

**SUPREME COURT OF CANADA**

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| **Citation:** Quebec (Commission des normes du travail) *v.* Asphalte Desjardins inc., 2014 SCC 51, [2014] 2 S.C.R. 514 | **Date:** 20140725  **Docket:** 35375 |

Between:

Commission des normes du travail

Appellant

and

Asphalte Desjardins inc.

Respondent

**Official English Translation**

**Coram:** McLachlin C.J. and LeBel, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

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| **Reasons for Judgment:**  (paras. 1 to 72) | Wagner J. (McLachlin C.J. and LeBel, Rothstein, Cromwell, Moldaver and Karakatsanis JJ. concurring) |

comm. normes du travail *v.* asphalte desjardins, 2014 SCC 51, [2014] 2 S.C.R. 514

Commission des normes du travail Appellant

v.

Asphalte Desjardins inc. Respondent

**Indexed as: Quebec (Commission des normes du travail) *v.* Asphalte Desjardins inc.**

2014 SCC 51

File No.: 35375.

2014: March 28; 2014: July 25.

Present: McLachlin C.J. and LeBel, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

on appeal from the court of appeal for quebec

*Employment law — Contracts — Contract of employment for indeterminate term — Obligation to give notice of termination — Employee giving notice of termination to employer to terminate contract of employment as of later date — Employer terminating contract of employment before departure date announced by employee — Whether employer who receives notice of termination from employee can terminate contract of employment before notice period expires without in turn having to give notice of termination or pay indemnity in lieu of such notice* *— Civil Code of Québec, arts. 2091, 2092 — Act respecting labour standards, CQLR, c. N-1.1, ss. 82, 83.*

The employee in question had been working for his employer since 1994. On Friday, February 15, 2008, he gave his employer a notice of resignation in which he announced that he would be terminating his contract of employment as of March 7, 2008, that is, three weeks later. On Monday, February 18, after failing to convince the employee to stay with the company, the employer decided without any other formalities to terminate his contract of employment the very next day, February 19, 2008, rather than March 7 — the departure date announced by the employee.

The appellant, the Commission des normes du travail (“Commission”), claimed on the employee’s behalf an indemnity equivalent to a notice period of three weeks, which corresponded to the notice of termination given by the employee in his letter of resignation. It also claimed, in the same proportion, the monetary value of his annual leave. The Court of Québec found in the Commission’s favour, but the Court of Appeal ruled against it.

*Held*: The appeal should be allowed.

This appeal raises the issue of the interplay of the provisions of the *Civil Code of Québec* (“*C.C.Q.*”) and the *Act respecting labour standards* that relate to the effect of the notice of termination in the context of a contract of employment for an indeterminate term. The provisions in question must be interpreted harmoniously, since they are all concerned with the same subject, namely termination of the employment relationship.

A party may unilaterally terminate a contract of employment for an indeterminate term without giving reasons, but on condition that he or she give notice of termination to the other party in reasonable time in accordance with art. 2091 *C.C.Q.* The obligation under art. 2091 *C.C.Q.* to give notice of termination applies to both the employee and the employer, for the entire term of the contract.

Added to the principles established in the *Civil Code* are the standards provided for in the *Act respecting labour standards*, including the one set out in s. 82, which imposes an obligation on the employer to give written notice to an employee where it is the employer that terminates the contract of employment. This section specifies the duration of the notice period, which depends on the employee’s years of service. Absent such notice, the employer must pay the employee an equivalent compensatory indemnity in accordance with s. 83 of the *Act respecting labour standards*. In the context of this appeal, the *Act respecting labour standards* clarifies the employer’s obligations, and in light of its purpose, it should be given a large and liberal interpretation.

A contract of employment for an indeterminate term is not terminated immediately upon notice of termination being given in accordance with art. 2091 *C.C.Q.* The wording of s. 82 of the *Act respecting labour standards* confirms that the contract of employment for an indeterminate term is not terminated at the time of the notice. It is well established that a contract is not automatically resiliated upon receipt of a notice of termination and that the contractual relationship continues to exist until the date specified in the notice given by the employee or the employer. This means that even after one of the parties to a contract of employment for an indeterminate term gives the other party notice of termination, both parties must continue to perform their obligations under the contract until the notice period expires. This includes the obligation to give notice of termination set out in art. 2091 *C.C.Q.*, which the other party must meet if he or she wishes in turn to terminate the contract before the notice given by the first expires.

It is inappropriate to deal with the issue of the effect of notice of termination from the perspective of renunciation. The notice announces the termination of the contract of employment: it does not authorize a departure from the principle that a party may not unilaterally cease performing his or her contractual obligations, to the detriment of the other party’s rights. In this context, the argument based on renunciation of the notice of termination is an unacceptable fiction. An employer who advances the date of termination of the contract after an employee has given notice of termination effects not a “renunciation”, but a unilateral resiliation of the contract of employment, which is authorized only as provided by law (arts. 1439 and 2091 *C.C.Q.*).

In sum, an employer who receives from an employee the notice of termination provided for in art. 2091 *C.C.Q.* cannot terminate the contract of employment for an indeterminate term unilaterally without in turn giving notice of termination or paying an indemnity in lieu of such notice. The notice given by the employee does not have the effect of immediately releasing the parties from their respective obligations under the contract. If the employer prevents the employee from working and refuses to pay him or her during the notice period, the employer is “terminating the contract” within the meaning of s. 82 of the *Act respecting labour standards*.

Moreover, art. 2092 *C.C.Q.* does not establish an exception to the rule that a party who wishes to terminate a contract unilaterally without giving a reason must in every case, as required by art. 2091 *C.C.Q.*, give notice of termination to the other party. Indeed, art. 2092 *C.C.Q.* concerns not the notice of termination itself, but the employee’s right to claim an indemnity if the notice is insufficient. It is wrong to conclude that the absence of an equivalent provision in the employer’s favour means that the employer may “renounce” a notice of termination received from the employee.

Finally, the distinction between circumstances such as those in the instant case and circumstances in which an employee resigns effective immediately but nonetheless offers to keep working for a certain time should be accepted. In the latter case, if the employer does indeed want the employee to leave immediately, there is a meeting of minds and notice of termination is unnecessary, since a contract for an indeterminate term can be terminated by agreement of the parties. In such a case, art. 2092 *C.C.Q* does not apply, since the termination of the employment does not then flow from a unilateral act by the employer. Nor would the indemnity provided for in ss. 82 and 83 of the *Act respecting labour standards* apply, since the termination of the contract would flow from an agreement between the parties: the employer could not be found to have terminated the contract.

