

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**SMALL CLAIMS COURT**

|                               |   |                                             |
|-------------------------------|---|---------------------------------------------|
| <b>BETWEEN:</b>               | ) |                                             |
|                               | ) |                                             |
| ASHISH YADAV                  | ) | <i>Self-represented</i>                     |
|                               | ) |                                             |
|                               | ) | Plaintiff                                   |
|                               | ) |                                             |
| <b>– and –</b>                | ) |                                             |
|                               | ) |                                             |
| ANOSHAN AHANGAMA and AHANGAMA | ) | <i>Richard P. Gorrin for the Defendants</i> |
| LAW PROFESSIONAL CORPORATION  | ) |                                             |
|                               | ) |                                             |
|                               | ) | Defendants                                  |
|                               | ) |                                             |
|                               | ) | <b>HEARD at Toronto:</b> April 29, 2026     |

**REASONS FOR JUDGMENT**

**Overview**

- [1] The Plaintiff, Ashish Yadav (“Mr. Yadav”) was hired as a Law Clerk by the Defendant Ahangama Law Professional Corporation (the “Law Firm”) pursuant to an offer of employment dated January 26, 2021 which offer Mr. Yadav accepted on January 27, 2021 (the “Employment Agreement”).
- [2] The first paragraph of the one-page Employment Agreement written by the Defendant Anoshan Ahangama (“Mr. Ahangama”) on behalf of the Law Firm, reads as follows:

I am very pleased to offer you the position of Law Clerk with Ahangama Law Professional Corporation. This is a full-time, permanent position with a start date of February 1 st, 2021. This position is conditional on the successful completion of an initial probationary period of three months, during which time your performance will be reviewed.
- [3] Pursuant to the Employment Agreement, Mr. Yadav commenced employment on February 1, 2021. Much to his surprise, he was dismissed on a without cause basis ten (10) days later.
- [4] Mr. Yadav commenced this action against Mr. Ahangama and the Law Firm seeking damages for (a) wrongful dismissal, (b) breach of the *Human Rights Code*, RSO 1990, c. H.19, and (c) mental and emotional distress, and injury to dignity, feelings, and self-respect. He also sought

punitive, exemplary, aggravated, and consequential damages.

- [5] The Defendants maintain that because Mr. Yadav was a probationary employee, he could be terminated at any time without cause, without notice, and without payment in lieu of notice.
- [6] In one of the leading cases on the dismissal of a probationary employee, *Nagribianko v. Select Wine Merchants Ltd.*, 2017 ONCA 540 (CanLII), (“Nagribianko”) the Court of Appeal for Ontario confirmed the test for dismissal of a probationary employee as follows:
- [6] ... The status of a probationary employee has acquired a clear meaning at common law. Unless the employment contract specifies otherwise, probationary status enables an employee to be terminated without notice during the probationary period if the employer makes a good faith determination that the employee is unsuitable for permanent employment, and **provided the probationary employee was given a fair and reasonable opportunity to demonstrate their suitability**: *Mison v. Bank of Nova Scotia* (1994), 1994 CanLII 7383 (ON SC) 6 C.C.E.L. (2d) 146 (Ont. Ct. (Gen. Div.)), at para. 43. [Emphasis added]
- [7] In *Chan v. NYX Capital Corp.*, 2025 ONSC 4561 (CanLII), <https://canlii.ca/t/kdsw1> (“Chan”) the Court found that the termination clause in the employment agreement in that case, which included the clause that characterized the plaintiff’s employment as probationary, was void and unenforceable because it allowed for termination “at any time without cause,” contrary to the *Employment Standards Act, 2000*, S.O. 2000, c. 41 (the “ESA”).
- [8] While the Employment Agreement makes no reference to termination, the Defendants’ position that the Employment Agreement allowed the Law Firm to terminate Mr. Yadav at any time without cause, without notice, and without payment in lieu of notice is inconsistent with the principles outlined in both *Nagribianko* and *Chan* and the cases referenced therein.

### The Issues

- [9] The primary issue in this case is whether the Law Firm was entitled to dismiss Mr. Yadav without cause, without notice, and without payment in lieu of notice after only 10 days of his three-month probationary period. Specifically, the question is whether Mr. Yadav was given a fair and reasonable opportunity to demonstrate his suitability for the Law Clerk position.
- [10] The second issue involves a determination of the appropriate payment in lieu of notice to be awarded to Mr. Yadav in the event it is determined that he was not given a fair and reasonable opportunity to demonstrate his suitability for the Law Clerk position. Specifically, the question is what period of notice is appropriate for a short-service employee.
- [11] The third issue is whether Mr. Yadav is entitled to damages for mental distress, emotional distress, and/or injury to dignity, feelings, and self-respect, and if so, in what amount.
- [12] The fourth and final issue is whether Mr. Yadav is entitled to punitive, exemplary, aggravated, and/or consequential damages and if so, in what amount.

