

**COLLECTIVE TERMINATION IN CANADA**

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## Collective Termination in Canada

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### Introduction

All Canadian jurisdictions, with the exception of Prince Edward Island, have adopted legislation similar to the American *Worker Adjustment and Retraining Notification Act*<sup>1</sup>, dealing with mass layoffs or, in Canadian terms, collective or group terminations<sup>2</sup>.

The underlying reason for this type of legislation is the same in all Canadian jurisdictions, namely, the termination of a significant number of employees in a relatively short period of time can have a significant negative impact on local economies. Consequently, a notice of the collective termination must be given to either a Minister, Director or Board, as set out in the relevant legislation.

The notion of what constitutes collective terminations and the rules relating to them differ from jurisdiction to jurisdiction. The present article briefly summarizes the rules and exceptions applicable to collective terminations across Canada.

### Brief Overview of Canadian Legal System

The Canadian *Constitution Act* establishes a federal system in which the authority to enact laws is divided between a federal Parliament and ten (10) provincial legislators.

The areas of federal and provincial jurisdiction are, by and large, mutually exclusive. In practice, however, some activities may be regulated by both levels of government, since a particular statutory initiative may have a provincial and federal aspect to it. In the event of the conflict between valid federal and provincial legislation, the former will prevail. The courts serve as referees of the division of powers through their authority to declare any law that is beyond the jurisdiction of either the federal Parliament or the provincial assembly to be of no force or effect.

There are several subjects on which the federal Parliament may pass laws that are likely to impact on business activities, namely

- regulation of foreign investment;
- patent and copyright;
- direct and indirect taxation;
- incorporation of federal companies;
- immigration;
- bankruptcy and insolvency;

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<sup>1</sup> 29 U.S.C. §2101 et seq.

<sup>2</sup> The terminology varies depending on the jurisdiction. For the purposes of the present article, we refer to the relevant terminology of the respective jurisdiction being discussed.

- the general regulation of trade throughout Canada;
- inter-provincial undertakings in the transportation and communication fields;
- banking and bills of exchange.

In Canada, labour and employment relations are for the most part, governed exclusively by the laws of the province in which an employee works. A limited number of important industries are under exclusive federal jurisdiction. While the legislative systems may be similar, the actual specific content of the legislation, including the rules applicable to mass terminations, vary from province to province.

**a) Provincial jurisdiction**

As part of their constitutional powers over “property and civil rights”, provinces have exclusive jurisdiction over employment relations in most sectors of economic activity.

A corporation that operates in more than one province is subject to the laws of each one of those provinces.

A manufacturing operation, for example, with plants in different provinces will, therefore, find itself subject to the laws of several different jurisdictions.

**b) Federal jurisdiction**

Federal jurisdiction in the labour and employment field is limited to federal works or undertakings, including inter-provincial or international transportation, telecommunications and banking.

Employer operating in the federal jurisdiction are subject to the *Canada Labour Code*<sup>3</sup>, which, among provisions dealing with collective and individual employment, contains the requirements for collective terminations.

**Federal Jurisdiction**

The *Canada Labour Code* deals with group terminations in Division IX, and the regulations thereunder. These define a group termination as a termination of fifty (50) or more employees within a four (4) week period.

Notice must be given sixteen (16) weeks prior to the effective date of the terminations and should be delivered to the federal Minister of Labour with a copy to the Minister of Human Resources Development Canada, the Employment Insurance Commission and any trade union representing the employees in question. If the employees are not represented by a trade union, the notice must be delivered to them individually or it must be posted in a conspicuous place within the establishment.

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<sup>3</sup> R.S.C. 1985, c. L-2.

The notice itself must contain the following information:

- Employer's name;
- Location of terminations;
- Nature of Employer's industry;
- Date on which the terminations are to occur;
- Estimated number of employees in each occupational classification whose employment will be terminated;
- Name of trade union representing the affected employees, as the case may be;
- Reasons for the terminations.

