

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *CHC Helicopters International Inc. v. Jessen*, 2006 NSCA 81

**Date:** 20060711

**Docket:** CA 250947

**Registry:** Halifax

**Between:**

CHC Helicopters International Inc.

Appellant

v.

Wendy Jessen

Respondent

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**Judge:** Honourable Justice Linda Lee Oland

**Appeal Heard:** March 22, 2006

**Subject:** *Wrongful dismissal; extension of reasonable notice period; reduction of award by earnings during extended period*

**Summary:** After working for the appellant for approximately two and a half years, the respondent was dismissed without cause. A replacement was found and hired within days. The appellant did not provide a letter of reference or, within the statutory period, a record of employment. The jury awarded four months' pay in lieu of notice as reasonable notice, and extended the reasonable notice period by a further 48 months. The trial judge ruled that damages relating to that extended period should be reduced by the respondent's earnings during that period.

**Issue:** Whether the 48 month extended notice period award by the jury is a palpable and overriding error, or wholly out of all proportion to that which ought to have been given as compensation for damages.

Whether the judge erred in law in finding that damages for that period must be reduced by income earned during that time.

**Result:** Appeal and cross-appeal allowed, with costs. The manner of the respondent's dismissal was not exceptionally egregious. Even if

all the inferences that the jury made from the evidence favoured the respondent, and although there is no cap on *Wallace* damages and the determination was made by a jury, the disparity between the jury award and the existing case law is massive. In the circumstances of this case, the award constitutes an erroneous determination of fact that is palpable and overriding, and one which shocks the conscience of the court. The appellant shall pay the respondent an extended notice period award equal to nine months' pay. As to the cross-appeal, reduction of an award of *Wallace* damages by the amount of earned income does not accord with the jurisprudence that injuries resulting from bad faith conduct on the part of an employer is sufficient to merit compensation in and of itself.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 19 pages.**