‘Where’s My Pay?’: A Commentary on Wage Forfeiture Clauses for Insufficient Notice

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Abstract

Parliament’s intent in relation to wages protection has been that workers should exercise control over and receive the full benefit of the expenditure of their wages. The development of forfeiture clauses for lack of notice, especially in relation to the modern employment environment of individual contracting, has undermined this principle. The clash between principle and practice needs government attention and some action.

Introduction

Employers frequently deduct money from the final pay of workers who give insufficient notice of leaving their employment.[1] Such deductions are made with the apparently specific written consent of the employee. This consent is usually included in their employment agreement, which appears to be lawful under section 5 of the *Wages Protection Act, 1983*. This is supported by a number of employment law cases (for example, *Portia Developments v Taylor*, *Labour Inspector (Horn) v Valiant Holdings*). While these cases suggest that the deductions may be lawful, there are a number of reasons for questioning the reasonableness of the practice. Principally, the practice does not appear to be consistent with Parliament’s intentions. The deductions are not for the real value of goods or services supplied and workers do not exercise effective control over the deductions. The deductions applied as penalties also do not fit well with the provision in the *Wages Protection Act* that allows the withdrawal of consents to deduct wages, they may promote termination without any notice, and they are regressive in the sense that they recall the operation of the old law of master and servant.

The following commentary provides: very brief outlines of the principles of wages protection evident from parliamentary debates and the development of forfeiture clauses;

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[1] There appear to be no specific figures kept on the number of these cases. The Department of Labour’s national call centre records, however, show that it received nearly 9,000 calls on the issue of deductions from wages from the beginning of October 2000 to the end of September 2004 and a further 1500 calls over the same period that indicated unlawful deductions from wages in general. From our observations and those of our colleagues, a significant proportion of wage deduction problems involve deductions on the basis of short notice.

a discussion of the mismatch between principle and practice; and a brief discussion of the other matters that also suggest that automatic forfeiture for not giving notice is inappropriate. For further information and references, a more detailed paper covering the same issues is also available on the website for *New Zealand Journal of Employment Relations* (see: www.nzjournal.org).

Background

Following on from British precedents, statutory wages protection has a long history in New Zealand commencing in 1891 with the enactment of the *Truck Act*. The current principal legislation, the *Wages Protection Act*, was enacted in 1983. For the immediate purposes of this article, the principles behind the legislation and the New Zealand Parliament's intentions on the matter are summarised briefly below.

The overriding principle throughout has been that workers have a right to the payment of their wages in full. In 1891, William Downie Stewart, a leading proponent of wages protection, stated during the debate on the Truck Bill that the right of 'the workman' was to 'be free and untrammelled as to how, when, and where he shall spend his money.' (NZPD, v.73: 228-229). In 1983, during the debate on the current *Wages Protection Act*, Jim Bolger noted that: 'Nothing is more fundamental than the right of an individual to spend his or her own pay' and that the object of wages protection legislation was to allow 'nobody but the worker himself to determine how his wages will be spent.' (NZPD: 2338-3229).

Alongside this principle, Parliament has debated and allowed various deductions from wages under certain circumstances. At first these were itemised in detail, covering items such as certain tools supplied by employers, food and drink, forms of personal insurance, and relief. Importantly, Parliament expressly prohibited deductions to cover employers' insurance costs and also expressly provided that deductions should relate to the 'real and true' value of goods supplied (Truck Act, s. 19). In 1964, the mechanism of listing items for which deductions could be made was replaced and the current provision whereby workers are generally able to provide written consent for deductions was introduced. The Minister of Labour at the time noted that the legislation was still intended 'to protect the wage worker against exploitation by his employer' but that he was prepared to abrogate this principle 'in some respects'. He was concerned in particular to ensure that workers did not obtain goods from their employers and then demand full payment of their wages. The Minister specifically cited the need to protect isolated farmers who supplied their workers with items such as clothing and tobacco and large retail stores that allowed their workers to purchase discounted goods on staff accounts. The legislation had to enable 'the value of those goods' to 'be deducted from the wages.' (NZPD, v. 340: 2588-2589, 3006-3008).

From 1939, Parliament also placed registered collective awards and agreements outside

the scope of the wages protection legislation. It did this on the basis that trade unions under the industrial conciliation and arbitration system were powerful enough to safely arrange and enforce their own qualifications to the general rule that wages be paid in full without risk to their members.