### Conclusions

- [13] I have determined that (a) Mr. Yadav was not given a fair and reasonable opportunity to demonstrate his suitability for the position, (b) he is entitled to payment in lieu of 3 months notice, (c) he has not proven he suffered compensable damages for mental or emotional distress, or injury to dignity, feelings, and self-respect, and (d) the Defendants’ actions do not warrant punitive, exemplary, aggravated or consequential damages.

## The Pleadings

[14] Within his Amended Plaintiff's Claim, Mr. Yadav sought:

- (a) damages of \$15,000 for wrongful dismissal (equivalent to 4.5 months notice at his salary of \$40,000);
- (b) damages of \$5,000 for breach of the *Human Rights Code*, RSO 1990, c. H.19 (a claim he abandoned during the trial);
- (c) damages of \$10,000 for mental and emotional distress, injury to dignity, feelings, and self-respect; and
- (d) punitive, exemplary, aggravated, and consequential damages in an unspecified amount.

[15] Within their Defence, the Defendants asserted that they were not liable for any damages as:

- (a) Mr. Yadav was dismissed during the probationary period of his employment, and, as such, neither the *ESA* nor the Employment Agreement required the Law Firm to provide Mr. Yadav with notice of termination or payment in lieu of notice;
- (b) In the alternative, Mr. Yadav was dismissed for cause, including misrepresenting that he had experience working as a real estate clerk, thus disentitling him to any termination pay (a position the Defendants abandoned at trial);
- (c) Mr. Yadav failed to mitigate his damages;
- (d) Mr. Yadav's human rights were not breached;
- (e) Mr. Yadav did not suffer compensable mental or emotional distress, or injury to dignity, feelings, and self-respect; and
- (f) with respect to the claim for punitive, exemplary, aggravated, and consequential damages, the Defendants did not address this aspect of the claim in their Defence.

## Events Leading to the Signing of the Employment Agreement

[16] In January of 2021 Mr. Yadav saw a posting on the Indeed website which had been prepared by Mr. Ahangama on behalf of the Law Firm (the "Indeed Ad").

[17] The Indeed Ad, titled "Real Estate Law Clerk" "Full-time, Permanent" specified that the Law Firm was looking for a senior law clerk with a minimum of 2-5 years of experience in Real Estate Law who could handle files from opening to closing. The Indeed Ad listed the duties and attributes required of the "ideal candidate" and noted that 2 years of experience as a Law Clerk was "preferred". The Indeed Ad also noted that a law clerk diploma from an accredited University or College program and other legal experience was also welcomed as an asset "as our firm offers a variety of other services."

[18] Mr. Yadav submitted his resume (the "Resume") to Mr. Ahangama through the Indeed website. The Resume indicated, among other things, that Mr. Yadav had obtained a law degree in India in 2008 and had worked as a lawyer in India from November 2010 until January of 2020. As was apparent from the Resume, none of the positions held by Mr. Yadav in India involved real estate law.

- [19] The Resume indicated that Mr. Yadav was “currently pursuing Law Clerk Program from Canadian Business College, Toronto (2020)” and that since arriving in Canada, he had worked as a Law Clerk from April of 2020 until December of 2020 (8 months) where he had, among other things, prepared and registered various documents in Teraview and Unity, and prepared documents regarding real estate matters/transactions.
- [20] Although it was apparent from the Resume that Mr. Yadav did not have 2-5 years of experience in real estate law and that he did not have a law clerk diploma, Mr. Ahangama reached out to Mr. Yadav to schedule an interview.
- [21] The interview took place on zoom on January 23, 2021. Mr. Yadav recalls that during the interview, he advised Mr. Ahangama that he was in the process of taking the NCA exams (exams that allow the National Committee on Accreditation to assess the legal and professional experience of individuals who obtained their credentials outside of Canada) following which he would be writing the Bar exams to qualify as a lawyer in Ontario. According to Mr. Yadav, Mr. Ahangama advised him that he would treat him like a lawyer.
- [22] Mr. Ahangama testified that he has very little recollection as to what was discussed during the interview. He could not recall what, if anything, Mr. Yadav said about the NCA exams. There was little detail given as to what else was discussed at the interview, but it appears that Mr. Ahangama, having gone through the NCA and bar admission process himself, was willing to give Mr. Yadav the position notwithstanding that he did not appear to have the credentials and experience described in the Indeed Ad.
- [23] Shortly after the interview, and without verifying any of the information contained in the Resume with Mr. Yadav’s former employers, Mr. Ahangama sent the January 26, 2021 offer of employment to Mr. Yadav, who accepted it on January 27, 2021. As noted above, the one-page Employment Agreement provided that the position was “conditional on the successful completion of an initial probationary period of three months, during which time [Mr. Yadav’s] performance [would] be reviewed”.

