

## *Court of Appeal for British Columbia*

BETWEEN:

OSSIE SYLVESTER

PLAINTIFF  
(APPELLANT)

AND:

HER MAJESTY THE QUEEN  
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

DEFENDANT  
(RESPONDENT)

Before: The Honourable Mr. Justice Lambert  
The Honourable Mr. Justice Cumming  
The Honourable Mr. Justice Hollinrake

I. Sara Counsel for the Appellant  
D. Chesman

T. Leadem Counsel for the Crown, Respondent

Place and Date of Hearing: Vancouver, British Columbia  
February 6 and 7, 1995

Place and Date of Judgment: Vancouver, British Columbia  
June 2, 1995

Written Reasons by:  
The Honourable Mr. Justice Lambert

Concurred in by:  
The Honourable Mr. Justice Cumming  
The Honourable Mr. Justice Hollinrake

*Court of Appeal for British Columbia*

Ossie Sylvester

v.

Her Majesty the Queen

**REASONS FOR JUDGMENT OF  
THE HONOURABLE MR. JUSTICE LAMBERT**

1. When Mr. Sylvester was dismissed from his employment he was disabled from working and was receiving benefits under the disability plans which formed a part of his employment package. This appeal involves questions about the termination of employment of an employee who is receiving disability benefits.
2. This appeal was heard immediately after the hearing of the appeal in *Datardina v. Royal Trust Corporation of Canada* because the two cases raised some similar issues. The judgments of the Court on the two appeals and on *Bohun v. Similco Mines Ltd.*, which also raises a similar issue, are to be handed down at the same time.

**The Facts**

3. The plaintiff was employed for nineteen years by the Provincial Crown. He is a professional administrator with post-secondary qualifications in that field. For the last thirteen

years of his service with the Crown he held the position of Director of Private Training Institutions under the Ministry of Labour and latterly under the Ministry of Advanced Education, Training and Technology. His salary at the conclusion of his employment was \$61,260 each year. He was then 55 years old.

4. On 1 June, 1992 the plaintiff became unable to work because of illness. The illness was treated by a physician and had sufficiently responded to treatment by 31 December, 1993 that the plaintiff would then have been able to resume work if he had had any work to resume. But he did not. On 23 July, 1992 he was sent a letter informing him that his position would "become surplus to the Ministry's requirements on August 31, 1992." He was told that he would start a paid notice period on 1 September, 1992 and that he would be eligible for short-term disability payments under the Short Term Illness and Injury Plan (STIIP) and, if his disability continued, then to long-term disability payments under the Long Term Disability plan (LTD). Meanwhile his notice period would be running. The letter was in these terms:

This will advise that your position with the Ministry of Advanced Education, Training and Technology will become surplus to the Ministry's requirements on August 31, 1992. This redundancy arises from operational changes within the Ministry and is not a reflection of the quality of your service to the Government of the Province of British Columbia. As a result of your position's redundancy, you will be offered a severance settlement package.

While you remain under a physician's care and eligible for Short Term Illness and Injury Plan (STIIP) benefits, you will continue to be paid at 75% of your salary level as per the STIIP plan provisions. During this paid notice period commencing September 1, 1992, and continuing for the period you are on STIIP benefits, the Province will top up the STIIP plan provisions to 100% of your salary level. This period of paid notice will then be deducted from the final severance settlement that is agreed upon.

Should you be accepted on Long Term Disability (LTD), you would receive the benefit payable under that plan and, again, the Province will top up the LTD plan provision to 100% of your salary level. This further period of paid notice will also be deducted from the final severance settlement that is agreed upon. Should you continue to be eligible for LTD benefits after the expiration of your notice period, then these benefits will continue to be paid in accordance with the Long Term Disability (LTD) provisions. The employer top up would be discontinued at that time.

When you come off of STIIP or LTD, the balance of the severance settlement, if any, will be available to you as a lump sum payment or as part of paid absence prior to retirement (or some mix as you prefer).

Appendix A to the letter contained options about use of sick leave credits and retirement on pension. It contained this paragraph:

Your proposed total severance notice period is equivalent to 12.5 months. As noted in your letter from the Deputy Minister, any period of Short Term Illness and Injury (STIIP) and Long Term Disability (LTD) benefits will be deducted from this total notice period.