This last development had particular importance in allowing unions and employers to agree to forfeiture clauses for lack of notice. An early example of the clauses appears in the annual collection of industrial awards and agreements and orders of the Arbitration Court for 1940. The purpose of the clause was clearly stated to 'prevent workers leaving without giving notice'. The agreement, however, also recognised the need to take care with regard to the application of the clause and that the wages of a worker who left without notice for 'good cause' were not to be deducted for the lack of notice. In addition, any disagreements over the application of the provisions were to be referred to disputes committees comprising representatives of the worker's union and representatives of the employer (New Zealand Dairy-Factory Employees Award 1940: 11, 18, 23). From this rare provision in 1940, forfeiture clauses increased and were present in about 80% of awards and agreements by 1983. Typically, they required a week's notice or forfeiture of a week's wages.

The enactment of the *Employment Contracts Act* in 1991 affected the pattern of forfeiture clauses in two ways. Firstly, it produced some reduction in the coverage of the clauses through the development of greater individual employment contracting (including an increased reliance on verbal contracts) not directly derived from registered awards and agreements. The second important development, clearly evident from and associated with the above, is that where forfeiture clauses have been included in written agreements after 1991, this has been much more likely to be within the framework of an individual rather than a collective employment agreement.

With regard to the form of forfeiture clauses in current employment agreements, these are continuing to largely follow the traditional format, excepting that notice periods (with forfeiture of wages for the same period) are tending to be longer. Notice requirements in current employment agreements are often two weeks with some requiring four or more weeks' notice. In one extreme case the authors have seen, the agreement required notice of twelve months or forfeiture of the same in wages in lieu of notice. Not so extreme but still onerous was the provision considered by the Employment Court in *Portia Development v Taylor in 1997*. In this case, the intended arrangement was:

> 'Termination of employment requires (21) days written notice and further requires that you fully train your replacement unless otherwise agreed upon by both parties. .... In the event that proper notice to quit is not given by either party and in accordance with … [the requirements outlined in the previous sentence], the defaulting party will be liable to forfeit (21) days wages.'

A further example of a recent forfeiture clause is cited in *Labour Inspector v Valiant Holdings*. In this case, the employment agreement 'provided for two weeks' forfeiture of wages if no notice were given.'

Both *Portia Development v Taylor* and *Labour Inspector v Valiant Holdings* show that forfeiture provisions are being actively applied. The Valiant Holdings case also shows the need for concern over the current application of these provisions. The Employment Relations Authority found in this particular case that the employer had breached her agreement with the worker, causing the worker to leave without notice, and then deducted for lack of notice. The Authority held that the worker had been entitled to leave without notice and required the employer to pay the worker the wages she had deducted. The following four cases reported to the authors provide further examples of problems and common themes relating to the current application of forfeiture clauses. Because of privacy concerns, the details have been reduced to brief sketches.

Case 1

An office employee, temporarily working in New Zealand, described being penalised for inadvertently giving the incorrect notice. Her written employment agreement required a four week notice period of termination and forfeiture of four weeks' wages in the event that the four weeks' notice was not provided. Apparently unaware of the provision, the worker gave eleven days' notice of leaving and worked the eleven days. She was leaving to return home overseas earlier than she had anticipated. The employer did not pay the worker on termination. The worker, on asking for her missing pay, was shown the four week notice requirement in her agreement. The forfeited four weeks' wages exceeded the final pay and holiday pay she was expecting to be paid on termination. She left New Zealand without receiving any further payment.

Case 2

A worker in a motel reported that she had lost wages after verbally agreeing with her manager to leave her employment without notice. The manager subsequently denied the agreement and implemented the forfeiture clause in her written agreement. Because the change to the agreement had been made informally between the manager and the worker without witnesses, the worker believed she would be unable to show that her contractual obligation to provide notice had been waived. The employee later found that the employer had not found it necessary to re-fill her position.

Case 3

An employee in the fast food industry reported the application of a forfeiture clause after walking off the job because of what he regarded as abusive and culturally insensitive behaviour on the part of his manager. The worker found, on inquiring about the failure of

the employer to direct credit his outstanding wages after the termination, that the employer had deducted two weeks' wages for lack of notice. The two weeks' wages exceeded the sum due on termination, including his final holiday pay. The worker sought advice about his problem and was informed generally of his right to initiate action under personal grievance procedures in the event of unfair and unreasonable behaviour by his employer. The worker expressed concern over the possible legal costs of such action and that he might not be able to provide sufficiently clear evidence to establish his grievance.