### **Events Leading to the February 10, 2021 Termination of Employment**

- [24] Mr. Yadav testified that he commenced work on February 1, 2021 and that on February 4 or 5, 2021 Mr. Ahangama asked him how long he could commit to staying at the Law Firm. While the evidence was somewhat unclear, it appeared that at Mr. Ahangama’s urging, Mr. Yadav promised he would stay for 18 months. It was during this conversation that Mr. Ahangama asked Mr. Yadav to provide 3 months notice if he intended to leave the Law Firm.
- [25] With Mr. Ahangama’s permission, Mr. Yadav took the day off on Monday February 8, 2021 to write his final NCA exam. When he returned to the office on February 9, 2021 he was given his “first” real estate file to handle on his own. Mr. Ahangama testified that it was apparent to him that Mr. Yadav had no idea how to handle the file on his own, which led Mr. Ahangama to conclude that he should terminate Mr. Yadav’s employment the following day.
- [26] Mr. Yadav testified that he was told by Mr. Ahangama on February 10, 2021 that he was being let go as the Law Firm was looking for someone more senior to handle the real estate files. No mention was made during the meeting of any issues with Mr. Yadav’s performance.
- [27] It became apparent during the trial that Mr. Ahangama was of the (mistaken) view (apparently shared by Mr. Gorrin) that because Mr. Yadav was a probationary employee, he was at liberty to fire him at any time without cause and without notice or pay in lieu thereof.

## Events that Transpired After the Termination

- [28] Mr. Yadav wrote several emails regarding his termination to Mr. Ahangama late on February 10, 2021, pointing out that he was taken aback by the sudden decision to terminate him after their previous discussions. He reminded Mr. Ahangama that he had refused at least 4 potential job calls after Mr. Ahangama had assured him he did not need to look for another job. Mr. Yadav expressed his view that the termination would have a financial and emotional impact on his future, and he asked that he be paid 2 months salary in restitution.
- [29] Mr. Ahagama wrote back advising Mr. Yadav that he was hired on probation, that Mr. Ahagama was not satisfied with Mr. Yadav's work performance and that "as per the applicable laws the firm is required to pay you based on the time you worked for the firm." He said he would pay Mr. Yadav 2 weeks salary less source deductions for the days he worked.
- [30] In response, Mr. Yadav noted that this was the first time Mr. Ahangama had mentioned that he was not satisfied with Mr. Yadav's work performance and that he had never raised the issue earlier. This was also Mr. Yadav's evidence at trial. Mr. Ahangama did not dispute that prior to this late-night email on February 10, 2021, Mr. Ahangama had never mentioned to Mr. Yadav that he was dissatisfied with Mr. Yadav's work performance.
- [31] Mr. Yadav never received payment for the time worked as he refused to provide the Law Firm with his SIN. Instead, he reported Mr. Ahangama to the Law Society (the "LSO") and commenced the within action when it became apparent that the LSO was not the appropriate venue to deal with his claim.

## Issue 1 - Was the Law Firm Entitled to Dismiss Mr. Yadav Without Cause, Without Notice, and Without Payment in Lieu of Notice – Specifically was Mr. Yadav Given a Fair and Reasonable Opportunity to Demonstrate his Suitability for the Law Clerk Position

- [32] A review of the many cases dealing with the dismissal of probationary employees reveals that over the last 44 years, the Courts have recognized that it is unfair to allow the dismissal of a probationary employee at any time without cause, without notice, and/or without payment in lieu of notice.
- [33] In *Ritchie v. Intercontinental Packers Ltd.*, 1982 CanLII 2538 (SK QB), <https://canlii.ca/t/g7sg0> ("Ritchie") the plaintiff was hired as a human resources officer with a six-month probationary period. He was terminated 4 months later. The Court explained that while the common law gave a probationary employee little or no rights to recover damages if dismissed during or at the end of the probationary period, there had been a softening of this "anachronistic" position.
- [34] The test set out by the Court in *Ritchie* in 1982 has since been followed by numerous courts:

[14] ...where [a probationary] employee is fired, it seems to me that the only onus that rests on an employer to justify the dismissal, is that he show the court that he acted fairly and with reasonable diligence in determining whether or not the proposed employee is suitable in the job for which he was being tested. **So long as the probationary employee is given a reasonable opportunity to demonstrate his ability to meet the standards the employer sets out when he is hired**, including not only a testing of his skills, but also his ability to work in harmony with others, his potential usefulness to the employer in the future, and such other factors as the employer deems essential to the viable performance of the position, then he has no

complaint. As for the employer, he cannot be held liable if his assessment of the probationary employees' suitability for the job is based on such criteria and a fair and reasonable determination of the question. In my opinion the law does not require the employer to do anything more [Emphasis added].

- [35] In *Mison v. Bank of Nova Scotia*, 1994 CanLII 7383 (ON SC), <https://canlii.ca/t/1w5jg> ("Mison") the Court reviewed the authorities noting that some authorities support "what has been described as a harsh doctrine" that a probationary employee can be terminated without cause and without notice, in the absence of bad faith or any improper motive, whereas more recent authorities indicate that "there has been some movement toward an attitude of greater fairness in dismissing a probationary employee".

- [36] The Court in *Mison* agreed with the above quoted statement from the *Ritchie* case adding the following statement that was eventually relied upon by the Court of Appeal in *Nagribianko*:

[43] I agree that an employer can only dismiss a probationary employee for just cause. However, during probation, "just cause" can be based on a decision that the employee is unsuitable for the job. Such a conclusion must be a reasonable one and properly motivated. In addition, **it is a conclusion that must be reached after the employee has been given a fair opportunity to demonstrate his ability...** [Emphasis added].