5. So it is clear that the Crown proposed a total notice period of 12.5 months running from 1 September, 1992 or 13.75 months from the date when the notice of terminal redundancy was given. It was contemplated that if the plaintiff was still on long-term

disability at the expiration of the proposed notice period then the topping up to 100% of salary of the amount payable under the Long Term Disability plan would be discontinued. In short, the short-term and then long-term disability periods were to run consecutively, as the plans contemplate, and the notice period was to run concurrently with them. But each of those periods would expire in accordance with the applicable contractual provision. And the disability periods would count as all or part of the notice period for the purposes of compensation calculation.

6. There is no dispute about whether the dismissal of Mr. Sylvester was for cause. It was not. And there is no dispute about whether Mr. Sylvester was totally disabled from work between 1 January, 1992 and 31 December, 1993. He was.

### **The Proceedings**

7. Mr. Sylvester considered that he had not been accorded his legal rights. On 15 February, 1993 he began proceedings for breach of his contract of employment and for failure to pay him his public service benefits. In the original action he also claimed damages for mental distress and punitive damages. He said that 24 months notice was the proper notice period under his contract of employment. He said further that he was entitled to employment benefits including salary for the full notice period and also that

he was entitled to payment under the Short Term Disability plan for the first seven months of his disability, until 31 December, 1992, and payment under the Long Term Disability plan for the full twelve months of 1993 until he was fit to return to work right after 31 December, 1993.

8. The plaintiff applied for judgment on the basis of a summary trial under Rule 18A. At the hearing before the Chambers judge the claims of the plaintiff for damages for mental distress and for punitive damages were abandoned. The Crown in turn abandoned its argument about mitigation. That left arguments about the length of the notice period under the implied term in the contract of employment about giving reasonable notice of termination; about the entitlement to short-term and long-term disability benefits; about setting the period of disability entitlement off against the notice period or against damages for breach of the notice provision; and about entitlement to loss of pension benefits.

9. The Chambers judge decided that the appropriate length of notice under the contract of employment was fifteen months. He decided that the long-term disability plan never came into effect for the plaintiff because he was terminated before it could engage in accordance with its terms, specifically clause 2.08. He decided that it would be wrongful double compensation to allow the plaintiff compensation for wrongful dismissal measured by the

period of reasonable notice and also to allow any compensation for short-term disability over the same period. In reaching the latter conclusion the Chambers judge considered he should apply the decision of the Supreme Court of Canada in *Ratyck v. Bloomer*, [1990] 1 S.C.R. 940 and other tort decisions. He also considered he should apply the decision of the British Columbia Supreme Court in *Prince v. The T. Eaton Co. Limited* (1991), 34 C.C.E.L. 228 which, though a wrongful dismissal case, relied on the tort decisions to deny compensation under two different headings for two different wrongs under two different contractual terms in the employment package. The Chambers judge also decided that if the plaintiff were to make pension contributions with respect to the notice period then the Crown would match them, as conceded by counsel for the Crown. Finally, though the Chambers judge had set a notice period of fifteen months and had given reasons which, when incorporated into a formal judgment, awarded damages of \$76,575.00, subject to a deduction for short-term disability payments of \$19,285.85, leaving a net amount payable by the Crown of \$57,289.15, the Chambers judge dismissed the summary judgment application. In short supplementary reasons, delivered after receiving submissions on costs, the Chambers judge repeated that he had dismissed the summary judgment application and on the basis of that dismissal he awarded the Crown costs against the plaintiff.

10. The plaintiff has brought this appeal from the judgment of the Chambers judge.

**The Important Distinction Between Damages in Tort and in Contract**

11. Damages in tort are designed to put the plaintiff in the position he or she would have been in if the tort had not occurred. No better, no worse. If the loss is not suffered it will not be compensated for. So there should be no double compensation and the plaintiff should not receive a windfall profit from being the victim of a tort. There are exceptions with respect to subrogation claims, indemnity provisions under contracts funded in whole or in part by the plaintiff, and punitive damages. The principles are set out in the decisions of the Supreme Court of Canada in *Ratych v. Bloomer*, [1990] 1 S.C.R. 940 and *Cunningham v. Wheeler*, [1994] 1 S.C.R. 359.

12. Damages in contract, on the other hand, are designed to give the plaintiff what he or she contracted for. If the plaintiff contracted for compensation in excess of the loss actually suffered if a particular loss occurred, then that is what the plaintiff is entitled to receive. The plaintiff is to be put into the position that he or she would have been in if the contract had been performed.

13. So the tort cases are not directly applicable to damages for breach of contract. The question in contract cases is: What were the terms of the contract or contracts?