In this case, the circumstances of the employee’s resignation were not ambiguous. When he gave his employer a letter in which he announced that he would be resigning, the employee did not terminate his contract immediately: rather, he was complying with art. 2091 *C.C.Q.* and announcing to his employer that their contractual relationship would be terminated in the near future. When the employer asked the employee to leave before the announced date, it terminated the contract unilaterally without giving sufficient notice of termination, thereby defaulting on its obligation under art. 2091 *C.C.Q.*, and this had the effect of triggering the application of ss. 82 and 83 of the *Act respecting labour standards*. Since the employee did not claim the full indemnity provided for in those sections, it is preferable to leave the question whether the notice period of s. 82 of the *Act respecting labour standards* and the equivalent indemnity of s. 83 are matters of directive or protective public order for another occasion.

**Cases Cited**

**Referred to:** *ChemAction inc. v. Clermont*, 2008 QCCQ 7353 (CanLII); *Commission des normes du travail v. 9063-1003 Québec inc.*, 2009 QCCQ 2969 (CanLII); *Commission des normes du travail v. S2I inc.*, [2005] R.J.D.T. 200; *Commission des normes du travail v. Compogest inc.*, 2003 CanLII 39374; *Martin v. Compagnie d’assurances du Canada sur la vie*, [1987] R.J.Q. 514; *Syndicat de la fonction publique du Québec v. Quebec (Attorney General)*, 2010 SCC 28, [2010] 2 S.C.R. 61; *Commission des normes du travail v. Centre de décoration des sols inc.*, 2009 QCCQ 2587 (CanLII); *Commission des normes du travail v. Commission scolaire de Laval*, 2003 CanLII 42505; *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701; *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038; *IBM Canada ltée v. D.C.*, 2014 QCCA 1320 (CanLII); *Atwater Badminton and Squash Club Inc. v. Morgan*, 2014 QCCA 998 (CanLII); *Aksich v. Canadian Pacific Railway*, 2006 QCCA 931, [2006] R.J.D.T. 997; *Nurun inc. v. Deschênes*, 2004 CanLII 27918; *Isidore Garon ltée v. Tremblay*, 2006 SCC 2, [2006] 1 S.C.R. 27; *Garcia Transport Ltée v. Royal Trust Co.*, [1992] 2 S.C.R. 499; *Commission des normes du travail v. Quesnel*, [1999] J.Q. no 6966 (QL); *Transforce inc. v. Baillargeon*, 2012 QCCA 1495, [2012] R.J.Q. 1626.

**Statutes and Regulations Cited**

*Act respecting labour standards*, CQLR, c. N-1.1, ss. 82, 83, 114.

*Civil Code of Québec*, arts. 1380, 1439, 2085 to 2097, 2086, 2087, 2088, 2091, 2092, 2094.

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APPEAL from a judgment of the Quebec Court of Appeal (Pelletier, Bich and Fournier JJ.A.), 2013 QCCA 484, [2013] AZ-50948335, [2013] J.Q. no 2366 (QL), 2013 CarswellQue 2371, setting aside a decision of Massol J.C.Q., 2010 QCCQ 7473, [2010] R.J.D.T. 935, [2010] AZ-50668866, [2010] J.Q. no 8693 (QL), 2010 CarswellQue 9152. Appeal allowed.

*Robert Rivest* and *Jessica Laforest*, for the appellant.

*Claude J. Denis* and *Frédérick Langlois*, for the respondent.