Case 4

A worker in a retail outlet operating under a nation-wide franchise left without notice because of continuing delays in the payment of her due wages. Payment was due two days before Christmas. As payment was not made on the due date the worker complained. Wages had still not been paid by Boxing Day, so the employee abandoned her employment and returned to her home town. The employer refused to pay the wages or holiday pay due on the basis of the clause in her employment agreement that provided for forfeiture in the event that the required notice period was not worked out. The worker considered taking an action for breach of contract and a personal grievance against the employer but was also concerned at the possible cost of legal action and potential difficulties associated with travelling back to the town in which the outlet was located for hearings.

The facts of this last case are very similar to those of *Valiant Holdings* and highlight the difficulties of obtaining effective redress for the worker. The inspector's case against Valiant Holdings, however, also indicates that redress may take some time to achieve. The wages in dispute in *Valiant Holdings* were due in September 2002. The Employment Relations Authority made its determination almost two years later. This elapse of time is of course significant, the more so because any delay in receiving expected earnings can be especially hard for workers whose margins for living are small. In part the delay may be an indictment of available disputes resolution processes. It may also be that the black and white terms of the written provision encouraged the employer in her simple approach to the application of the clause and her determined refusal to subsequently budge from her position.

Generally, the authors have been acquainted with a considerable number of reports of deductions for lack of notice, particularly in relation to small businesses and businesses in the rural sector. In a significant proportion of these cases, inappropriate deductions are relatively easy to identify because of the lack of written employment agreements. As written agreements become more common, however, this will probably change. Deciding the accuracy of the application of such clauses may often only follow the more difficult determination of counter-claims of personal grievances and breaches of contracts, sometimes in the absence of willing witnesses. The need to prove a personal grievance or breach of contract to overturn the application of the forfeiture clause tends

to put workers who genuinely have some 'good cause' for leaving at a disadvantage. They have to weigh their prospects of proof, particularly in circumstances where willing witnesses are not readily available, against the costs of time, emotional distress, and legal fees involved in the pursuit of personal grievances or breaches of contract.

In some ways, forfeiture clauses have changed little since they first appeared. They remain first and foremost penalty provisions seeking to deter workers from leaving work without giving required notice. There is no necessary connection between the real cost to the employer of the worker leaving prematurely and the penalty imposed, as illustrated by the motel case above (see Case 2). The wording of the clauses also tends to follow a very distinct and simple pattern. There is a difference, nonetheless, in that the notice periods associated with the forfeiture clauses are tending to be longer and thus more restrictive. The shift presents an interesting contrast to the general, modern push for employers and workers to adopt more flexible market-driven decision-making in their employment relations.

There has also been a significant change in the process of including and enforcing forfeiture clauses in employment agreements. Before 1991, the inclusion of these clauses was subject to union negotiation. Difficulties in relation to the application of the clauses were also invariably subject to union scrutiny, thus limiting the opportunity for employers to take matters into their own hands. For most workers, neither protections now apply. At best, workers on individual employment agreements generally have to negotiate for themselves the inclusion, exclusion, or modification, of the forfeiture clauses and either represent themselves or obtain costly legal advice in the event of a dispute over the application of the clauses. At worst, some workers are faced with 'take-it or leave it' agreements and have no real prospect of excluding forfeiture provisions from their contracts.

The cases above show some of the types of incidents that are arising in this industrial environment. Important themes in these cases include the lack of worker awareness of: how much notice was required under their employment agreements; the consent they had apparently provided within the body of their employment agreement for forfeiture in the event of insufficient notice; and their right to amend their consent to the forfeiture. The cases also indicate sharp practice and unlawful behaviour on the part of employers in applying provisions relating to forfeiture for lack of notice, and the sense among workers of a relative inability to challenge the employer's use of their, the worker's, 'consent'.

Practice versus Principles

The current practice of including and applying forfeiture clauses for insufficient notice in many individual employment agreements does not match Parliament's intentions in relation to wages protection. The clauses do not provide for the recovery of real costs; individual workers are not negotiating or acting from positions of industrial strength or in

a safe labour relations environment; and workers are not exercising decisive control over the application of the clauses.