14. In this case the logical way to tackle the issues is to start with the disability plans, of which the Long Term Disability plan is statutory, and go on from there to the damages for wrongful dismissal.

#### The Short Term Disability Plan

15. The plaintiff went on to the Short Term Illness and Injury Plan when he became unable to perform his work because of illness on 1 June, 1992.

16. The Short Term Illness and Injury Plan is a part of the Crown's "Personnel Management Policies and Procedures". It is not an enactment, and its force is not derived from a specific provision in a statute but rather from a policy directive under the general scheme establishing the public service. The provisions of the Short Term Illness and Injury Plan which are relevant in this case are these:

2. Short Term Plan Benefit

a) In the event an employee is unable to work because of illness or injury he/she will be entitled to a

benefit of 75 percent of pay for a period not to exceed seven months from date of absence, (Short Term Plan Period).

b) The 75 percent benefit may be supplemented in quarter day increments by the use of the following in descending order:

- i) supplemental sick benefit (excluded employees only);
- ii) accumulated sick leave credit under the old sick leave plan;
- iii) compensatory time off (CTO);
- iv) banked earned time off (ETO), excepting where scheduled in a shift schedule;
- v) optional selection of benefit provisions (OSB) and overtime, shift work and standby provisions (OSS) (Professional Employees' Association only);
- vi) Executive Benefit Plan (EBP) banked time;
- vii) vacation entitlement.

. . .

10. Benefits Upon Lay-Off or Separation

a) Subject to subsections (b) and (c) below, regular employees who have completed three months of service and who are receiving benefits pursuant to sections 1(c), 1(d), or 2 shall continue to receive such benefits upon lay-off or separation until the termination of the illness or until the maximum benefit entitlement has been granted, whichever comes first, if the notice of lay-off or separation is given after the commencement of the illness for which benefits are being paid.

. . .

(my emphasis)

17. I do not understand that the Crown disputes that Mr. Sylvester was entitled to the short-term disability benefit for the seven month period set out in para. (a) of s.2. The amount would be 75%

of pay supplemented by any of the supplements that were available to Mr. Sylvester in accordance with para.(b) of s.2. It is not necessary to deal with the meaning of "lay-off or separation" in s.10.

18. The plan entitlement would have extended this benefit to Mr. Sylvester from 1 June, 1992 until 31 December, 1992.

**The Long Term Disability Plan**

19. This plan is established under the *Public Service Benefit Plan Act*, the *Long Term Disability Plan Regulations* and Schedule A to the *Regulations* which is entitled "Long Term Disability Plan". The plan is described as a contract but is given statutory force.

20. The relevant provisions are these:

Long Term Disability benefit

- 2.02 (a) If an employee, while covered under this Plan, becomes totally disabled as a result of an accident or a sickness, then, after the employee has been totally disabled for a period as set out in the applicable Short Term Illness and Injury Plan, including periods approved under the Recurring Disability section of the applicable Short Term Illness and Injury Plan, the employee shall be eligible to receive a monthly benefit as follows:

(i) while the employee has a sick bank balance to be used on a day-for-day basis, full monthly earnings will continue until the sick bank is exhausted, and section 2.06 will not apply, and

(ii) when an employee has no sick bank, or after it is exhausted, the employee shall receive a monthly benefit equal to the sum of:

. . . .

(D) 68.3% of the first \$2 400 of monthly earnings and 50% of the monthly earnings above \$2 400 where the employee is described in section (a) (iv),...

. . . .

(d) The Long Term Disability Plan payment will be made as long as an employee remains totally disabled in accordance with section 2.03, and will cease on the date the employee recovers, or at the end of the month in which the employee reaches age 65, or resigns or dies, whichever occurs first.

. . . .

Cessation of Benefits

2.08 (a) An employee shall cease to be eligible for benefits of this Plan at the earliest of the following dates:

(i) at the end of the month in which the employee reaches his or her 65th birthday, (60th birthday for firefighters and correctional centre employees as specified in their terms and conditions of employment). A person described in section (e), (f), (i) or (j) of Schedule B shall cease to be covered by this Plan on the date that is 6 months prior to his or her 65th birthday (7 months

for persons described in sections  
(c) and (d);

(ii) on the date of commencement of paid  
absence prior to retirement;

(iii) on the date of termination of  
employment with the employer.

. . .

(c) Cessation of active employment as a  
regular employee shall be considered  
termination of employment except when an  
employee is on authorized leave of  
absence with or without pay.

. . .