An employer who provides notice of collective termination pursuant to the *Canada Labour Code* must establish a Joint Planning Committee consisting of two (2) employee representatives and two (2) employer representatives. There is an exception to the requirement to establish a Joint Planning Committee where a trade union is already in place to represent the affected employees. In addition, the Minister may waive the application of the group termination provisions altogether, when such provisions would unduly prejudice the interests of the employees or the employer, where the notice would be prejudicial or detrimental to the employer's operations or where the group termination provisions are redundant in light of an applicable collective agreement.

Employees who are employed on a seasonal or irregular basis under an arrangement whereby they may elect to work or not when requested to do so are not subject to the group termination provisions and therefore are not included in the calculation of the employees affected by the termination.

In terms of defining what exactly constitutes a layoff within the meaning of the *Canada Labour Code*, a layoff is deemed to be a termination unless:

- it is a result of a strike or lockout;
- it is for a term of twelve months or less and the layoff is mandatory by virtue of a minimum work guarantee in a collective agreement;
- it is for a term of more than three months and the employee continues to receive payments from the employer, the employer continues to make payments regarding a registered pension benefits plan or a group or employee insurance plan, the employee receives supplementary unemployment benefits, or the employee would be entitled to receive such benefits, but is disqualified under the *Employment Insurance Act*; or;
- it is for a term of three months or less;

- it is for more than three months, but the employee is given notice at or before the time of layoff that he/she will be recalled within six months of the layoff's start;
- the layoff is for a term of more than three months but not more than twelve months and the employee maintains recall rights in accordance with a collective agreement.

With respect to the last three circumstances, any period of re-employment of less than two weeks duration is not included in the calculation of the length of the layoff.

Finally, it is important to note that the receipt of collective termination notice does not deprive an employee of his or her right to receive severance payment pursuant to the provisions of the *Canada Labour Code*.

### **Alberta**

Similar to the requirements of the federal jurisdiction, the *Alberta Employment Standards Code*<sup>4</sup> defines a collective termination as a dismissal of fifty employees or more at a single location within a four week time period.

The notice period in this respect is four (4) weeks. The notice must be delivered to the Minister of Human Resources and Employment and it must specify the number of affected employees and the effective date(s) of the terminations.

The foregoing notice does not effect the individual prior notice of termination that an employee is entitled to receive.

Employers do not have to include seasonal employees or employees hired for a fixed term or task in the calculation of affected employees and employers do not have to provide notice of collective termination in the context of a temporary layoff. In this regard, the *Employment Standards Code* stipulates that a layoff is not temporary when it exceeds sixty days.

The *Employment Standards Code* does not require the establishment of a Joint Planning Committee.

### **British Columbia**

In British Columbia, the group termination provisions are found in the *Employment Standards Act*<sup>5</sup> and the regulations thereunder.

A group termination in British Columbia is defined as a termination of fifty (50) employees or more at a single location within a two (2) month period.

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<sup>4</sup> R.S.A. 2000, c. E-9.

<sup>5</sup> R.S.B.C. 1996, c.-113.

The notice period varies depending on the number of employees involved:

<b>Number of Employees</b>	<b>Notice Period</b>
50 to 100	8 weeks
101 to 300	12 weeks
301 and more	16 weeks

The notice must be delivered to each affected employee<sup>6</sup>, any trade union representing the employees and the Minister of Skills Development and Labour. The notice must set out the number of affected employees, the effective dates of termination and the reasons for the terminations. It is also important to note that the *Employment Standards Act* clearly establishes that an employee's working conditions must not be altered during the notice period.

In the event improper or insufficient notice is given to an individual employee affected by the group termination, the employee in question is entitled to receive an indemnity equivalent to the pay in lieu of the notice he or she should have received or a combination of notice and pay. The payment on account of group termination notice does not affect an employer's obligations for other payments that may be owing to an employee pursuant to the *Employment Standards Act*.

As in other Canadian jurisdictions, the notice requirements are in addition to the individual notice requirements that an employee is entitled to receive, as set out in the *Employment Standards Act*.