- [37] In *Ly v. British Columbia (Interior Health Authority)*, 2017 BCSC 42 (CanLII), <https://canlii.ca/t/gwtnd> ("Ly") the Court held that in terminating a probationary employee only two months into his six month probationary period the employer did not meet its legal obligation to carry out a good faith assessment of Mr. Ly's suitability for continued employment and that accordingly, Mr. Ly was entitled to an award of damages based on reasonable notice of termination.

- [38] The Court in *Ly* reiterated that the test for dismissal in the context of probationary employment is suitability. Just cause need not be established. An employer need only establish that it acted in good faith in its assessment of the probationary employee's suitability.

- [39] As confirmed by the Court of Appeal for Ontario in *Nagribianko*, the status of a probationary employee has acquired a clear meaning at common law. Specifically, unless the employment contract specifies otherwise, probationary status enables an employee to be terminated without notice during the probationary period if the employer makes a good faith determination that the employee is unsuitable for permanent employment, and provided the probationary employee was given a fair and reasonable opportunity to demonstrate their suitability.

- [40] In the recent decision in *Liivam v MacKay Contracting Ltd.*, 2025 BCSC 582 (CanLII), <https://canlii.ca/t/kbbqn> ("Liivam") the Court reviewed the law concerning termination of probationary employees noting that the *Bardal* factors operate differently where an employee is terminated within their probationary period. The Court in *Liivam* held as follows:

[93] Generally speaking, it is an implied term of an employment contract that an employer may terminate the employment of an employee either for just cause or by giving reasonable notice. In the absence of just cause, an employee is generally entitled to compensation for what would have been a reasonable period of notice, which is determined with regard to such matters as the character of the employment, the length of service, the age of the employee and the availability of similar employment having regard to the experience, training, and qualifications of the employee: *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140, [1960 CanLII 294 \(Ont. H.C.\)](https://canlii.ca/t/1w5jg).

[94] These principles operate differently where an employee is within their probationary period. The parties referenced two primary judgments dealing with termination of probationary employees.

- [41] The Court in *Liivam* referred to *Jadot v. Concert Industries Ltd.* (1997), 44 B.C.L.R. (3d) 327, [1997 CanLII 4137 \(C.A.\)](#), aff'g (1995), 4 B.C.L.R. (3d) 311 (S.C.) ("*Jadot*"), where the Court of Appeal commented:

[29] After a careful review of the authorities, the trial judge concluded, correctly in my view, that an employer, during a probationary period "has the implied contractual right to dismiss a probationary employee without notice and without giving reasons provided the employer acts in good faith in the assessment of a probationary employee's suitability for the permanent position".

- [42] The Court in *Liivam* went on to describe what is necessary to satisfy the requirement of acting in good faith in the assessment of a probationary employee, holding as follows:

[96] What is required in order to "to act in good faith in the assessment" of a probationary employee has been developed in subsequent cases. In *Ly*, the trial judge concluded that the plaintiff's employment contract included a probationary term of employment, and that it was terminated during the probationary period, but that the defendant did not meet its legal obligation to carry out a good faith assessment of the plaintiff's suitability for continued employment. At paras. 57-58, Justice Morellato set out the applicable general principles:

[57] As addressed above, the test for dismissal in the context of probationary employment is suitability. Just cause need not be established. An employer needs only to establish that it acted in good faith in its assessment of the probationary employee's suitability: *Jadot*.

[58] In determining whether an employer acted in good faith, courts have examined the process through which the employer determines whether the employee is suitable for permanent employment. While an employer is not required to give reasons for the dismissal of a probationary employee, that employer's conduct in assessing the employee is reviewed by the court in light of various factors such as: 1) whether the probationary employee was made aware of the basis for the employer's assessment of suitability before, or at the commencement of, employment; 2) whether the employer acted fairly and with reasonable diligence in assessing suitability; 3) **whether the employee was given a reasonable opportunity to demonstrate his suitability for the position**; and 4) whether the employer's decision was based on an honest, fair and reasonable assessment of the suitability of the employee, including not only job skills and performance but also character, judgment, compatibility, and reliability ...[Emphasis added].

- [43] Finally, the Court in *Liivam* dealt with the *Nagribianko* decision, reiterating the principles noted above:

[97] Justice Morellato cited a number of cases for this proposition, including *Jadot*. I note that an Ontario judgment, decided a few months after *Ly*, was to similar effect; in *Nagribianko*..., the Court confirmed that:

[6] ... The status of a probationary employee has acquired a clear meaning at common law. Unless the employment contract specifies otherwise, probationary status enables an employee to be terminated without notice during the probationary period if the employer makes a good faith determination that the employee is unsuitable for permanent employment, and provided the probationary employee was given a fair and reasonable opportunity to demonstrate their suitability.