English version of the judgment of the Court was delivered by

1. Wagner J. — This appeal concerns the notice required to terminate a contract of employment for an indeterminate term. More specifically, the question is whether an employer who receives a notice of termination from an employee can terminate the contract of employment before the notice period expires without in turn having to give notice of termination or pay an indemnity in lieu of such notice. For the reasons that follow, I would answer this question in the negative and allow the appeal.
2. Background
3. The facts of this case are not in dispute. The employee in question, Daniel Guay, had been working for the respondent, Asphalte Desjardins inc., since 1994. Asphalte Desjardins is a paving company that generates its income from contracts with municipalities and the provincial government. There is some competition in that market, and contracts are generally awarded under calls for tenders. Mr. Guay was employed as a project manager and had access to confidential information, including the prices proposed by the company in its tenders and the costs of performance of its work.
4. On Friday, February 15, 2008, Mr. Guay gave Asphalte Desjardins a notice of resignation in which he announced that he would be terminating his contract of employment as of March 7, 2008, that is, three weeks later. In handing in his notice, Mr. Guay explained that he was leaving to work for a competitor, which had offered him a higher salary. He also stressed that the intervening three weeks would suffice to finish his work and ensure an orderly transition with his replacement.
5. On Monday, February 18, some Asphalte Desjardins managers tried unsuccessfully to convince Mr. Guay to stay with the company. Asphalte Desjardins then decided without any other formalities to terminate his contract of employment the very next day, February 19, 2008, rather than March 7 — the departure date announced by Mr. Guay.
6. The appellant, the Commission des normes du travail (“Commission”), claimed on Mr. Guay’s behalf an indemnity equivalent to a notice period of three weeks, which corresponded to the notice of termination given by Mr. Guay in his letter of resignation, even though under s. 82 of *An* *Act respecting labour standards*, CQLR, c. N-1.1, he would have been entitled to four weeks as an employee credited with five to ten years of uninterrupted service. The Commission also claimed, in the same proportion, the monetary value of his annual leave.
7. Judicial History
   1. Court of Québec, 2010 QCCQ 7473, [2010] R.J.D.T. 935
8. Judge Massol allowed the Commission’s action with the exception of its claim for a 20 percent lump sum for itself under s. 114 of the *Act respecting labour standards*. In ordering Asphalte Desjardins to pay the amounts claimed in respect of the notice period and annual leave, he stated that where an employee gives an employer notice that he or she plans to resign as of a future date and the employer decides to terminate the contract of employment prior to the effective date of the resignation, the employer must in turn give the employee notice or pay him or her an indemnity in lieu of notice. In other words, the employee is entitled to be paid during the period between the notice of resignation and the date it takes effect (para. 35).
9. Judge Massol stated that a distinction should be drawn between an employee who announces that he or she intends to resign on a specific date (as in this case) and one who announces that he or she intends to resign immediately but also *offers* to keep working for a certain time (as in *ChemAction inc. v. Clermont*, 2008 QCCQ 7353 (CanLII), at paras. 37 *et seq.*). In the instant case, because Mr. Guay had indicated clearly in his letter of resignation that he would be resigning effective March 7, 2008, Judge Massol concluded that Mr. Guay had done more than simply offer to remain in the employ of Asphalte Desjardins for the three weeks until his departure date.
10. In this regard, Judge Massol stressed that it is up to the employee to choose the time at which the termination of the employment relationship will take effect. This choice must be respected insofar as the employee satisfies his or her obligation under art. 2091 of the *Civil Code of Québec* (“*C.C.Q.*”) to give notice of termination. Judge Massol concluded that, [translation] “[w]hen all is said and done, although the employer benefits from a protection, that protection cannot be renounced to the detriment of the employee’s own rights” (para. 49).
    1. Quebec Court of Appeal, 2013 QCCA 484 (CanLII)
       1. Reasons of the Majority by Bich J.A. (Concurred in by Fournier J.A.)
11. The majority of the Quebec Court of Appeal, *per* Bich J.A., allowed the appeal of Asphalte Desjardins and dismissed the Commission’s action. In the majority’s view, the purpose of the notice of termination provided for in art. 2091 *C.C.Q.* is to protect the party who receives the notice by enabling that party [translation] “to limit the adverse effects of a termination [of a contract of employment] that he or she can neither counter nor prevent” (para. 55). The majority acknowledged that the party giving notice of termination may in practice derive certain benefits from it, but nevertheless found that that is not the purpose of art. 2091 *C.C.Q.* According to them, the notice of termination does not “resul[t] in a synallagmatic obligation that would be binding on the party who receives it” (para. 56), which means that an employee who gives notice to his or her employer cannot place the employer under an obligation to comply in full with the notice. Likewise, an employee cannot be forced to comply until the very end with a notice from the employer that includes a period “to be worked”, and if the employee in question decides to leave earlier, he or she cannot be required to give notice of termination in turn or to indemnify the employer (para. 58).
12. Nor, the majority added, is the notice of termination provided for in art. 2091 *C.C.Q.* a condition for exercising the power of unilateral resiliation that would serve to determine whether a resiliation is valid: in the absence of such notice, the resiliation is not null, and the right of the other party to the contract is limited to obtaining compensation for the injury flowing from the fact that he or she was not given notice of termination (para. 59).
13. The subject, purpose and nature of the obligation to give notice of termination lead, at first glance, to the conclusion that the recipient of the notice can renounce it (para. 60). But the majority noted that, because of the risk of abuse that might entail for employees, the legislature had established a measure designed to protect them, in art. 2092 *C.C.Q.*, by prohibiting any renunciation of their right to an indemnity should the notice of termination be insufficient or should the resiliation be abusive. They pointed out that this prohibition — which applies only to the employee — shows that, were it not for art. 2092 *C.C.Q.*, it would in fact be possible to renounce the notice of termination (paras. 61-62). The majority also pointed out that the prohibition set out in art. 2092 *C.C.Q.* is not absolute and that an employee can, on certain conditions, renounce the notice of termination his or her employer is required to give. In short, in their view, both the employee (on certain conditions) and the employer (without conditions) can renounce the notice of termination (paras. 63-65).
14. The majority noted that, as a general rule, the contract of employment continues to exist during the notice period, unless the party who receives the notice of termination renounces it (para. 66). However, they added that an employer who renounces a notice of termination received from an employee cannot be considered to be terminating the contract within the meaning of s. 82 of the *Act respecting labour standards*. From the time the employee gives notice of termination, the fate of the contract of employment is [translation] “inevitable” (para. 70). The notice merely delays the effect of the employee’s unilateral decision to terminate the contract: “The employer’s renunciation of the notice can change neither this fact nor its legal consequences” (para. 70). In other words, a resignation does not become a dismissal if the employer renounces the notice of termination.
15. As for the distinction between a situation in which an employee announces that he or she intends to resign as of a subsequent date and one in which an employee announces that he or she intends to resign immediately but offers to keep working for a certain time, the majority rejected it. They explained that, in either situation, the employer can renounce the notice of termination without engaging s. 82 of the *Act respecting labour standards* (para. 74). Despite the fact that it refers to “terminating” the contract of employment, that section is not intended to protect an employee who resigns, but instead concerns situations in which the contract of employment is terminated on the employer’s initiative (paras. 77-80).
16. Turning to another topic, the majority expressed the opinion that there was no reason to reconsider the practice according to which an employer can, if he or she so desires, resiliate the contract immediately and pay the employee an indemnity in lieu of notice of termination. In their opinion, the analysis of Pelletier J.A., dissenting, would, if applied, jeopardize that practice (para. 82).
17. In sum, the majority of the Court of Appeal held that the employer can freely renounce the notice of termination the resigning employee is required to give him or her under art. 2091 *C.C.Q.* and that, in so doing, the employer does not terminate the contract of employment within the meaning of s. 82 of the *Act respecting labour standards*, which does not apply in such a case (para. 84).
18. Finally, the majority invited the legislature to intervene to change the law with respect to the applicability of s. 82 of the *Act respecting labour standards* in such a case, as they found that it could in some circumstances lead to a result that would be unfair for the employee (paras. 85-86).
    * 1. Dissenting Reasons of Pelletier J.A.