The exceptions to the collective termination provisions are provided for at section 65 of the *Employment Standards Act*, which stipulates as follows:

- 65** (1) Sections 63 and 64 do not apply to an employee
- (a) employed under an arrangement by which
    - (i) the employer may request the employee to come to work at any time for a temporary period, and
    - (ii) the employee has the option of accepting or rejecting one or more of the temporary periods,
  - (b) employed for a definite term,
  - (c) employed for specific work to be completed in a period of up to 12 months,
  - (d) employed under an employment contract that is impossible to perform due to an unforeseeable event or circumstance other than receivership, action under section 427 of the *Bank Act* (Canada) or a proceeding under an insolvency Act,

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<sup>6</sup> It should be noted that the notice has no effect if the employment continues beyond the expiry of the notice period.

(e) employed at one or more construction sites by an employer whose principal business is construction, or

(f) who has been offered and has refused reasonable alternative employment by the employer.

(2) If an employee who is employed for a definite term or specific work continues to be employed for at least 3 months after completing the definite term or specific work, the employment is

(a) deemed not to be for a definite term or specific work, and

(b) deemed to have started at the beginning of the definite term or specific work.

(3) Section 63 does not apply to

(a) a teacher employed by a board of school trustees,

(a.1) a teacher who is employed with or who has a service contract with a francophone education authority as defined in the *School Act*, or

(b) an employee covered by a collective agreement who

(i) is employed in a seasonal industry in which the practice is to lay off employees every year and to call them back to work,

(ii) was notified on being hired by the employer that the employee might be laid off and called back to work, and

(iii) is laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation.

(4) Section 64 does not apply to an employee who

(a) is offered and refuses alternative work or employment made available to the employee through a seniority system,

(b) is laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation, or

(c) is laid off and does not return to work within a reasonable time after being requested to do so by the employer.

The *Employment Standards Act* also provides that the Minister may establish an adjustment committee for the purposes of developing and implementing an employee adjustment program with a view to minimizing the effects of the group termination.

Finally, it should be noted that a temporary layoff becomes permanent after the layoff exceeds thirteen (13) weeks within a twenty (20) week period.

## Manitoba

The Manitoba *Employment Standards Code*<sup>7</sup> defines a group termination as a termination of fifty (50) or more employees within a period of four (4) weeks. In such a case the notice periods are as follows:

Number of Employees	Notice Period
50 to 100	10 weeks
101 to 300	14 weeks
301 and more	18 weeks

The notice must be sent to the Minister of Labour and Immigration with copies to any trade union representing the employees and to the employees not represented by a trade union, or by way of posting in a conspicuous place. The notice must indicate the effective date of the terminations, the reasons for it, the estimated number of affected employees in each occupational classification and the names of at least two employer representatives available to sit on a Joint Planning Committee, to the extent this is required by the Minister.

During the foregoing notice periods, an employer may not alter the conditions of employment of the affected employees.

Failing such notice to the employee, the employee is entitled to an amount representing payment in lieu of the notice he or she should have received.

Under the Manitoba *Employment Standards Code*, the Minister may waive application of the collective termination provisions if:

- it unduly prejudicial to the interests of the employees or a class of employees;
- it unduly prejudicial to the interests of the employer; or
- it seriously detrimental to the operation of the business of the employer.

The collective termination provisions do not apply to the following persons:

- persons employed in agriculture, fishing, fur or dairy farming, or in the growing of horticultural or market garden products for sale;
- practicing members and students-in-training of regulated professions; and
- persons employed in a private family home, paid by a member of the family, and whose employment in the home consists of working as: a domestic worker for not more than 24 hours in a week for the same employer, a sitter attending primarily to the needs of a member of the household who is a child, or a

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<sup>7</sup> C.C.S.M. c. E-110.

companion attending primarily to the needs of a member of the household who is aged, infirm or ill.

