), Re)

Howard A. Levitt

30 D.E.L.D. 118 (Banque de Montréal et Hamel (Wrongful Dismissal), Re)

§2:60.10 CONSTRUCTIVE DISMISSAL

§2:90.10 — WHAT IS "JUST" CAUSE?

LABOUR AND EMPLOYMENT LAW — Labour law — Discipline and termination — What constituting discipline or termination — Employee was dismissed after 30 years of service — Employee brought wrongful dismissal complaint under *Canada Labour Code* — Complaint dismissed — Criteria necessary for constructive dismissal was not present — Employee's tasks of essential items had been changed but those changes were based on reasonable business grounds and were part of original scope of employment contract — Employee did not clearly express dissatisfaction with changes that occurred in three years preceding complaint.

Banque de Montréal et Hamel (Wrongful Dismissal), Re, 2016 CarswellNat 4136 (Can.Adjud. (CLC Part III))

30 D.E.L.D. 119
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

119 — 30 D.E.L.D. 119 (Provident Security Corp., Re)

Howard A. Levitt

30 D.E.L.D. 119 (Provident Security Corp., Re)

§1:160.30 STATUTORY REMEDY — EMPLOYMENT STANDARDS

§1:180 — GENERAL STATUTORY REQUIREMENTS OF TERMINATION

§15:180 — ENFORCING EMPLOYMENT STANDARDS REMEDIES

LABOUR AND EMPLOYMENT LAW — Employment standards legislation — Termination of employment — Exemptions to entitlement to statutory termination or severance pay — Misconduct — Employee worked for security company employer for 10 years — Employee e-mailed employer stating that he could not attend work that day due to family emergency — In reality, employee was attending examination to be accredited as Field Safety Representative — Employee was dismissed — Employee filed complaint alleging employer owed compensation for length of service — Delegate of Director of Employment Standards found employee's dishonesty was motivated by fear of losing his job, concluded nature and degree of employee's dishonesty was insufficient to warrant dismissal in circumstances, and ordered employer to pay compensation for length of service — Employer appealed — Appeal dismissed — It was open to delegate, on evidence, to conclude that employee's dishonesty did not warrant dismissal — Delegate's analysis of nature of employer's business and employee's position within that business was balanced and disclosed no error — Delegate's analysis and conclusion respected proportionality and balance between severity of employee's misconduct and sanction imposed — No error of law was established in findings of fact — No breach of natural justice was proven.

Provident Security Corp., Re, 2016 CarswellBC 2442 (B.C. Empl. Stnds. Trib.)

End of Document

30 D.E.L.D. 119
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

119 — 30 D.E.L.D. 119 (Provident Security Corp., Re)

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30 D.E.L.D. 119 (Provident Security Corp., Re)

§1:160.30 STATUTORY REMEDY — EMPLOYMENT STANDARDS

§1:180 — GENERAL STATUTORY REQUIREMENTS OF TERMINATION

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Provident Security Corp., Re, 2016 CarswellBC 2442 (B.C. Empl. Stnds. Trib.)

End of Document

30 D.E.L.D. 120
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

120 — 30 D.E.L.D. 120 (Davis v. RJB Machining Ltd.)

Howard A. Levitt

30 D.E.L.D. 120 (Davis v. RJB Machining Ltd.)

§15:152 STAY OF PROCEEDINGS

LABOUR AND EMPLOYMENT LAW — Occupational health and safety legislation — Rights of complainant employee — Freedom from employer reprisal — Complainant alleged employer violated s. 50 of *Occupational Health and Safety Act* (Ont.) — Hearing was scheduled for August 2016 — Employer requested adjournment of hearing due to unavailability of counsel and individual from corporation — Complainant did not consent to request — Request denied — Reprisal complaints should be heard quickly to mitigate workplace issues — Adjournments in absence of consent would be granted only in exceptional circumstances — Party's travel plans did not constitute exceptional circumstances — Unavailability of preferred counsel did not constitute exceptional circumstances.

Davis v. RJB Machining Ltd., 2016 CarswellOnt 13432 (Ont. L.R.B.)

30 D.E.L.D. 121
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

121 — 30 D.E.L.D. 121 (Gach v. Eleven Point Logistics Inc.)

Howard A. Levitt

30 D.E.L.D. 121 (Gach v. Eleven Point Logistics Inc.)

§1:180 GENERAL STATUTORY REQUIREMENTS OF TERMINATION

LABOUR AND EMPLOYMENT LAW — Employment standards legislation — Termination of employment — Termination pay — Entitlement — Claimant commenced maternity leave in October 2014 — Employer announced closure of plant in January 2015 — Employer issued mass notice of termination to active non-supervisory employees, in January 2015 — Claimant did not received notice of termination — Claimant commenced parental leave in March 2015 — Employer's facility ceased operations in April 2015 — Claimant filed claim for termination pay under mass termination provisions of *Employment Standards Act* (Ont.) — Employer disputed claimant's entitlement under mass termination provisions — Employer paid claimant termination pay upon December 2015 termination — Officer dismissed claim — Claimant applied for review of officer's refusal to issue order to pay — Application dismissed — Claimant's employment was not terminated until December 2015 — Claimant's employment was not terminated within four weeks of termination of other non-supervisory employees as required to establish entitlement — Claimant continued to be on parental leave when employment of active employees was terminated — Employees on leave remained employed despite closure of operation before leaves expired — Claimant's decision to discontinue benefits from employer did not terminate employment.

Gach v. Eleven Point Logistics Inc., 2016 CarswellOnt 13413 (Ont. L.R.B.)

30 D.E.L.D. 122
Dismissal and Employment Law Digest (D.E.L.D.) (Levitt)
2016

122 — 30 D.E.L.D. 122 (Samms v. 911887 Ontario Ltd.)

Howard A. Levitt

30 D.E.L.D. 122 (Samms v. 911887 Ontario Ltd.)

§12:10.20.2 FACTORS — RESIGNATION OR TERMINATION

LABOUR AND EMPLOYMENT LAW — Employment standards legislation — Termination of employment — Termination of employment by employer — Quit vs. fired — Employee alleged he was fired when he went to give notice of his resignation to his employer and employer said "get out" — Employee sought termination pay — Employment Standards Officer refused to issue order for wages owing — Employee applied for review — Application dismissed — Employee quit — Circumstances including employee's intention to give two weeks' notice; his being engaged in repair work which he knew, if abandoned, would cause disruption at workplace; his over-reaction to employer's remark that he "Get out"; and several attempts of employer to have him return to work, led to conclusion that employee consciously quit and was not dismissed without notice.

Samms v. 911887 Ontario Ltd., 2016 CarswellOnt 11361 (Ont. L.R.B.)