- [44] The uncontradicted evidence in the present case is that Mr. Yadav was terminated 10 days after he commenced his three month probationary period and that during those 10 days he was never given any feedback about his performance, notwithstanding that the one-page Employment Agreement specifically provided that during the three month probationary period his performance would be reviewed.
- [45] It is also uncontradicted that during the 10-day period of his employment, Mr. Yadav was given only one real estate file to handle on his own, he was never given any training, and he never received any indication or warning that his employment might be terminated. From Mr. Yadav's perspective, the termination came out of the blue as evidenced by the late-night emails he wrote to his former employer on February 10, 2021.
- [46] Having failed to provide Mr. Yadav with a fair and reasonable opportunity to demonstrate his suitability for the position, the Law Firm is required to provide Mr. Yadav with payment in lieu of reasonable notice.

## **Issue 2 - What Period of Notice is Appropriate for a Short-Service Employee**

- [47] In *Chan*, the Court confirmed that there is a presumptive entitlement to reasonable notice under the common law noting that the Supreme Court of Canada emphasized that this entitlement governs all employment relationships except where it is properly displaced via contract (*Machtinger v. HOJ Industries Ltd.*, [1992 CanLII 102 \(SCC\)](#), [1992] 1 S.C.R. 986).
- [48] The Court in *Chan* went on to consider the protections afforded to probationary employees under the *ESA* and the common law noting that while the *ESA* does not expressly create a category called "probationary employees", it provides, in section 54, that "No employer shall terminate the employment of an employee who has been continuously employed for three months or more unless the employer, (a) has given to the employee written notice of termination ...; or (b) has complied with" the *ESA* provisions on pay instead of notice.
- [49] The Court in *Chan* affirmed that the case law is clear that section 54 of the *ESA* "cannot properly be interpreted as displacing the common law obligation on an employer who dismisses an employee to give either reasonable notice or pay in lieu of reasonable notice, in the case of employees whose employment is of less than three months duration."
- [50] According to the Court in *Chan*, the fact that the *ESA* mandates notice or pay in lieu of notice for employees who have been working for three months or more does not somehow do away with the obligation at common law to provide reasonable notice for employees who have been working for less than three months. That latter obligation survives.
- [51] Having determined that the protection of common law reasonable notice has been expressly held to extend to probationary employees, this Court must now determine what period of reasonable notice ought to have been provided to Mr. Yadav.

- [52] The Plaintiff asserts that he is entitled to payment in lieu of notice in the amount of \$15,000 representing 4.5 months of salary. This is how long it took him to find another position following his dismissal. The Defendants assert that if the Law Firm was not entitled to dismiss Mr. Yadav without notice or payment in lieu of notice, Mr. Yadav should receive a maximum payment of \$1,538.46 representing 2 weeks of salary.
- [53] As referenced in *Chan*, the courts have recognized that where an employee has a very short period of employment, a longer notice period may be warranted. The Court referred to *Grimaldi v. CF+D Custom Fireplace Design Inc.*, [2023 ONSC 6708](#), where the court awarded 5.5 months notice to a plaintiff who had been employed for five months. The court reasoned that the longer notice period was warranted for Mr. Grimaldi, because a very short period of employment, made the search for other employment more difficult because it would “require him to explain to prospective employers why he was terminated so soon after being hired.”
- [54] In *Longshaw v. Monarch Beauty Supply Co. Ltd.*, 1995 CanLII 551 (BC SC), <https://canlii.ca/t/1ds29> (“Longshaw”) the Court noted that by definition, a case involving a probationary employee involves a short term of employment. The Court went on to note that weighed against this is the reality that the probationary employee has given up other job finding opportunities and that this explains why the proportion between damages awarded to probationary employees and their length of employment differs from typical awards where an established employee has been dismissed.
- [55] In *Longshaw* the Court held that a 45 year old Sales Manager who was terminated 3 months into his probationary period was entitled to 6 months notice. In coming to that conclusion, the Court noted that Mr. Longshaw was never given an opportunity to demonstrate his fitness for the position of Sales Manager. The Court also noted that as recognized in the *Ritchie* case, hiring a person on probation means the employee can no longer look for a job.
- [56] In *Liivam*, the Court dealt with short-service employees as follows:
- [100] As noted above, the plaintiff relied on the concept of “short service” employment and suggested that this concept underlies the award made in *Ly*. It is generally accepted by BC courts that “short service” employees are entitled to a proportionately longer period of notice: *Saalfeld v. Absolute Software Corporation*, [2009 BCCA 18](#) at para. 15; *Ostrow v. Abacus Management Corporation Mergers and Acquisitions*, [2014 BCSC 938](#) at para. 41; *Sciancamerli v. Comtech (Communication Technologies) Ltd.*, [2014 BCSC 2140](#) at para. 35; *Chapple v. Big Bay Landing Ltd. (Inc. No. 0764163)*, [2018 BCSC 1666](#) at paras. 28-29.
- [57] In *Saalfeld v. Absolute Software Corporation*, [2009 BCCA 18](#), (“*Saalfeld*”) the B.C. Court of Appeal provided the following guidance with respect to determining an appropriate period of notice for short-service employees:
- [15] ...[T]he respondent submits that the recent jurisprudence supports a notice period of five to six months in short service cases. While B.C. precedents are consistent that proportionately longer notice periods are appropriate for employees dismissed in the first three years of their employment, I see little support for the proposition that five to six months is the norm in short service cases for employees in their thirties or early forties whose function is significant for their employer, but not one of senior management. I further see no support for a floor of six months as the trial judge appears to have understood the respondent’s counsel to have suggested to her. That proposition was not put to us. Absent inducement, evidence of a specialized or