Moreover, employees in the following situations need not be included in the calculation of affected employees:

- the termination occurs within the first 30 days of employment (unless otherwise agreed in writing by the employer and the employee before employment begins);
- the employment terminates at the end of a fixed period of employment;
- the employment is for a specified work or undertaking and for a period not exceeding 12 months, on completion of which the employment terminates;
- the employee is laid off, and it is not deemed to be a termination;
- the employee acts in a manner that constitutes wilful misconduct or disobedience or wilful neglect of duty that is not condoned by the employer;
- the employee is on strike or is locked out;
- the employee is laid off after refusing an offer of reasonable alternate work made available by the employer or through a seniority system;
- the employee fails to return to work within a reasonable time after being recalled from a layoff;
- the employee is employed in construction;
- the employee is employed under an arrangement whereby he/she may elect to work or not when requested to do so;
- the employee reaches the retirement age as established by custom or practice in the employer's business;
- the employee acts in an insubordinate or violent manner toward the employer or in a dishonest manner in the course of employment; or
- the contract of employment is impossible to perform or is frustrated by a fortuitous or unforeseeable circumstance.

## **New Brunswick**

Collective terminations in New Brunswick is governed by the *Employment Standards Act*<sup>8</sup> and the regulations thereunder, which define a collective termination as the

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<sup>8</sup> S.N.B. 1982, c. E.7.2.

termination of more than ten employees representing at least twenty-five percent (25%) of the employer's workforce within a period of four weeks.

Unless provided otherwise in a collective agreement, the notice requirement is six weeks and if the employee is not provided with the appropriate notice, an indemnity in lieu thereof will have to be paid by the employer.

The notice must be sent to the affected employees, or the certified trade union representing same, as well as to the Minister of Training and Employment Development. In addition, a copy of the notice must be posted in a conspicuous place within the concerned establishment. The content of the notice is not specified in the statute nor does the statute require the establishment of a Joint Planning Committee.

No notice of group termination is required where an employee:

- has completed a definite assignment that he/she was hired to perform over a period not exceeding 12 months;
- has completed a term of employment that was fixed in the employment contract, unless the employee is employed for a period of three months beyond that period;
- retires under a *bona fide* retirement plan;
- is doing construction work in the construction industry;
- is terminated or laid off as a result of the normal seasonal reduction, closure or suspension of an operation;
- is laid off for a period not exceeding six days; or
- is laid off due to a lack of work resulting from any reason unforeseen by the employer at the time notice would otherwise have been given, for such period as the lack of work continues due to that reason.

Finally, it is worth noting that an employer may apply to the Director of Employment Standards to be exempted from the collective termination requirements.

### **Nova Scotia**

Collective terminations in Nova Scotia are governed by the *Labour Standards Code*<sup>9</sup> which defines a collective termination as a termination of ten (10) employees or more in an establishment within a four (4) week period.

The notice must be delivered to each affected employee and to the Minister of Labour, either personally or via registered mail. The statute does not specify the

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<sup>9</sup> R.S.N.S. 1989, c. 246, s. 1.

content of the notice nor does it call for the establishment of a Joint Planning Committee.

The notice periods are as follows:

<b>Number of Employees</b>	<b>Notice Period</b>
10 to 99	8 weeks
100 to 299	12 weeks
300 and more	16 weeks

In all cases, if the appropriate notice is not provided to the employee, an indemnity in lieu thereof will have to be paid by the employer.

During the notice period, an employer cannot alter the conditions of employment of the affected employees.

An employer is not required to give notice, or pay in lieu, to an employee who:

- has been employed for less than three months;
- is employed for a definite term or task for a period not exceeding 12 months and does not continue to be employed for a period of three months or more after completion of the term or task;
- is laid off or suspended for no longer than six consecutive days;
- is discharged or laid off for any reason beyond the control of the employer (e.g., complete or partial destruction of plant, destruction or breakdown of machinery or equipment, unavailability of supplies, lack of orders for products, accident, labour disputes, weather conditions and government actions) if the employer has exercised due diligence to foresee and avoid the cause of discharge or layoff;
- has been offered reasonable alternate employment by his/her employer;
- has reached the age of retirement according to the established practice of the employer; or
- is employed in the construction industry.