19. Pelletier J.A. would have dismissed the appeal and affirmed the trial judge’s judgment. He noted that this case raises [translation] “the issue of the interplay of sections 82 and 83 of the *Act* [*respecting labour standards*] and the general law rules provided for in the *Civil Code of Québec*, and in particular those flowing from articles 2091 and 2092 *C.C.Q.*” (para. 10). He stated that the first step in considering this issue was to go back to February 15, 2008, and he mentioned the trial judge’s finding that on that date, Mr. Guay had clearly told Asphalte Desjardins that he would keep working until March 7, 2008 (para. 23). In Pelletier J.A.’s view, the effect of that finding was that the instant case can be distinguished from *ChemAction* in that Mr. Guay had not offered Asphalte Desjardins an alternative that would have given it the choice of immediately, on a consensual basis, terminating the mutual obligations flowing from the contract of employment (paras. 24-25).
20. Pelletier J.A. stated that there had not, in the case at bar, been a meeting of minds for the immediate termination of the employment relationship (para. 25). He noted in this regard that Asphalte Desjardins was not arguing that Mr. Guay had consented to the immediate termination of the contract of employment. Rather, it was submitting that Mr. Guay’s letter of resignation had given it the opportunity to unilaterally renounce the performance of work for the time remaining until March 7, 2008 and that the effect of that renunciation was to release it from its obligation to pay Mr. Guay his salary (para. 26). In support of this argument, Asphalte Desjardins expressly invoked the concept of “release” within the meaning of the *Civil Code of Québec*. But, Pelletier J.A. stated, there could not have been a release, since release from a debt is a synallagmatic contract, requiring the agreement of both parties (para. 27). He added that, according to the interpretation that was most favourable to Asphalte Desjardins, this situation would constitute a renunciation that had the incidental effect of releasing both parties (para. 28).
21. Pelletier J.A. pointed out that art. 2091 *C.C.Q.* requires that a party wanting to unilaterally terminate a contract give notice of termination to the other party. Where the termination of a contract of employment for an indeterminate term flows from the will of only one of the parties, it does not occur at the time the decision is announced, since the period corresponding to the notice of termination must elapse first. This is true both for the employer and for the employee (para. 31). Pelletier J.A. explained that if an employee were to renounce in advance his or her right to obtain an indemnity for any injury that might result from the employer’s failure to perform the obligation under art. 2091 *C.C.Q.*, that renunciation would be absolutely null as a result of art. 2092 *C.C.Q.* (para. 32). However, he stated that nothing would preclude the parties from freely agreeing to immediately terminate their contractual relationship, in which case art. 2092 *C.C.Q.* would not apply, [translation] “because the termination of the employment does not result from a unilateral act on the employer’s part” (para. 34).
22. Pelletier J.A. added that it was in his opinion inappropriate to analyze the issue before the court from the perspective of renunciation, since the contract of employment between the parties had continued to apply during the notice period and since only an agreement between them, and not a unilateral act, could have released them from their obligations (para. 36). Asphalte Desjardins had unilaterally terminated the employment relationship for the purposes of s. 82 of the *Act respecting labour standards* on February 19, 2008, thereby laying itself open to the consequences provided for in s. 83 of that Act (para. 37).
23. Pelletier J.A. advanced two other arguments in support of his analysis. First, in his opinion, the position of Asphalte Desjardins meant that [translation] “a resignation in compliance with article 2091 *C.C.Q.* would, for the employee, amount to a renunciation in advance of the employee’s right to obtain an indemnity for any injury he or she suffers” (para. 39 (emphasis deleted)), whereas art. 2092 *C.C.Q.* expressly prohibits such a renunciation. Second, Pelletier J.A. stated, regardless of whether the employer’s unilateral act can be characterized as a “dismissal”, the employee’s compliance with his or her obligation under art. 2091 *C.C.Q.* cannot cause the employee to lose the protection afforded by ss. 82 and 83 of the *Act respecting labour standards* and the minimum compensation for which they provide (para. 40).
24. Finally, in Pelletier J.A.’s view, because Asphalte Desjardins had terminated the employment relationship for the purposes of s. 82 of the *Act respecting labour standards*, it was the debtor of the obligation provided for in s. 83 (para. 44). Pelletier J.A. accepted that under s. 82, Mr. Guay would have been entitled to four weeks’ notice. However, given that Mr. Guay had consented to the resiliation of the contract as of March 7, 2008, and assuming that it could be inferred that Asphalte Desjardins had consented to that same date, Pelletier J.A. found that the obligation to pay an indemnity associated with the notice of termination had expired as of that date: [translation] “In other words, as of March 7, 2008, the dismissal ceased to be the sole explanation for the termination of the contract of employment, which was then also based on the agreement of the parties. When the mutual consent of the parties to terminate their agreement took effect, it also, as it were, terminated the application of sections 82 and 83 of the *Act* to the rights and obligations flowing from the employment relationship” (para. 45).
25. Issue
26. This appeal raises the following issue: In the context of a contract of employment for an indeterminate term, can an employer who has received a notice of termination from an employee lawfully terminate the contract before the expiration of the notice period without in turn having to give the employee notice of termination or an indemnity in lieu of such notice?
27. Analysis
28. I would adopt Pelletier J.A.’s reasons in part, allow the appeal and restore the trial judge’s judgment.
29. I will begin by noting that in their reasons, the majority of the Quebec Court of Appeal underscored a certain confusion with respect to the notice of termination concept, the effects of such notice and what must happen for a court to find that a contract of employment has been terminated. In so doing, they overruled a well-established line of authority at the trial level in Quebec labour relations law according to which an employer cannot renounce a notice of termination without engaging ss. 82 and 83 of the *Act respecting labour standards* (see, e.g., *Commission des normes du travail v. 9063-1003 Québec inc.*, 2009 QCCQ 2969 (CanLII); *Commission des normes du travail v. S2I inc.*, [2005] R.J.D.T. 200 (C.Q.); *Commission des normes du travail v. Compogest inc.*, 2003 CanLII 39374 (C.Q.)). That line of authority is not unanimous, however. In *ChemAction*, the Court of Québec held that an employer can renounce a notice of termination received from an employee, that such a renunciation does not transform a resignation into a dismissal and that the resignation is immediate, which means that the employee cannot then demand an indemnity under either s. 83 of the *Act respecting labour standards* or art. 2092 *C.C.Q.*
30. A decision by a court of appeal that overrules a dominant line of authority at the trial level is not, of course, open to challenge for that reason alone. On the contrary, such a decision is within the jurisdiction of an appellate court. After all, someone always has to take the first step if the law is to change. Nevertheless, it is impossible to disregard the impact of such a radical reversal in a field of law whose general principles, while based on civil law rules, are also subject to specific legislative provisions relating exclusively to labour relations, which is what makes this appeal so important.
31. I will begin by discussing certain principles and standards applicable to the contract of employment for an indeterminate term, after which I will consider the question of the notice of termination in the context of such contracts.
    1. Principles and Standards Applicable to the Contract of Employment for an Indeterminate Term
32. The contract of employment is a synallagmatic contract — one that creates obligations to be performed by both parties (art. 1380 *C.C.Q.*) — in which an employee undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of an employer (art. 2085 *C.C.Q.*). Articles 2085 to 2097 of the *Civil Code* set out the general law with respect to the contract of employment, adding to the general framework of the law of obligations. A contract of employment can be for a fixed term or for an indeterminate term (art. 2086 *C.C.Q.*). The employer undertakes to allow the performance of the employee’s work and to pay the employee’s remuneration while at the same time protecting the employee’s health, safety and dignity (art. 2087 *C.C.Q.*). The employee is bound to perform his or her work with prudence and diligence, and faithfully and honestly (art. 2088 *C.C.Q.*).
33. More broadly, art. 1439 *C.C.Q.* establishes the principle that a contract is irrevocable: a party cannot resiliate it unilaterally except on grounds recognized by law or by agreement of the parties. The parties to the contract must therefore, *inter alia*, respect its term. This principle also applies to a contract for an indeterminate term, such as the one at issue in the case at bar. Thus, D. Lluelles and B. Moore state that [translation] “the contract for an indeterminate term is, in principle, just as irrevocable as the contract for a fixed term. . . . A contracting party cannot be allowed to revoke the contract suddenly, brusquely and immediately” (*Droit des obligations* (2nd ed. 2012), at pp. 1218-19).
34. The power of unilateral resiliation provided for in legislation [translation] “is an exceptional privilege whose intended scope is narrow” (Lluelles and Moore, at p. 1198). Where the contract of employment is concerned, the *Civil Code* provides for two circumstances in which a party may terminate the contractual relationship unilaterally. First, a party may unilaterally resiliate a contract of employment for a serious reason without giving notice (art. 2094 *C.C.Q.*), regardless of whether the contract is for a fixed term or for an indeterminate term. Second, as in the instant case, a party may unilaterally terminate a contract of employment for an indeterminate term without giving reasons, but on condition that he or she give notice of termination to the other party in reasonable time in accordance with art. 2091 *C.C.Q.*, which reads as follows:

**2091.** Either party to a contract for an indeterminate term may terminate it by giving notice of termination to the other party.

The notice of termination shall be given in reasonable time, taking into account, in particular, the nature of the employment, the specific circumstances in which it is carried on and the duration of the period of work.

1. It should also be mentioned, given that this is crucial to the outcome of this appeal, that the obligation under art. 2091 *C.C.Q.* to give notice of termination applies to both the employee and the employer, for the entire term of the contract.
2. Added to the principles established in the *Civil Code* are the standards provided for in the *Act respecting labour standards*, the purpose of which is to correct the imbalance of power between employer and employee by establishing minimum standards for employees by means of provisions of public order (*Martin v. Compagnie d’assurances du Canada sur la vie*, [1987] R.J.Q. 514 (C.A.), at p. 517; *Syndicat de la fonction publique du Québec v. Quebec (Attorney General)*, 2010 SCC 28, [2010] 2 S.C.R. 61, at paras. 6-8). These standards supplement the framework established in the *Civil Code*.
3. The standards in question include the one set out in s. 82 of the *Act respecting labour standards*, which imposes an obligation *on the employer* to give written notice to an employee where it is the employer that terminates the contract of employment. This section specifies the duration of the notice period, which depends on the employee’s years of service. Absent such notice, the employer must pay the employee an equivalent compensatory indemnity in accordance with s. 83 of the *Act respecting labour standards*. Sections 82 and 83 read as follows:

**82.** The employer must give written notice to an employee before terminating his contract of employment or laying him off for six months or more.

The notice shall be of one week if the employee is credited with less than one year of uninterrupted service, two weeks if he is credited with one year to five years of uninterrupted service, four weeks if he is credited with five years to ten years of uninterrupted service and eight weeks if he is credited with ten years or more of uninterrupted service.

. . .

This section does not deprive an employee of a right granted to him under another Act.

**83.** An employer who does not give the notice prescribed by section 82, or who gives insufficient notice, must pay the employee a compensatory indemnity equal to his regular wage excluding overtime for a period equal to the period or remaining period of notice to which he was entitled.

. . .