(my emphasis)

21. Clause 2.02(d) must be read together with clause 2.08(a)(iii). They must both be interpreted in the light of the purpose of a long term disability plan, namely, to provide income security to disabled employees for what would have been their full working lives. In that context it is my opinion that an employee who is eligible to start to receive benefits and who is totally disabled is entitled to continue to receive benefits until the employee recovers, resigns, dies, or reaches age 65, whichever occurs first. The employer can not put an end to those benefits by terminating the employment. Clause 2.08(a)(iii) does not deal with the receipt of benefits but with eligibility to start receiving benefits. The termination of employment referred to in that clause must be interpreted as a lawful termination, at the expiry of a lawful notice period, and can not include an unlawful termination.

Accordingly, if an employee becomes disabled during the running of a period equal to the period of lawful notice of termination, the date of termination, for the purposes of clause 2.08(a)(iii), will be the end of the notice period and the employee will have become disabled within the period of eligibility and will remain entitled to benefits until he or she recovers, resigns, dies, or reaches age 65, whichever occurs first.

22. Mr. Sylvester became eligible for long term disability benefits at the end of his entitlement to short term disability benefits, that is, on 1 January, 1993. That date is before the end of any lawful notice period and accordingly Mr. Sylvester was entitled to benefits under the long term disability plan until the date of his recovery, namely, 31 December, 1993.

**Dismissal During Disability**

23. What seems to me to be the central question in this appeal is whether, under Mr. Sylvester's contract of employment with the Provincial Crown, the Crown was free to dismiss Mr. Sylvester, on giving him reasonable notice, during the period when he was unable to work through disability and was receiving benefits under the Short Term Illness and Injury Plan and then under the Long Term Disability Plan.

24. Does the fact that the Long Term Disability Plan refers to the persons receiving benefits as "employees", coupled with the fact that the benefits must continue until recovery, resignation, death or retirement at age 65, mean that a person receiving benefits under that plan must continue to be an employee and can not be terminated as an employee? An argument can be made that such a term should be implied in the contract of employment. However, the rule for implying terms in contracts is that the term must be one which the parties would clearly have agreed to if it had been pointed out to them that they had forgotten it, and if the term is one which is required in order to give the contract practical efficacy. I do not think a term that an employee receiving disability payments can not be terminated as an employee is such a term. (I leave aside as a special case the situation where an employee on disability is terminated for failure to report for work. It is not necessary to decide that question in this case.) Of course, if an employee is terminated while the employee is receiving disability payments then under the plans in this case the disability payments would not cease when the employment came to an end.

25. It is my opinion that in this case the Crown was entitled to dismiss Mr. Sylvester on giving him reasonable notice of termination in accordance with the implied term to that effect in the contract of employment, notwithstanding that he was disabled

from working and was receiving benefits under the disability plans when the notice of termination was given.

**The Period of Reasonable Notice for a Person Under a Disability**

26. If an employee is under a disability which prevents that employee from working, then the employee can not work out the notice period in accordance with the classic conception of the implied term for reasonable notice in the contract of employment. If the employer, nonetheless, decides to give notice to the employee while the employee is disabled from working, the notice must still be reasonable, but the employee is necessarily precluded from working, at least until he or she recovers at a time within the notice period.

27. So the question is whether the fact that the employee is receiving disability payments, either paid directly by the employer or paid by an Insurer on the basis of premiums paid by the employer alone or by the employer and employee together, should have any effect on the amount payable by the employer to the employee under the implied notice provision in the basic contract of employment.

28. In my opinion it should not. The employer and the employee have contracted for salary or wages to be paid for employment services. That should properly be regarded as the basic contract

of employment. It can be terminated on reasonable notice. If the employer decides to terminate the employee at a time when the employee is disabled from working that does not affect the employer's obligation to pay the employee at the employee's rate of pay for the notice period.

29. The fact that the employee is receiving benefits under a disability plan should not, in my opinion, have any effect on the length of the period of reasonable notice or the payment to the employee of his or her regular rate of pay throughout the notice period. I think that from a legal perspective the disability plan should be viewed as a contract that is distinct from the basic contract of employment, but like the basic contract of employment forming a part of the total employment package. It is true that if an employee is able to work, the employee would not receive disability benefits, and if the employee is receiving disability benefits while continuing as a regular employee, then the employee would not also be receiving wages or salary. So in the usual circumstances of continuing employment, no employee would be receiving both wages or salary and disability benefits with respect to the same period. Either the basic contract of employment is controlling the mutual obligations of the employer and employee, or the disability plan is controlling those obligations, but both are not operating at once. But the inter-relationship of those two distinct contractual obligations changes when notice of termination

is given. In my opinion both contracts then operate together and both must be complied with. And if the employer breaks the obligations under one or other of those contracts, or both, then damages can be assessed under the broken contract or the broken contracts.