Finally, the following employees are exempted from the collective termination provisions:

- employees covered by a collective agreement;
- employees engaged in work as real estate salespersons, automobile salespersons, or salespersons other than route salespersons who are entitled to receive all or part of their remuneration as commissions for purchase offers or sales which are normally made outside the employer's establishment; and

- employees who work on fishing vessels or in the operation of fishing vessels on water.

## Ontario

Collective termination in Ontario is governed by the *Employment Standards Act, 2000*<sup>10</sup> and the regulations thereunder, which define a collective termination as a termination of fifty or more employees in the same establishment<sup>11</sup> and:

- representing more than ten percent (10%) of the number of employees in the establishment who have been employed there for at least three months, or
- the termination are caused by the permanent discontinuance of at least part of the employer’s business at the establishment within a four week period.

The notice periods are as follows:

Number of Employees	Notice Period
50 to 199	8 weeks
200 to 499	12 weeks
500 and more	16 weeks

In all cases, if the appropriate notice is not provided to the employee an indemnity in lieu thereof will have to be paid to the employee by the employer<sup>12</sup>.

The notice must be sent to the Director of Employment Standards and the notice must be posted in a conspicuous place within the establishment throughout the notice period and beginning on the first day of the notice period. The notice must contain the employer’s name, the location of the affected employees, the number of affected employees, the anticipated termination dates, the name of any relevant trade union,

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<sup>10</sup> S.O. 2000, c. 41.

<sup>11</sup> Establishment is defined as “a location at which the employer carries on business but, if the employer carries on business at more than one location, separate locations constitute one establishment if, (a) the separate locations are located within the same municipality, or (b) one or more employees at a location have seniority rights that extend to the other location under a written employment contract whereby the employee or employees may displace another employee of the same employer”.

<sup>12</sup> Termination pay must be a lump sum equivalent to the amount the employee would have received during the period of notice. Where the employee does not have a regular work week or is paid on a basis other than time, the employer must pay the employee an amount calculated according to the weekly average amount of regular wages earned by the employee during the 12-week period immediately preceding the day of termination. The employer must also continue to make all benefit plan contributions necessary to maintain the benefits to which the employee would have been entitled had he/she been employed during the period of notice. If the employer fails to do so, the amount that should have been contributed is deemed to be unpaid wages. If the employer terminates the employment of employees without giving the required notice, the employees are deemed to have been actively employed during the period for which there should have been notice for the purposes of any benefit plan under which entitlement to benefits might be lost or affected if the employees cease to be actively employed.

and the name and contact information of the person who completed the form on behalf of the employer. The notice may also include other factors such as the economic circumstances surrounding the termination.

The statute does not call for the establishment of a Joint Planning Committee and an employer may not alter the conditions of employment during the notice period.

In addition to the termination notice, or pay in lieu, certain employees are also entitled to receive severance in accordance with the requirements set out in the *Employment Standards Act, 2000*.

It should be noted that where an employee's contract of employment provides for seniority rights allowing the bumping of less senior employees in the case of layoff or termination of employment, the employer, may, instead of having the notice of termination delivered to such an employee whose employment is terminated, post the notice is a conspicuous part of the workplace, setting out the name, seniority, job classification and proposed layoff or termination date of the employee and such a notice is deemed to constitute the formal notice of termination.

