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# **The Employment Law Roundup: Assessing Reasonable Notice**

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*Assessing Reasonable Notice by Aaron Rousseau*

*Love v. Acuity Investment Management Inc., 2011 ONCA 130*

*Di Tomaso v. Crown Metal Packaging Canada LP, 2011 ONCA 469*

There were two important decisions from the Ontario Court of Appeal in 2011 on reasonable notice of termination. The main factors to consider in determining reasonable notice are (1) age, (2) length of service, (3) character of employment, and (4) the availability of similar employment.

In *Love v. Acuity*, the employee was 50 years old, had 2.5 years of service, and was a senior executive. The Court of Appeal set aside an award of 5 months' notice, and substituted 9 months. The trial judge had focused on cases where the employees had two to three years of service. The Court of Appeal explained that this was a mistake because it gave insufficient weight to the character of employment.

In *Di Tomaso*, the employee was 62 years old, had 33 years of service, and worked as a mechanic. The employer argued that there was a 12 month cap on notice periods for unskilled, non-managerial employees. The Court of Appeal confirmed that there is no such cap, and upheld an award of 22 months.

*Love v. Acuity* warns us to pay attention to the character of employment. *Di Tomaso* on the other hand warns us not to pay too much attention to the character of employment. The key to understanding these potentially contradictory instructions is to weigh each of the Bardal factors. The real lesson of *Love v. Acuity* is not simply to pay attention to the character of employment. The lesson is also not to pay too much attention to length of employment – or to any one factor. The key



to reasonable notice is to weigh every factor – age, length of service, and character of employment – and not to focus on any one to the exclusion of the others.

***What does this mean for employers?***

1. Reasonable notice must be considered on a case-by-case basis. There is no notion of a “one size fits all” formula.
2. The 12-month “cap” for unskilled, non-managerial employees is eroding. Employers need to be prepared to commit more severance dollars to terminations of this kind.