otherwise difficult employment market, bad faith conduct or some other reason for extending the notice period, the B.C. precedents suggest a range of two to three months for a nine-month employee in the shoes of the respondent when adjusted for age, length of service and job responsibility:[citations omitted].

[58] The Court of Appeal in *Saalfeld* held that although the five-month notice period fixed by the trial judge was “on the very high end of an acceptable range”, the award was not unreasonable in the circumstances and was thus upheld.

[59] Significantly the Court of Appeal in *Saalfeld* appeared to support the notion that in determining the appropriate period of notice, a Court can consider the time it took the employee to find another position. The Court said this:

[16] Nevertheless, I am not persuaded the trial judge’s award in this case is unreasonable. The factor that appears to have loomed largest in her analysis was the nine months it took the respondent to find employment. **While the evidence of the respondent’s job search between the date she received notice of the termination of her employment and the date she obtained new employment is paltry, it is legitimate to take that evidence into account in assessing the availability of alternative employment.** Neither party led evidence as to the market in which the respondent was competing for employment as a senior software salesperson. It seems both her counsel and the trial judge considered the appellant’s failure to pursue its pleaded allegation of failure to mitigate rendered such evidence unnecessary in light of the authorities: [citations omitted] [Emphasis added].

[60] The parties were asked to provide case law regarding the appropriate period of notice for a short-term employee like Mr. Yahav, who was dismissed during a probationary period.

[61] The Plaintiff relied on the following cases:

- *Hadida c. Dehumidified Air Solutions Inc.*, 2022 QCCS 4152, 2022 CarswellQue 16830 – Director of Human Resources fired after **three (3) months employment** during his probationary period – awarded **eight (8) months notice**
- *Dalskog v Crowsnest Pass Ecomuseum Trust Society*, 2019 ABPC 36 (CanLII) – plaintiff fired after **five (5) months employment** during her probationary period - awarded **9 weeks’ notice**
- *Bryczkowski v. Dennison Associates*, 2017 ONSC 6384 – administrative assistant fired after **two (2) months and 10 days employment** during six (6) month probationary period – **action dismissed**
- *Buchanan v Introjunction Ltd.*, 2017 BCSC 1002 – Plaintiff’s **job was rescinded** before his start date – awarded **6 weeks’ notice**
- *Ly v. British Columbia (Interior Health Authority)*, 2017 BCSC 42 – Manager fired after **two (2) months employment** during his probationary period – awarded **3 months notice**
- *Cao v. SBLR LLP* (2012), 217 A.C.W.S. (3d) 871, 26 D.E.L.D. 172 (ON SCSM) – 30 year old tax accountant earning \$60,000 was fired after **five (5) weeks employment** during her probationary period - awarded **four (4) months notice**

- *Alishah v. J. D. Collins Fire Protection Co.*, [2006] O.J. No. 4634 (OH CJ) – Plaintiff fired after **three (3) months employment (but lured from prior 8 year position)** – awarded **five (5) months notice**
- *Lipp v. First Nations Education Steering Committee*, [2005] B.C.J. No. 1854 (BCPC) – Office manager fired after **three (3) months employment** during her probationary period – awarded **three (3) months notice**
- *Dang v. North America Tea, Coffee & Herbs Trading Co.*, [2002] B.C.J. No. 1593 – 35 year old Plant Superintendent fired after **five and a half (5.5) months employment** during his probationary period – awarded **three (3) months notice**
- *Humbert v. Leduc Gold & Country Club*, [1999] A.J. No. 476 (ABQB) – 38 year old golf club manager fired after **four (4) months employment** – awarded **three (3) months notice**
- *Longshaw v. Monarch Beauty Supply Co. Ltd.*, [1995] B.C.J. No. 2362 (BCSC) – 45 year old Sales Manager fired after **three (3) months employment** during his probationary period – awarded **six (6) months notice**
- *Mison v. Bank of Nova Scotia* (1994), 1994 CanLII 7383 (ON SC) – 43 year old banker fired after **two (2) weeks employment** during his six (6) month probationary period – Court found Mison was fired for cause but said it would have awarded **one month notice if no cause**
- *Ritchie v. Intercontinental Packers Ltd.*, 1982 CanLII 2538 (SK KB) – human resource officer fired after **four (4) months employment** during probationary period – **action dismissed**