1. The purpose of s. 82 is to advise the employee that the employment relationship will soon be terminated and to give him or her reasonable time to try to find a new job (see, e.g., *Commission des normes du travail v. Centre de décoration des sols inc.*, 2009 QCCQ 2587 (CanLII), at para. 38; *Commission des normes du travail v. Commission scolaire de Laval*, 2003 CanLII 42505 (C.Q.), at para. 15). The *Act respecting labour standards* does not impose similar minimum periods for notice given by an employee, although art. 2091 *C.C.Q.* does require that an employee who wishes to unilaterally terminate a contract of employment for an indeterminate term give notice of termination “in reasonable time”. This asymmetry is not surprising given that the purpose of the *Act respecting labour standards* is to protect employees as vulnerable members of society, a fact that has been acknowledged on many occasions (*Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, at para. 93; *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, at p. 1051).
2. The parties can agree to lengthen the minimum notice period provided for in the *Act respecting labour standards*. Moreover, even if there is no such provision in the contract, it is possible for an employee to be entitled under art. 2091 *C.C.Q.* to a notice period longer than the one provided for in s. 82 of the *Act respecting labour standards*. The cardinal rule with respect to the unilateral resiliation of a contract of employment is the giving, in reasonable time, of a notice of termination that takes into account, in particular, the nature of the employment, the specific circumstances in which it is carried on and the duration of the period of work. The courts have, although without suggesting that these were maximums, accepted notice periods of 9, 12, 15 and 18 months, and even 24 months in certain circumstances (R. P. Gagnon, *Le droit du travail du Québec* (7th ed. 2013), at p. 166; *IBM Canada ltée v. D.C.*, 2014 QCCA 1320 (CanLII), at para. 39; *Atwater Badminton and Squash Club Inc. v. Morgan*, 2014 QCCA 998 (CanLII), at para. 17; *Aksich v. Canadian Pacific Railway*, 2006 QCCA 931, [2006] R.J.D.T. 997, at para. 124).
3. Having reviewed the principles and standards applicable to the contract of employment for an indeterminate term, I must reiterate that this appeal raises the issue of the interplay of the provisions of the *Civil Code* and the *Act respecting labour standards* that relate to the effect of the notice of termination. In my opinion, the provisions of the *Civil Code* and the *Act respecting labour standards* in question must be interpreted harmoniously, since they are all concerned with the same subject, namely termination of the employment relationship. The *Civil Code* forms the backdrop for the contractual relationship between employees and employers in the workplace and establishes the general law that applies to all those who are bound by contracts of employment. As for the *Act respecting labour standards*, in the context of this appeal it clarifies the employer’s obligations, and in light of its purpose, it should be given a large and liberal interpretation.
   1. Effect of the Notice of Termination
4. The Quebec Court of Appeal in the instant case (both the majority and the dissenting judge), like the academic writers, rightly recognized that a contract of employment for an indeterminate term is not terminated immediately upon notice of termination being given in accordance with art. 2091 *C.C.Q.* (paras. 31, 66 and 70; see also *Nurun inc. v. Deschênes*, 2004 CanLII 27918 (Que. C.A.), at para. 44). The wording of s. 82 of the *Act respecting labour standards* also confirms that the contract of employment for an indeterminate term is not terminated at the time notice is given: “The employer must give written notice to an employee before terminating his contract of employment . . . .” Nevertheless, the majority of the Court of Appeal in the case at bar expressed the opinion that the fate of the contract of employment is [translation] “inevitable as of the time when the employee announces his or her resignation” (para. 70).
5. It is well established that a contract is not automatically resiliated upon receipt of a notice of termination and that, on the contrary, the contractual relationship continues to exist until the date specified in the notice given by the employee or the employer. This means that even after one of the parties to a contract of employment for an indeterminate term gives the other party notice of termination, both parties must continue to perform their obligations under the contract until the notice period expires. This includes the obligation to give notice of termination set out in art. 2091 *C.C.Q.*, which the other party must meet if he or she wishes in turn to terminate the contract before the notice given by the first expires. The argument that the parties’ legal situation “crystallizes” when notice of termination is given in that the notice merely delays the termination of the employment by postponing the employee’s date of departure must therefore fail. The notice of termination does not immediately terminate the contract of employment, preserving only the conditions of employment during the notice period. Rather, the contract itself continues to exist in its entirety until that period expires.
6. I agree with Pelletier J.A. that it seems inappropriate to deal with the issue of the effect of notice of termination from the perspective of renunciation. The notice announces the termination of the contract of employment: it does not authorize a departure from the principle that a party may not unilaterally cease performing his or her contractual obligations, to the detriment of the other party’s rights. In this context, the argument based on renunciation of the notice of termination is an unacceptable fiction.
7. An employer who advances the date of termination of the contract after an employee has given notice of termination effects not a “renunciation”, but a unilateral resiliation of the contract of employment, which is authorized only as provided by law (arts. 1439 and 2091 *C.C.Q.*). By “renouncing” a notice received from an employee, the employer prevents the employee from performing his or her work and ceases to pay the employee, thereby defaulting on the contractual obligations the employer is required to fulfil until the expiration of the notice period. In the case at bar, as Pelletier J.A. rightly stated at para. 36 of his reasons, [translation] “[u]ntil that date, only an agreement, and not a unilateral act, [can] release the parties from their obligations.”
8. In sum, an employer who receives from an employee the notice of termination provided for in art. 2091 *C.C.Q.* cannot terminate the contract of employment for an indeterminate term unilaterally without in turn giving notice of termination or paying an indemnity in lieu of such notice. The notice given by the employee does not have the effect of immediately releasing the parties from their respective obligations under the contract. If the employer prevents the employee from working and refuses to pay him or her during the notice period, the employer is “terminating the contract” within the meaning of s. 82 of the *Act respecting labour standards*.
9. Unlike the majority of the Court of Appeal, I cannot bring myself to conclude that the general principle that the contract continues to exist during the notice period is subject to an exception that applies where the party who receives the notice of termination renounces it. With respect, if this conclusion were accepted, it would also have to be accepted that it is the party who “renounces” the notice who unilaterally terminates the contract, with the consequences that would entail for the employer.
10. I agree with Bich J.A., writing for the majority of the Court of Appeal, that the notice of termination does not result in a synallagmatic obligation that would be binding on the party who receives it (para. 56). It is because of the contract of employment for an indeterminate term that the parties have reciprocal obligations: if, on being advised of the date when the other party wishes to terminate the contract in accordance with art. 2091 *C.C.Q.*, the party receiving the notice (the employer in the instant case) objects, he or she must in turn give notice of termination under art. 2091 *C.C.Q.*
11. Of course, the notice period chosen unilaterally by the employee cannot be “imposed” on the employer. An employer can deny an employee access to the workplace during the notice period, but must nonetheless pay his or her wages for that period, provided that the employee’s notice of termination was given in reasonable time. The employer can also choose to terminate the contract by giving notice of termination in reasonable time or by paying the corresponding indemnity in accordance with art. 2091 *C.C.Q.* and under ss. 82 and 83 of the *Act respecting labour standards* (F. Morin, “*Démission* et *congédiement*: la difficile parité des règles de droit applicables à ces deux actes” (2013), 43 *R.G.D.* 637, at p. 651; see also F. Morin et al., *Le droit de l’emploi au Québec* (4th ed. 2010), at para. II-179; N.-A. Béliveau with M. Ouellet, *Les normes du travail* (2nd ed. 2010), at p. 364).
    * 1. Reciprocal Nature of the Obligation to Give Notice of Termination Provided for in Article 2091 *C.C.Q.*
12. The majority of the Court of Appeal reached the following conclusion regarding the obligation to give notice of termination at para. 58 of their reasons:

[translation] Thus, an employee cannot place an employer under an obligation to comply in full with a notice that the former gives, unilaterally, to the latter; likewise, when it is the employer who resiliates the contract and gives the employee notice including a period “to be worked”, the employee cannot, in my opinion, be forced to comply with it until the very end and, if the employee decides to leave earlier, he or she certainly cannot be required to give notice in turn of that earlier departure or to indemnify the employer, which was counting on receiving his or her services until the notice period expired. [Emphasis added.]