Parliament has worked from a fundamental principle that workers must receive their entire wages when due, without being subject to the dictates of employers (who have the power when unrestricted to compromise the workers' ability to determine for themselves how to expend their wages). Over time, it has made specific exceptions to the general rule and allowed deductions for the recovery of the actual cost of things received, given certain circumstances. The types of payments contemplated have included payment for the tools to be owned by trades workers, actual premiums for insurance for accidents outside work, and the actual cost of discounted purchases on staff accounts. These examples are quite distinct from an exception to allow standard penalties against employees in circumstances where the cost (if any) to the employer is uncertain. The main purpose of the forfeiture clauses is punitive; the purpose of the exceptions relating to goods or services supplied is recovery of the fair value of the goods and services supplied. Parliament has never shown any intent in its debates on the enactment of wages protection legislation to include the deduction of penalties against workers as an exception to the general principle of wages payment in full.

Parliament excluded industrial awards and agreements from the protective scope of wages protection legislation on the basis of the ability of powerful unions to negotiate and uphold the equity of their agreements within the safety of the now defunct industrial conciliation and arbitration system. Neither the exclusion nor its grounds apply in relation to non-unionised workers in the post-1991 labour market. Today's reality for many un-represented workers is that employers set the initial terms of their individual employment agreements. The terms in fact are often offered on a 'take-it or leave-it' basis. Often workers appear not to recognise the inclusion of forfeiture provisions for lack of notice in the agreements they are offered or the significance of the provisions. Even more often they are not aware of the optional nature of the provisions, that is that they do not need to consent. Of course, this option is largely illusory. To dispute the provision may lead to an employer not employing an applicant worker. This seems inevitable in the case of take-it or leave-it employment agreements. In either case, the agreements are generally completed under at least the suspicion of employer coercion. Similarly, workers are unlikely to be aware (until too late – that is after application of the clause on termination) that they can vary their consent at any time (as the *Wages Protection Act* permits). Even if they are aware, they may be restrained from effecting change for fear of poisoning their employment relationships.

According to Jim Bolger, in 1983 the *Wages Protection Act* was intended to allow 'nobody but the worker himself to determine how his wages will be spent.' As discussed above, this intent is not matched by the reality of the inclusion of forfeiture clauses in individual employment agreements. It is also not matched in terms of the practical application of the clauses. Forfeiture clauses are usually very simply framed. This simplicity, however,

is at odds with the often complex circumstances of termination. The worker is not necessarily in the wrong, for example, because he or she departs from their employment without proper notice. As indicated in early awards, such terminations may be for, or in part based on, a 'good cause' (for example in cases of constructive dismissals) and in such circumstances an employer may have no or very limited right to any damages under law in relation to the early departure of worker, and no or little prospect of a court upholding a decision to implement a penalty against the worker. As *Valiant Holdings* and various other cases set out above illustrate, employers step into the gap between the simply phrased forfeiture clause and the often more complicated circumstances of an employee's termination and determine for themselves whether or not the clause applies. To return to Bolger's statement that the worker must have the sole right to determine how his wages are spent and the reason for his statement, decisive control by a worker is exercised in the explicit consent of the worker to deduct a specific and fair sum for some thing received, as in the case of the worker's voluntary decision to pay union fees for union services. It is not decisive control by the worker where an employer effectively obtains the option to decide to deduct a standard penalty with or without regard to any complicating circumstance relating to the employee's termination, and subsequently acts on this option.

Parliament's stated intent is that workers' wages should be protected from the prospect of the interference and control of the employer. It is grounded in a fear that the employer may use his or her ability to control the worker's wage and thus deprive the worker of his earnings to the employer's own advantage. However, employers are determining the inclusion and application of forfeiture clauses in individual employment agreements. The penalties involve the deduction of monies from wages earned by the worker and the sum deducted goes to the employer. Such arbitrary penalties of fixed value applied by employers in often problematic circumstances with no clear regard to actual damages do not match Parliament's intentions. At best, Parliament has indicated that employers should be able to recover the fair value of goods and services they have provided to the worker, as equity would allow, on the informed written consent of the worker. Chilwell J noted in 1978 in the wages protection case, *McClenaghan v Bank of New Zealand*, that the employer should not be 'judge, jury and enforcement officer in his own cause'. In the case of forfeiture clauses, the employer is often the rule giver, judge, jury, and enforcer.

Additional Important Matters

To justify deductions for insufficient notice, employers make a number of arguments. The following briefly considers what appear to be the three most common justifications.

Employers argue that there should be symmetry in the treatment of employers and workers. In particular they note that they are required to give notice to workers (excepting in cases of summary dismissals associated with misconduct) and to provide payment in lieu of notice if proper notice is not provided. The provision of a standard notice period by

employers, or payment in lieu of the same standard notice is not only generally accepted as fair and reasonable practice in employment relations but it is also made an explicit term in many written employment agreements. Employers argue that if they have to meet these requirements then workers should be required to do the same or similar.