Finally, the following employees are not entitled to notice of termination or termination pay:

- an employee that has been continuously employed for less than three months;
- an employee who is on a temporary layoff;
- an employee who is employed for a definite term or task at the end of which employment is to terminate (unless employment terminates before the expiry of the term or task, the term expires or the task is completed more than 12 months after employment commences, or employment continues for three months or more after the expiry of the term or the completion of the task);
- an employee who has his/her employment terminated after refusing an offer of reasonable alternate work with the employer or refusing work made available through a seniority system;
- an employee who is temporarily laid off and does not return to work within a reasonable time after being requested to do so by his/her employer;
- an employee who has his/her employment terminated during or as a result of a strike or lockout at the place of employment;
- an employee who is employed under an arrangement whereby he/she may elect to work or not when requested to do so;
- an employee who has his/her employment terminated after reaching the age of retirement according to the employer's established practice;
- an employee who is guilty of wilful misconduct or disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer;

- an employee who works in the construction industry; and
- an employer whose employer is engaged in building, alteration or repair of a ship or vessel with a gross tonnage of over ten tons designed for commercial navigation, and who has agreed, personally or through a bargaining agent, to be exempted from statutory notice of termination provisions in return for a supplementary unemployment benefit plan.

## Quebec

In Quebec, collective dismissals are governed by the *Act respecting Labour Standards*<sup>13</sup> and the regulation thereunder, which was amended in 2002 by the insertion of provisions dealing with collective dismissals.

Section 84.0.4 of the *Labour Standards Act* provides for the obligation of an employer to notify the Minister of Employment and Social Solidarity in writing of an impending collective dismissal or layoff the duration of which exceeds six (6) months:

- 8 weeks in advance where the number of employees affected by the dismissal is at least equal to 10 and less than 100;
- 12 weeks in advance where the number of employees affected by the dismissal is at least equal to 100 and less than 300;
- 16 weeks in advance where the number of employees affected by the dismissal is at least equal to 300.

Copies of the notice of collective dismissal must be sent to the *Commission des normes du travail* (Labour Standards Commission) and, where applicable, to the certified trade union representing the employees affected by the dismissal. Also, the notice must be posted in a conspicuous and readily accessible place within the establishment concerned.

The notice must contain the following information, namely:

- The name and address of the employer or establishment concerned;
- The nature of the product or principal service;
- The names and addresses of the association of employees, (the union) if any;
- The reason for the collective dismissal;
- The date on which the collective dismissal will be made; and

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<sup>13</sup> R.S.Q., c. N-1.1.

- The full name of each employee likely to be involved in the collective dismissal.

A collective dismissal is defined as a “termination of employment by the employer, including a layoff for a period of six months or more, involving not fewer than ten employees of the same establishment in the course of two consecutive months (...)” (section 84.0.1).

An employer does not have to consider all employees when calculating the number of employees affected, as the *Labour Standards Act* specifies that several categories of employees are not to be considered “employees affected by the dismissal”, such as:

- employees having less than three months of uninterrupted service;
- employees whose contract for a fixed term or for a specific undertaking expires;
- employees who have committed a serious fault; and
- senior managerial personnel (senior executives).

Unfortunately, paragraph 3(6) of the *Labour Standards Act* does not define what constitutes senior managerial personnel and heavy reliance must accordingly be placed on the principles enunciated by our courts and tribunals in this regard. The caselaw has held that an employee’s status as a member of senior managerial personnel will depend on two distinct considerations, namely the level of the employee’s position in the hierarchy of the organisation and his level of decision-making power within the enterprise. Therefore, the expression “*senior managerial personnel*”, for purposes of the *Labour Standards Act*, encompasses a very restricted group of people within the hierarchy of a corporation, such as a president or senior vice-president who plays an integral role in the company’s daily decision-making process and is often part of the company’s executive committee.

In addition, section 84.0.3 of the *Labour Standards Act* specifically provides that the collective dismissal provisions of division VI.0.1 of Chapter IV of the *Labour Standards Act* do not apply:

- to the layoff of employees for an indeterminate period, but in fact less than six (6) months,
- in respect of an establishment whose activities are seasonal or intermittent, or
- in respect of an establishment affected by a strike or lock-out.

There are no such exclusions based on the size of the employer or its field of activities.

Pursuant to section 84.0.13, where an employer does not give the notice prescribed by section 84.0.4 or gives insufficient notice, it must pay each dismissed employee an

indemnity equal to the employee's regular wages, excluding overtime, for a period equal to the remainder of the time period within which the employer was required to give notice. That indemnity must be paid at the time of the dismissal.