1. The obligation to give notice of termination provided for in art. 2091 *C.C.Q.* applies equally to both parties to the contract. The obligation’s reciprocal nature means that, contrary to the conclusion reached by the majority of the Court of Appeal, an employee who, after receiving from his or her employer a notice of termination that includes a period to be worked (as opposed to an indemnity in lieu of such notice), stops working without in turn giving notice of termination defaults on his or her contractual obligations and could be sued for damages. In practice, this consequence for the employee will tend to be hypothetical given that the employer would be required to prove that he or she has sustained an injury. Be that as it may, if the employer was able to prove an injury caused by the employee’s failure to perform his or her contractual obligations, the fact that the employee had received a notice of termination from the employer could not prevent the employer from bringing an action against that employee. An employee who has received such a notice is, like the employer, still bound by his or her contractual obligations.
2. Of course, since the contract is an *intuitu personae* contract, specific performance is not an option if the employee wishes to leave the company. He or she will nevertheless be required, in turn, to give notice of termination in reasonable time in order to satisfy the requirements of art. 2091 *C.C.Q.*
   * 1. Notice of Termination That Benefits Both Parties
3. As I mentioned above, the majority of the Court of Appeal noted that the purpose of the notice of termination is to enable [translation] “*the party who receives it* to limit the adverse effects of a termination that he or she can neither counter nor prevent” (para. 55 (emphasis in original)). They stated that although the notice of termination may in practice result in benefits for the party who gives it — by providing him or her with a transition period, for example — that is not the purpose of art. 2091 *C.C.Q.*, which is instead designed to protect the other party (para. 55).
4. However, notice of termination is not given solely to benefit the recipient. Regardless of who terminates the contract, the notice can benefit both parties: When it is given by an employee, he or she counts on the notice period for financial planning purposes, while the employer can use it to limit any adverse effects of the employee’s resignation. Likewise, when notice of termination is given by an employer, the employer can benefit from the transition period corresponding to the notice period to finalize certain projects on which the employee has been working, while the employee can use it if necessary to get his or her finances in order and find a new job.
5. In sum, it is my opinion that the notice of termination serves the interests not only of the party who receives it, but also of the party who gives it, and that this is true in circumstances that are far from being as exceptional as the reasons of the majority of the Court of Appeal suggest in this regard. Unlike the majority of the Court of Appeal, I conclude that the notice of termination not only benefits its recipient, but in fact benefits both parties to the contract of employment.
   * 1. Protection Afforded to the Employee by Article 2092 *C.C.Q.*
6. Article 2092 *C.C.Q.* prohibits the renunciation of the employee’s right to an indemnity. It reads as follows:

**2092.** The employee may not renounce his right to obtain an indemnity for any injury he suffers where insufficient notice of termination is given or where the manner of resiliation is abusive.

1. Article 2092 *C.C.Q.* makes it impossible for an employee to renounce redress for an injury flowing from, *inter alia*, insufficient notice of termination. Put differently, art. 2092 *C.C.Q.* precludes the employer from limiting his or her liability. It nullifies any clause in a contract of employment by which the employee has renounced the indemnity to which he or she would be entitled should the employer terminate the contract unilaterally without sufficient notice.
2. This is a protective provision of public order, and the employee — the party for whose benefit the provision was enacted — cannot renounce the right in question until it has been acquired (*Isidore Garon ltée v. Tremblay*, 2006 SCC 2, [2006] 1 S.C.R. 27, at para. 60; *Garcia Transport Ltée v. Royal Trust Co.*, [1992] 2 S.C.R. 499, at pp. 530-31).
3. Article 2092 *C.C.Q.* does not establish an exception to the rule that a party who wishes to terminate a contract unilaterally without giving a reason must in every case, as required by art. 2091 *C.C.Q.*, give notice of termination to the other party. Indeed, art. 2092 *C.C.Q.* concerns not the notice of termination itself, but the employee’s right to claim an indemnity if the notice is insufficient. The commentary of the Minister of Justice on art. 2092 *C.C.Q.* is revealing: [translation] “The purpose of this article is to confer a right on the employee. Like wages, the indemnity is a vital element, and it is accordingly viewed as replacing an essential element of the contract. It seemed reasonable to prohibit any renunciation of the indemnity; this article is therefore of public order” (Ministère de la Justice, *Commentaires du ministre de la Justice*, vol. II, *Le Code civil du Québec — Un mouvement de société* (1993), at p. 1315 (emphasis added)).
4. In commenting on the scope of art. 2092 *C.C.Q.*, F. Morin et al. stress that [translation] “[t]his is an incapacity of protection . . . that applies solely to the employee and ensures that the employee is entitled to a sufficient indemnity” (*Le droit de l’emploi au Québec*, at para. II-37 (emphasis added)). Article 2092 *C.C.Q.* thus relates not to a right to receive a notice of termination, that is, to an actual period of work, but to its monetary equivalent.
5. Furthermore, art. 2092 *C.C.Q.* confirms the legitimacy of the practice according to which an employer gives an employee an indemnity if the employer wants to terminate the employee’s contract immediately, since it establishes the employee’s right to receive an indemnity if he or she is not given sufficient notice.
6. Contrary to the view expressed by the majority of the Court of Appeal, art. 2092 *C.C.Q.* concerns not a situation in which an employee renounces the notice of termination, but, rather, one in which the employee renounces the indemnity in lieu of such notice. The Court of Appeal stated:

[translation] Paradoxically, however, the fact that the legislature, in article 2092 *C.C.Q.*, thus precludes the employee from renouncing a notice of termination given in reasonable time or the indemnity in lieu of such notice confirms that absent this prohibition, such a renunciation is possible. And it is in fact because it is possible that the legislature wanted to bar the employee from doing so. Otherwise, it would not have been necessary to enact this provision.

Moreover, I note that the courts have held that article 2092 *C.C.Q.* does not establish an absolute prohibition: the employee can renounce the notice the employer who resiliates the contract is required to give him or her, provided that this is done after the termination of the contract and that certain requirements are met. This being said, I do not see why the employer would be precluded from renouncing the notice given by a resigning employee, and I would also find it odd to preclude the employer from renouncing it in advance (by means, for example, of a contract clause agreed on while negotiating the contract that would allow the employee to resign without notice). [Emphasis added; emphasis in original deleted; paras. 62-63.]