Symmetry and a general equality of treatment between employers and workers may be a virtue. This is not easily achieved, however, and certainly does not directly stem from simply placing similar penalty clauses against workers and employers alongside each other in employment agreements. Even the perfect and fair application of penalties in cases of 'bad' workers and employers is unlikely to produce any general equality of impact on workers and employers. The loss of two weeks' wages will likely hurt workers dependent on earned income more than it will hurt employers, who generally have greater financial resources. For a similar reason the loss of work will likely be more damaging to a worker than the loss of a worker to an employer. A general equality of penalty in such circumstances would seem to be unfair. The issue at the heart of wages protection is also important here. The fundamental concern underlying the development of wages protection legislation is a strongly perceived asymmetry in the power of workers and employers. As keepers of the purse, employers have more effective power over the implementation of notice provisions than workers (at least those who are not represented by powerful unions). In disputed cases about costs to either employer or employee on termination, the employer as the payer either of wages due or wages payable in lieu of notice, is always in a position to defeat a worker by withholding payment. The intent of wages protection legislation is to limit this power.

In reality, the argument for the fairness of the same notice and forfeiture clauses applying to employers and workers is crude and the clauses do not achieve a genuine equality of treatment for employers and workers. It is also worth emphasising that wages protection is not designed to stop employers from obtaining fair damages from workers. It should, however, prevent employers from using their possession of wages not paid to remedy damages which they decide are owed without submitting their claim to an objective authority, such as a court. Again, the intent of the legislation includes the stopping of the employer from being judge, jury, and enforcer in his or her own case.

A second argument advanced is that workers need to be subject to an automatic penalty because they may escape a lawsuit for damages by moving to an undisclosed address or by spending their wages before damages are awarded and can be enforced. To accept this, however, is to accept discrimination against workers as a special category of debtors. The possible movement and the inability to pay of any debtor at the time the debt is determined (which, as above, should not be by the employer on termination) are normal hazards of debt recovery. It is also not unknown for employers to not pay wages by reason of bankruptcy and their own change of address.

Third, employers argue that the absence of an automatic penalty means that they must

take the more time consuming and costly step of pursuing the matter to the courts, if they are to recover their due damages. This is, however, largely an argument for the convenience of employers over equity for, or the convenience of, workers. The interest of the employer is served by an automatic penalty but at the likely expense of the worker's right to pay only fair damages (if any). Further, the inconvenience of initiating court action falls on workers if they wish to pursue a change in the status quo following the imposition of automatic penalties.

The issue of forfeiture clauses also raises several other matters. These are: the incongruity of penalty clauses that may be arbitrarily rescinded (without detriment) by those who stand to be penalised; a public policy consideration with respect to the deductions of a standard penalty for varying insufficiencies of notice; a similarity between the objects of forfeiture clauses and nineteenth century master and servant law; and the advantage to the employer of a worker leaving without notice.

At least nominally, workers are able under the *Wages Protection Act* to freely give and withdraw written consent to any deductions they choose. This provides an understandable convenience for workers in organising the payment of fees and debts within the framework of their personal and family budgets. Such voluntarism, however, is less easy to comprehend with respect to forfeiture clauses that penalise workers for lack of notice. Workers appear to have little to gain by agreeing to the clauses which contain only risk to their wages. A forthright informed worker who initially agrees to a forfeiture clause is also able to easily neutralise the punitive effect of the clause by withdrawing consent. In other words, the worker seems to be in a position to allow the penalty clause to subsist merely as long as it poses no threat to him or her. In practice, forfeiture clauses only seem to work if workers are ignorant of their statutory right to agree to, not agree to, vary or withdraw consent to such deductions, or they are intimidated by their circumstances into not exercising the right.

A public policy consideration seems to exist in relation to the apparently common view that the forfeiture clauses provide for a standard deduction regardless of the degree of insufficiency of notice. To illustrate: in the case of the requirement to provide two weeks' notice or forfeit two weeks' wages, an employer will usually deduct two weeks' wages regardless of whether the worker provides one week's notice or gives no notice at all. The effect of this interpretation is to strongly encourage those who may want or need to give less than the required notice, and who have little holiday pay at stake, to give no notice at all. In such cases, the worker is unlikely to receive any final pay on termination regardless of how much notice is worked short of the required notice. It is possible that an employer may seek the balance of the forfeiture, if any remains after calculating the final pay, but this does not usually occur.