- [62] Mr. Gorrin, on behalf of the Defendants provided the Court with a one-page document titled “Wrongful Dismissal Database Online” (the “Database Document”) which he said listed cases that were similar to the present case. The Database Document was provided by Mr. Gorrin ostensibly to assist the Court in determining the appropriate notice period for Mr. Yadav.
- [63] The Database Document listed a total of 7 cases with the lowest notice provided (2 weeks notice) at the top of the page and the highest notice provided (3 weeks notice) at the bottom of the page.
- [64] Two days after the trial had concluded, the Court realized that the one-page Database Document provided by Mr. Gorrin included the words “page 1 of 5” at the bottom of the page.
- [65] The Court asked Mr. Gorrin to provide the complete Database Document, something Mr. Gorrin as an Officer of the Court ought to have done when he first provided the Database Document to the Court.
- [66] Mr. Gorrin emailed the complete 5-page Database Document to the Court naming it “Clerical, 0-2 years, age 25-40” meaning it was a document setting out all cases where employees **between the ages of 25 and 40** were terminated from a clerical position held for between 0 and 2 years of employment.
- [67] The last page of the Database Document revealed that the search criteria used to create the list of cases specified that it was to include dismissal of clerical employees **between the ages of 24 and 34**, notwithstanding that Mr. Yadav was a 37 year old foreign trained lawyer working as a Law Clerk when he was dismissed by the Law Firm.

- [68] No explanation was given by Mr. Gorrin as to why the search criteria used to create the Database Document included employees between the ages of 24 and 34, nor was any explanation given by Mr. Gorrin as to why the Database Document he emailed to the Court was named “Clerical, 0-2 years, age 25-40”.
- [69] The missing 4 pages of the Database Document contained 25 additional cases where the employee was awarded payment in lieu of notice of between 1 month and 12 months.
- [70] While Mr. Gorrin attempted to explain his failure to produce all five pages of the Database Document on the basis that page 1 of the Database Document “contained the relevant/comparable cases in the database with a similar length of service, those being, *Benson v. Co-op Atlantic* (4 days) and *Schroder v. All Languages...*”, in fact there were *other* cases noted on the missing pages where the term of service was similarly short (such as *Sikorski v Walwyn Stodgell* on page 3 where a clerk with the same length of service as the plaintiff in *Benson v Co-op Atlantic* was awarded two months notice).
- [71] Further, it is clear from a review of the cases listed in the Database Document:
- (a) that the descriptions of many of the cases are inaccurate (in *Schroder v. All Languages* the plaintiff was awarded \$6,000 amounting to almost ten times the 1 week notice listed on the Database Document and in *Bryczkowski v. Dennison Associates* the action was dismissed but the Database Document lists an award of 3 months notice);
  - (b) that the list of cases is incomplete;
  - (c) that some of the cases cannot be located (if they even exist); and
  - (d) that the cases that could be located are distinguishable from the present case.
- [72] Notwithstanding all the issues with the Database Document, making it a completely unreliable source, Mr. Gorrin submitted that an award of between 0 and 2 weeks notice was appropriate based on the following two cases listed on page one of the Database Document:
- *Benson v Co-op Atlantic*, 1987 CanLII 3976 (NL CA), <https://canlii.ca/t/ft26q> - 28 year old key punch computer operator hired at a salary of \$12,792 per year who was fired after **four (4) days of employment** during her probationary period - awarded **two (2) weeks' notice**
  - *King v. The Regional Municipality of Peel*, 2012 ONSC 1730 (CanLII), <https://canlii.ca/t/fr44b> – 34 year old scheduling assistant fired after **ten (10) months of employment** after her probationary period had ended – awarded **two (2) weeks' notice**
- [73] I find that there is simply no support for Mr. Gorrin’s assertion that the appropriate period of notice for Mr. Yadav is between 0 and 2 weeks.

### Mitigation

- [74] With respect to the Defendants’ challenge of Mr. Yadav’s mitigation efforts, the jurisprudence establishes that the burden is on the Defendant to show that the Plaintiff failed to mitigate his damages (See *Red Deer College v. Michaels*, 1975 CanLII 15 (SCC), <https://canlii.ca/t/1mzjd>).
- [75] In *Lopez-Gonzalez v. Reliance Legal Services Ltd.*, 2022 ONSC 2255 (CanLII), <https://canlii.ca/t/jnsmy>, Justice Perell explained the concept of mitigation in the wrongful dismissal context as follows:

[15] Wrongful dismissal is a breach of contract claim, and the normal principles of damages assessment apply to the determination of the quantum of damages, including the principle that a plaintiff cannot recover for avoidable loss; i.e., the mitigation principle.<sup>[14]</sup> The so-called duty of a plaintiff to mitigate is somewhat mislabeled as a duty because the duty is a matter of self-interest and is not a duty owed to others. The policy idea behind the so-called duty to mitigate is that a plaintiff should not recover for losses that he or she could have avoided.