30. I have reached my conclusion after considering the alternative approach. Under that approach the notice period would start to run when notice is given and the payment of disability benefits during the notice period would operate as a discharge of the employer's obligations to pay salary or wages in the notice period. Under that approach the purpose of notice, namely to give the employee an opportunity to look for other employment at a time when the employee is able to give a commitment about when he or she would be able to start the new employment, is defeated. This approach was adopted in principle by Mr. Justice Finlayson, in dissent, in *McKay v. Camco Inc.* (1986), 53 O.R. (2d) 257, 11 C.C.E.L. 256; by the New Brunswick Court of Appeal in *Bursey v. Acadia Motors Ltd.* (1982), 35 N.B.R. (2d) 587; 88 A.P.R. 587; by the Alberta Court of Appeal in *Salmi v. Greyfriar Developments Ltd.*, [1985] 4 W.W.R. 463; 7 C.C.E.L. 80; and 17 D.L.R. (4th) 186; and by the Supreme Court of British Columbia in *Prince v. The Eaton Co. Limited* (1991), 34 C.C.E.L. 228.

31. The approach I would adopt is the one taken by the majority of the Ontario Court of Appeal, Mr. Justice Blair and Mr. Justice Thorson, in *McKay v. Camco Inc.* Mr. Justice Blair said this, at p.269:

While the appellant was receiving payments under the short-term disability plan, he was prevented by disability from seeking or accepting employment. Before his disability occurred and after it terminated, he sought and eventually found employment and in this period, he did not receive any disability payments. His rights to disability payments and to damages for breach of contract arose at different times, served different purposes and were based on different legal rights. They cannot be set off against each other. If disability payments were deductible from damages for the wrongful dismissal, the right of the appellant to reasonable notice would be completely frustrated because he could not have exercised it to search for employment while he was disabled.

(my emphasis)

I consider that Mr. Justice Blair's approach is the one that is most closely in accord with legal principles. The right to notice, and to payment in lieu of notice if the notice period can not be worked out, are distinct and separate rights stemming from different sources and both must be observed and complied with by the employer who gives notice which covers a period which is also covered, in whole or in part, by a period of disability. That was also the approach taken by Mr. Justice Fraser, at trial, in *Datardina v. Royal Trust* (1994), 85 B.C.L.R. (2d) 214; [1994] 2 W.W.R. 176; and (1993), 49 C.C.E.L. 255. The appeal from that decision is to be

dismissed by judgment to be delivered at the same time as judgment in this appeal.

32. However, I would make one variation from the concept embodied in the order in *McKay v. Camco Inc.* In that case, in working out the terms of the order, Mr. Justice Blair said this, at p.271:

I expect that the parties by agreement will be able to determine the damages to which the appellant is entitled but I may be spoken to if any difficulty arises. The notice period of 5-1/2 months includes the period from the notice of dismissal on June 6, 1980 to the appellant's injury on June 22, 1980, interrupted by the period from June 22 to December 22, 1980, when he received disability payments and resuming on December 22, 1980, until the term of 5-1/2 months expired. The respondent would be entitled to credit for salary paid from June 6 to June 22, 1980, and the damages would be reduced by the appellant's income from other employment in which he was engaged for some time in February 1980.

That concept embodies a linear approach to the assessment of damages on the basis that the employee cannot be in receipt of both payment in lieu of notice and disability benefits with respect to the same time period.

33. However, the concept creates a number of problems and is not either required by or consistent with the view that payments for the notice period and disability benefits are entirely different contractual rights stemming from entirely different contractual sources. The most significant problem flows from the fact that the

disability period might well run for a number of years. If the notice period must follow the end of the disability period then the factors that relate to the assessment of the availability of other employment could not be assessed at the time when notice was given. Nor could mitigation or the possibility of mitigation through obtaining other employment be taken into account. I think that the mitigation arising from other employment in February 1981 which was taken into account in *McKay v. Camco Inc.* represents a strange result when notice of dismissal was given on 6 June, 1980 and the period of reasonable notice was considered to be 5-1/2 months.