Forfeiture clauses also recall the rejected historical requirement of specific performance under master and servant law. The law was widely enacted and enforced against workers

throughout Britain and its colonies and former colonies through to the nineteenth century, but never enacted in New Zealand. Under the master and servant statutes, workers were required to work out full terms of their employment including often long periods of notice. Failure to serve out required terms of service was generally punishable by severe penalties including imprisonment. Proposals for a master and servant statute were considered by the New Zealand Parliament in 1864 and 1865 and rejected. Participating prominently in the debates in 1865, James Fitzgerald, the Minister of Native Affairs and one of the Parliament's leading opponents of the measure, stated that 'In the earlier times of history the idea of slavery had crept into all the relations of the servant with the master; but, as civilisation advanced, that idea of compulsory service had gradually been eliminated'. He further argued that 'any breach of agreement to labour should be dealt with as a civil action' (see Henning 2004: 36-50, 130, 222-223, 329-333).

Edward Gibbon Wakefield, the most prominent of the early promoters of the organised European colonisation of New Zealand and a strong promoter of 'free labour', also included a powerfully pertinent argument in *A Letter from Sydney* for not retaining unhappy workers any longer than need be. He argued that an employer who sought to make a reluctant worker remain as an employee ran serious risks in that the worker 'might contrive to do less than' the value of his wages, and worse - 'and this is no uncommon case – secretly do more than' the worth of his daily wages 'of injury per day to his master's property.' (see Lloyd Prichard 1969: 109). In such a case, far from damaging an employer, the employer could be rewarded by a worker's termination with insufficient notice.

Conclusions

There are a number of reasons to change current practice in relation to forfeiture clauses for insufficient notice. The practice is inconsistent with Parliament's stated intent. The clauses go beyond dealing with actual true debt and involve employer control over the expenditure of workers' wages to the detriment of the rights and interests of workers. Worker difficulties with forfeiture clauses are also exacerbated by the reduced level of unionisation in New Zealand which has deprived workers of strong and informed representation since 1991. Naturally, many individual workers have little expert knowledge of employment law (including the provisions of the *Wages Protection Act*), and are generally unable to match the industrial bargaining position of employers in relation to the establishment and enforcement of the terms of employment agreements. The clauses are also: functionally inconsistent with the terms of the *Wages Protection Act*; against public policy; and regressive.

The government in particular can play a significant role in securing change to this current practice. The Employment Court and the Employment Relations Authority have both indicated that forfeiture provisions in relation to the failure of workers to provide sufficient notice of termination are enforceable. If this is so, it seems necessarily equitable that both parties are fully informed of their rights and obligations in relation to the provisions.

As a first step, this should involve ensuring parties are fully aware of the inclusion of forfeiture provisions in their written employment agreements. This may be achieved by ensuring such provisions are specifically acknowledged by workers by asking them to initial the appropriate section of their agreements. Alternatively and perhaps making the fact of consent more certain, written consent could be provided separately from the main employment agreement. Possible ambiguity in the meaning of 'forfeiture' should also be clearly rectified. Further, employees must be advised of their right to withdraw their consent to deductions under the *Wages Protection Act.* This might well be set out as a plainly worded note to a separate consent document. Given the hardship of losing immediately anticipated earnings, it is also important that workers understand and are given immediate and affordable access to disputes and personal grievance resolution services where there is any dispute over the fairness of the application of forfeiture provisions by the employer. Another matter that might be considered is an increase in the certainty of penalties for the misuse and misapplication of forfeiture provisions, thus an increased deterrence against such action. For government these issues may entail action to amend the requirements of the *Wages Protection Act*, changes to its institutional response to complaints of unfair deductions on termination, and would certainly entail greater effort in educating workers as to their rights under the Act and under employment law generally.

These suggestions of course deal with the amelioration of the provision and application of forfeiture clauses. The overall argument of this paper, however, is that forfeiture provisions in relation to insufficient notice are inappropriate and should not be lawful. This is not to deny that employers may suffer damages as a result of the action of employees ending their employment without sufficient notice. Nor does it deny employers' legal recourse to recover their damages. These will always be available to employers and workers for all types of debt and can be remedied through various disputes procedures and before various disputes tribunals, authorities, and courts. The issue is simply that neither penalties nor damages should be recovered through arbitrary self determination and self enforcement by employers. In the circumstances, the best change to current practice may be secured by an amendment to the *Wages Protection Act* that makes forfeiture clauses clearly unlawful.

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