1. With respect, this *a contrario* reasoning of the majority of the Court of Appeal cannot be accepted. The fact that the legislature established a measure to protect employees by enacting art. 2092 *C.C.Q.* merely shows that, without this article, it would be possible for the employee, while negotiating the contract of employment for example, to release the employer from the obligation to pay such an *indemnity*. This is a possibility the legislature wished to preclude because of the employee’s vulnerability in relation to the employer.
2. Given that art. 2092 *C.C.Q.* deals with renunciation of *the indemnity* to which the employee is entitled in cases in which the notice of termination is insufficient (or in which the manner of resiliation is abusive), it is wrong to conclude that the absence of an equivalent provision in the employer’s favour means that the employer may “renounce” a *notice of termination* received from the employee. The prohibition established in art. 2092 *C.C.Q.* does not imply — as the majority of the Court of Appeal suggest — that otherwise the possibility of renouncing the notice of termination of art. 2091 *C.C.Q.* is the “default” rule.
3. With respect, I am of the opinion that the majority of the Court of Appeal erred in their analysis of art. 2092 *C.C.Q.* by confusing renunciation of the indemnity with renunciation of the notice of termination. This article cannot in fact preclude an employee from renouncing the notice of termination: specific performance cannot be required in the case of an *intuitu personae* contract. It is the monetary equivalent — the indemnity — that is at issue in art. 2092 *C.C.Q.*
   * 1. Notice of Termination or Agreement to Terminate the Contract
4. The distinction between circumstances such as those in the instant case and circumstances in which an employee resigns effective immediately but nonetheless offers to keep working for a certain time should be accepted. This distinction seems to me to have legal consequences, and contrary to the majority of the Court of Appeal, I find that it is more than a [translation] “question of semantics” (Court of Appeal’s reasons, at para. 73). Disregarding this distinction removes some flexibility from the analysis with respect to the termination of the employment relationship. Yes, the notice of termination is, until the notice period (and the contract) expires, an obligation for both the employer and the employee, but the two parties can very well agree, if they so wish, to terminate the contract immediately and thereby avoid the obligation to give notice of termination (see, e.g., *Commission des normes du travail v. Quesnel*, [1999] J.Q. no 6966 (QL) (C.Q.)).
5. An employee who tells the employer that he or she intends to resign effective immediately but who nonetheless offers to remain for a certain time must be aware and accept that the employer could renounce the right to notice of termination: if the employer does indeed want the employee to leave immediately, there is a meeting of minds and notice of termination is unnecessary, since a contract for an indeterminate term can be terminated by agreement of the parties (art. 1439 *C.C.Q.*). In such a case, art. 2092 *C.C.Q.*, which precludes the employee from renouncing his or her right to obtain an indemnity, does not apply, since the termination of the employment does not then flow from a unilateral act by the employer. Nor would the indemnity provided for in ss. 82 and 83 of the *Act respecting labour standards* apply, since the termination of the contract would flow from an agreement between the parties: the employer could not be found to have terminated the contract.
6. Thus, there is an important legal distinction between such a fact situation and the one at issue in the case at bar. I agree with the majority of the Court of Appeal that employees do not always express themselves perfectly clearly in announcing to their employer a decision — which will often have been difficult to make — to quit a job. But that does not eliminate the fundamental difference between the two situations.
   * 1. Practical Considerations
7. I wish to point out that the decision of the majority of the Court of Appeal would have undesirable practical consequences. Employees — who are already vulnerable — would in fact face losing wages simply because they must comply with art. 2091 *C.C.Q.* if they want to terminate their contract of employment for an indeterminate term. Furthermore, such an outcome would be inconsistent with art. 2092 *C.C.Q.*, which expressly prohibits any advance renunciation by the employee of the indemnity for insufficient notice of termination. If some employees were to refuse to place themselves in a situation of vulnerability such as this, the decision of the majority of the Court of Appeal would encourage them to quit their jobs surreptitiously, without giving notice of termination to their employer.
8. This result is of course not to be desired, as the majority of the Court of Appeal in fact wisely and properly acknowledged before suggesting that the legislature take action. Legislative intervention is not needed, however, as such an outcome can be avoided adequately by interpreting the relevant provisions of the *Civil Code* and the *Act respecting labour standards* harmoniously.
   1. Application to the Facts of This Case
9. In this case, the circumstances of Mr. Guay’s resignation were not ambiguous. When, on February 15, 2008, he gave his employer a letter in which he announced that he would be resigning effective March 7, 2008, Mr. Guay did not terminate his contract immediately: rather, he was complying with art. 2091 *C.C.Q.* and announcing to his employer that their contractual relationship would be terminated in the near future.
10. From February 15, 2008 to March 7, 2008, both Mr. Guay and Asphalte Desjardins continued to be creditors and debtors of the obligations flowing from the contract of employment for an indeterminate term, which was to terminate on the latter date. When Asphalte Desjardins asked Mr. Guay to leave on February 19, 2008, it stopped performing its obligations under the contract of employment, namely those of allowing Mr. Guay to perform his work and paying his remuneration (art. 2087 *C.C.Q.*). Mr. Guay, on the other hand, was prepared to perform his work until March 7, 2008. In acting as it did, Asphalte Desjardins terminated the contract unilaterally without giving sufficient notice of termination, thereby defaulting on its obligation under art. 2091 *C.C.Q.*, and this had the effect of triggering the application of ss. 82 and 83 of the *Act respecting labour standards*.
11. In this regard, it is irrelevant that Mr. Guay had already obtained another job and that the new employer had agreed to have him start working earlier in response to the decision of Asphalte Desjardins to advance the date of termination of the contract. As a general rule, absent fraud or conspiracy to injure, a third party — which is what Asphalte Desjardins was in relation to the contract of employment between Mr. Guay and his new employer — cannot take advantage of such a contract so as to be released from his or her own obligations (*Transforce inc. v. Baillargeon*, 2012 QCCA 1495, [2012] R.J.Q. 1626, at para. 75).
12. On the basis of the minimum periods provided for in the second paragraph of s. 82 of the *Act respecting labour standards*, an employee who, like Mr. Guay, is credited with five to ten years of uninterrupted service is entitled to four weeks’ notice if the employer terminates the contract of employment. Mr. Guay himself had given three weeks’ notice, indicating clearly on February 15, 2008 that he would be quitting his job on March 7, 2008. That is what the Commission claimed on his behalf — an indemnity equivalent to three weeks’ notice of termination. Thus, he did not claim the full indemnity provided for in ss. 82 and 83 of the *Act respecting labour standards*.
13. Pelletier J.A. would have awarded an indemnity equivalent to three weeks’ notice on the basis that the parties had reached a meeting of the minds: as of March 7, 2008, the termination of the contract of employment was no longer the result solely of a unilateral act of the employer, but flowed from an agreement of the parties (para. 45). This approach, although intuitively appealing, is problematic insofar as it attributes to the employer an intention to terminate the contract effective March 7, 2008. It is hard to accept this reasoning, given that Asphalte Desjardins clearly wanted Mr. Guay to leave on February 19, 2008.
14. In my opinion, it is preferable to leave the question whether the notice period provided for in s. 82 of the *Act respecting labour standards* and the equivalent indemnity provided for in s. 83 are matters of directive or protective public order for another occasion. The scope of the Commission’s action in this case is clearly defined, and this question was not properly argued in the courts below, nor did the parties raise it or make submissions with respect to it in this Court. I feel that it would in the circumstances be best to refrain from speaking to it.
15. Conclusion
16. For the foregoing reasons, I would allow the appeal with costs. The Commission can claim on Mr. Guay’s behalf an indemnity in lieu of notice of termination equivalent to three weeks’ salary, together with the amount due in respect of annual leave, in accordance with the total amount determined by the trial judge.

*Appeal allowed with costs.*

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