34. So I would follow the course of treating the entitlement to disability benefits and the entitlement to notice or pay in lieu of notice as entirely separate rights, both of which were separately contracted for. If either of those rights is denied by breach of the relevant contract then damages for the breach should be assessed in the usual way, namely by calculating the amount that is required to put the employee in the same position as she or he would have been in if the contract had been performed. In the result, the employee is able to use the payment for the notice period to look for other work, by saving that money and living on the disability benefits until the employee recovers, and then using the saved funds for support during the effective period of search for other work. So that result is consistent with the purposes of

both the disability benefits and the payment of wages or salary in lieu of notice for the notice period.

**Reasonable Notice in the Present Case**

35. Mr. Sylvester was 55 years old when he was given notice of termination. His salary was \$61,260. He had successfully completed an extensive post-secondary education which qualified him for his position. He had been employed by the Provincial Crown for nineteen years, the last thirteen of which were in the important management position which was later declared to be redundant.

36. Having regard to the fact that Mr. Sylvester is to receive disability benefits as well as damages for breach of the implied term for reasonable notice in the basic contract of employment, I do not think it is appropriate to modify, either by extension or contraction, the notice period to which he would have been entitled had he been fit and well when the notice of termination was given.

37. Having regard to the very great difficulties that must be experienced by someone with Mr. Sylvester's skills and training in seeking other employment at age 55, I think that the damages assessed by the trial judge, based on a notice period of fifteen months, were below the appropriate range. I would substitute damages based on a period of twenty months.

38. For the purposes of assessing the loss of fringe benefits, that period should be regarded as running from 23 July, 1992, the date when notice of termination was given.

**Pension Contributions**

39. Mr. Sylvester spent the period from 1 June, 1992 until 31 December, 1992 under the Short Term Illness and Injury Plan. The material that was presented to us does not contain any provision for what is to happen about pension contributions in that period. The practice, presumably, is either that the employee pays his usual contributions and the employer pays its usual contribution, as if the employee were actually at work, calculated on the basis of the salary payable while the employee was at work, or alternatively, that the employer pays both its own contribution and the employee contribution. Mr. Sylvester should be given the benefit of the usual practice and the period should be regarded as pensionable service.

40. Mr. Sylvester went on the Long Term Disability Plan on 1 January, 1993 and was on the plan until 31 December, 1993. Section 2.02(g) of the plan reads in this way:

(g) When an employee is in receipt of the benefit described in section 2.02(a)(ii), contributions

required for benefit plans in section 2.02(e) and contributions for superannuation will be waived by the employer.

(my emphasis)

The benefit of that provision should, of course, be extended to Mr. Sylvester. For that period the Crown should make the employee contributions if that is the usual practice. In any case Mr. Sylvester need not make them and that period should be regarded as pensionable service.

41. So pension contributions will be dealt with under the terms of the disability plans for the period from 23 July 1992 to 31 December, 1993. The damages to which Mr. Sylvester is entitled for breach of the implied term for reasonable notice in his contract of employment, as far as they relate to that period, should not reflect any deduction for employee contributions to the pension plan nor any increment for the employer contributions to the pension plan. In so far as the damages relate to the period from 1 January, 1994 to 23 March, 1994 they should include an amount for loss of pension benefits. Since that period is comparatively short an actuarial valuation should not be required. An amount representing the value of the notional employer contributions with respect to that period should simply be added in the calculation of damages. Alternatively, if Mr. Sylvester makes the employee

contributions for this period, then the period could be regarded as pensionable service.

**Disposition**

42. I would allow the appeal. Mr. Sylvester should receive compensation for his dismissal in accordance with the terms of his contract of employment and employment benefit package, including: short term disability benefits under the Short Term Disability Plan from 1 June, 1992 to 31 December, 1992; long term disability benefits under the Long Term Disability Plan from 1 January, 1993 to 31 December, 1993; and damages for breach of the implied term for reasonable notice of termination in the basic contract of employment, reflecting the loss of salary and the loss of fringe benefits for a period of twenty months from 23 July, 1992. If the parties cannot agree on the amounts then an application should be made to the Supreme Court of British Columbia, to which I would refer any questions relating to the calculations.

**Costs**

43. It is unnecessary to consider whether the Chambers judge's order with respect to costs was a proper order in relation to his disposition of the summary trial under Rule 18A.

44. I would order that the plaintiff is entitled to his costs in this Court and in the Court below.

**"The Honourable Mr. Justice Lambert"**

**I agree: "The Honourable Mr. Justice Cumming"**

**I agree: "The Honourable Mr. Justice Hollinrake"**