[16] The onus is on the defendant to establish a failure to mitigate.<sup>[15]</sup> More particularly, the onus is on the employer to prove that the employee would likely have found a comparable position reasonably adapted to his or her abilities and that the employee failed to take reasonable steps to find that comparable position.<sup>[16]</sup> In assessing the innocent party's efforts at mitigation, the courts are tolerant, and the innocent party need only be reasonable, not perfect.<sup>[17]</sup>

- [76] Having heard the evidence of Mr. Yadav and reviewed the documents showing the efforts he made to find a new position, I have determined that Mr. Yadav made reasonable efforts to mitigate his damages. He continued to search for positions following his termination on February 10, 2021, eventually finding a position in early July 2021 at ESC Corporate Services.
- [77] While Mr. Gorrin advised at the outset of the trial that the Defendants were challenging the mitigation efforts of Mr. Yadav, the Defendants provided no evidence whatsoever demonstrating that Mr. Yadav would have found a comparable position sooner had he taken additional steps to find a position.

### **Conclusions on the Appropriate Notice**

- [78] During cross-examination it became apparent that Mr. Yadav had not been completely truthful on the Resume in describing his prior experience. However, as Mr. Gorrin advised in his closing submissions that the Defendants were not alleging “cause” for dismissal, I have not addressed or considered any of the evidence that might have justified dismissal for cause.
- [79] I have concluded based on my review of the cases provided by the parties as well as a host of additional cases most of which have been referenced above, that an appropriate award in this case is 3 months payment in lieu of notice.
- [80] I have taken into consideration, in addition to the cases referenced above, Mr. Yadav’s age, the position held, the fact that it took him 4.5 months to find another position, the fact that the potential opportunities he had prior to being hired by the Law Firm were no longer available after his termination, and the fact that Mr. Ahangama told Mr. Yadav that if Mr. Yadav was going to leave the Law Firm, he should provide the Law Firm with three months notice.
- [81] In addition to the payment of 3 months notice, Mr. Yadav is also entitled to be paid for the days he worked at the Law Firm (February 1, 2021 to February 10, 2021).

### **Issue 3 – Is Mr. Yadav Entitled to Damages for Mental Distress, Emotional Distress and/or Injury to Dignity, Feelings, and Self-Respect, and if so, in What Amount**

- [82] While there is no doubt that Mr. Yadav was upset about the unexpected dismissal only 10 days after he was hired, he did not provide any medical or other evidence that would entitle him to damages for mental distress, emotional distress, or injury to dignity, feelings, and self-respect.

**Issue 4 – Is Mr. Yadav Entitled to Punitive, Exemplary, Aggravated, and/or Consequential Damages and if so, in What Amount.**

- [83] Based on my assessment of Mr. Ahangama's evidence, I am of the view that he terminated Mr. Yadav without cause and without notice or payment in lieu of notice as he was under the mistaken belief that Mr. Yadav's probationary status entitled him to do so.
- [84] There was no evidence of any conduct on the part of Mr. Ahangama or the Law Firm that would entitle Mr. Yadav to punitive, exemplary, aggravated and/or consequential damages.

**Pre-Judgment Interest**

- [85] The purpose of an award of pre-judgment interest is to compensate the Plaintiff for the loss of use of money. It is my view that it is appropriate in the exercise of my discretion to award an average of the pre-judgment interest rates that were in place over the 5.25-year period since Mr. Yadav was terminated, as this rate more accurately reflects the true prevailing rate over the entire period. See *Saulnier v. Postma*, 2026 ONSC 1275 (CanLII), <https://canlii.ca/t/kjkn8> where the Court made a similar calculation for the same reason.

**Conclusions**

- [86] Judgment is granted in favour of the Plaintiff for the following amounts:
- (a) **\$10,000.00** for wrongful dismissal representing payment in lieu of three months notice;
  - (b) **\$1,095.89** for wages earned by Mr. Yadav in the first 10 days of his employment; and
  - (c) **\$1,735.95** for pre-judgment interest on the above reference amounts for the period from February 10, 2021 to the date of Judgment at the rate of 2.98% (being the average pre-judgment interest rate between February of 2021 and May of 2026).
- [87] The parties are encouraged to resolve the issue of costs keeping in mind Rule 19.05, Rule 19.06, Rule 14.07 and section 29 of the *Courts of Justice Act*. If the parties cannot agree on costs, costs submissions should be emailed to the trial co-ordinator to my attention with a copy to the other side as follows:
- (a) Mr. Yadav is to provide costs submissions by May 7, 2026;
  - (b) Mr. Gorrin is to provide responding costs submissions by May 11, 2026; and
  - (c) the costs submissions of each party are to be no longer than three double spaced typed pages (not including any settlement offers or documentation supporting the amounts claimed).

**Released:** May 4, 2026

*Mirilyn Sharp*

Deputy Judge Mirilyn Sharp

**COURT FILE NO.:** SC-21-0000-9405-0000

**DATE:** 2026-05-04

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**SMALL CLAIMS COURT**

**BETWEEN:**

ASHISH YADAV

Plaintiff

– and –

ANOSHAN AHANGAMA and AHANGAMA  
LAW PROFESSIONAL CORPORATION

Defendants

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**REASONS FOR JUDGMENT**

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**Deputy Judge Mirilyn Sharp**

**Released: May 4, 2026**