

DOES COVID-19 FAVOUR A LONGER REASONABLE NOTICE PERIOD? ANOTHER COURT SAYS *PROVE IT*

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Recent court decisions have provided guidance about the impact that the COVID-19 pandemic may have on the reasonable notice period owed to dismissed employees. The most recent decision, *Marazzato v. Dell Canada Inc.*,^[1] confirms that employees seeking a longer period of notice must provide actual evidence of any alleged “economic downturn” caused by the pandemic.

Background

The employee in this case was a top executive for direct sales in Canada. He had nine employees reporting to him, had been employed for 14 years, and was 59 years old when his employment was terminated without cause in March 2020. In his last three years of employment, he earned \$464,580 (in 2017), \$466,502 (in 2018), and \$465,695 (in 2019). At the summary judgment motion, the employee sought a 20-month reasonable notice period. The employer argued that 16 months was more appropriate.

The court was asked to consider the impact of the alleged economic downturn caused by the COVID-19 pandemic. Similar to *Iriotakis v. Peninsula Employment Services Limited*,^[2] the court declined to give weight to the pandemic in assessing reasonable notice. In *Iriotakis*, the court focused on the uncertainty, at the time of termination, of the impact that the pandemic would have on the economy. However, in *Marazzato*, the court focused on the lack of evidence put forth by the employee, who was unable to clearly demonstrate how the pandemic affected his ability to obtain alternative employment.

Without actual evidence, the court said that it was not appropriate to speculate about the impact of the pandemic:

“I was also asked to take into consideration the economic downturn caused by the COVID pandemic as part of this factor. This would be on the basis there would be extra difficulty in finding and obtaining a new position. In this regard, I would note no evidence of same was presented to me. Further, it would not be appropriate to speculate on that submission without evidence. [...] Overall, I would conclude this factor does not favour a longer period of notice.”

The court went on to note that the employee's skill set may actually have become more desirable during the pandemic, given the increased reliance on computers for access to the internet and remote practices. In the result, the court found 18 months to be the proper notice period.

Takeaways for Employers

The court's decision in *Marazzato* is another positive development for employers who have had to make difficult decisions during the pandemic. It demonstrates that dismissed employees must tender actual evidence of how the pandemic has impacted their job searches, and will not be able to rely upon a general economic downturn in order to receive an enhanced notice period. The court's reasoning also reinforces the "balanced approach" put forward in *Iriotakis*, where it was held that the pandemic should be just one factor used to determine reasonable notice periods, rather than dominating the analysis.

[1] 2021 ONSC 248.

[2] 2021 ONSC 998.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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