However, an employer is not required to pay the indemnity in a situation of force majeure or where an unforeseeable event prevents it from abiding by the provisions of section 84.0.4. In such circumstances, the employer must nevertheless give the Minister of Employment and Social Solidarity a notice of collective dismissal as soon as it is in a position to do so. An "Act of God" is considered an unforeseeable event. However, the downsizing of the company's operations would most likely not constitute a superior force for purposes of the *Labour Standards Act*, unless it was due to a sudden and unexpected permanent loss of business, such as the unforeseeable loss of an important client.

Furthermore, if the notice is not given in accordance with the preceding provisions or if an insufficient notice is given, section 141.1 of the *Labour Standards Act* states that the employer may be liable to a fine of \$1,500 for each week or part of a week of failure to comply or late compliance. In our view, although there is no reported case on point to our knowledge, the amount of the fine refers to the failure to provide the notice and would not be multiplied by each employee affected by the termination.

With respect to a Joint Planning Committee, the *Labour Standards Act* authorises the Minister of Employment and Solidarity to request the establishment of a reclassification assistance committee as per section 84.0.8. The purpose of such a committee is to provide the employees affected by the collective dismissal with any form of assistance agreed to by the parties in order to alleviate the impact of the dismissal and assist those employees in finding new employment.

Finally, section 84.0.8 of the *Labour Standards Act* states that during the notice period, the employer cannot change the wages of the affected employees or change, in any manner whatsoever, either the applicable group insurance plan or pension plan, if any.

## Saskatchewan

Collective terminations in Saskatchewan is governed by the *Labour Standards Act*<sup>14</sup>, which defines a collective termination as a termination of ten or more employees in an establishment within a four week period.

The notice periods are as follows:

<b>Number of Employees</b>	<b>Notice Period</b>
10 to 49	4 weeks
50 to 99	8 weeks
100 and more	12 weeks

The notice must be delivered to the Minister of Labour as well as to each affected employee and any trade union representing the employees. The notice must indicate

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<sup>14</sup> R.S.S. 1978, c. L-1.

the number of employees affected, the effective date of the terminations and the reasons for same.

There is no requirement in the statute for the establishment of Joint Planning Committee.

As in most cases, in addition to the collective notice requirements, individual notice must also be provided to employees.

Employers may apply to the Director of Labour Standards to be exempted from the collective termination requirements.

Finally, a notice of group termination is not required where employees:

- are employed under an agreement whereby they may elect to work or not when requested to do so;
- are employed for a definite term;
- are employed for a specific project not exceeding 12 months;
- are offered and have refused reasonable alternative work or employment by the employer;
- are terminated because of the normal seasonal reduction, suspension or closure of the employer's operations;
- are laid off for a period not exceeding 26 weeks;
- have had their employment terminated because they have reached the age of retirement (as established by the employer); or
- are employed under a contract of employment that has become impossible to perform due to an unforeseeable event or circumstances.

## **Conclusion**

It is clear from the foregoing that most Canadian jurisdictions have similar requirements with respect collective terminations. Although the specific requirements vary from province to province, the underlying theme of the respective requirements remains the same: given the potential impact of such terminations, significant period of advance notice is required. In addition, and for this reason, most Canadian jurisdictions make provision for the mandatory establishment of a Joint Planning Committee to deal with the consequences of a collective termination of a group of employees. However, generally speaking, such committees will be established in practice when the collective termination affects a large number of employees.

Another common factor in the legislation dealing with collective terminations in Canada is the fact that an employer is not entitled to modify or alter the conditions of employment during the notice period.

In most jurisdictions, the obligation to provide collective termination notice will not affect an employer's other obligations towards employees who are terminated.

Finally, when calculating the number of employees contemplated by a collective dismissal, it is important for an employer to review and understand which employees are to be included and which employees are exempt from the calculation. Obviously, such calculation will vary depending on the jurisdiction and the exceptions contained in the relevant legislation.