

QUÉBEC EMPLOYERS CANNOT WAIVE EMPLOYEE'S NOTICE OF RESIGNATION – SUPREME COURT OF CANADA

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In Québec, employment law requires that the employer provide reasonable notice or indemnity in lieu of notice when terminating an employee without cause. Such obligation also applies to an employee who is required to give reasonable notice of resignation. Until recently, the courts refused to recognize the employers' right to waive the notice of resignation. Consequently, an employer who asked an employee to leave prior to the end of the notice period was deemed to terminate such employee without cause and had to pay his or her salary until the end of the notice period or provide a minimum compensatory indemnity in accordance with the *Act respecting labour standards*.

However, this well established principle was overturned by the Québec Court of Appeal in 2013 (*Asphalte Desjardins inc. c. Commission des normes du travail* [1]). The facts of the case were simple. The employee had given a notice of resignation to his employer three weeks prior to leaving. The employee was leaving to work for a competitor. Instead of waiting until the end of the three-week period, the employer asked him to leave immediately and refused to pay severance. According to the Québec Court of Appeal, the employer had the right to waive the notice of resignation. In such case, the resignation became effective immediately and did not entail an obligation to pay severance.

On July 25, 2014, the Supreme Court of Canada overturned the decision of the Québec Court of Appeal and clearly reiterated Québec employers' obligation toward an employee who gives a notice of resignation.[2] The employer cannot waive the notice of resignation. If the employer prevents the employee from working and refuses to pay him or her wages during the notice period, it is "terminating the contract" and requires a notice of termination or indemnity in lieu of such notice:

"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." [3]

The Supreme Court's reasoning in this case is in line with the traditional approach of the Québec courts in the cases preceding the judgment of the Court of Appeal. It also appears to be in line with the approach adopted by common law provinces. In the Ontario leading case on this matter [\[4\]](#), the Ontario Court of Appeal held that the employment relationship was not terminated by the employer's waiver of the employee's notice of resignation. If the employer wished to terminate the employee prior to his or her effective date of resignation, it was required to provide the employee with reasonable notice prior to his or her termination or compensation in lieu thereof.

The key point to be retained from the *Asphalte Desjardins* matter by Québec employers is that they are not allowed to waive the employee's notice of resignation. While many employers will chose to deny access to the workplace to an employee after he or she submitted notice of resignation, such decision will entail an obligation to pay the employee's wages for the notice period, provided such notice was given in reasonable time, or to pay indemnity in lieu of notice in accordance with the *Civil Code of Québec and the Act respecting labour standards*.

by Robert Boyd

¹ *Asphalte Desjardins inc. c. Commission des normes du travail*, 2013 QCCA 484.

² *Quebec (Commission des normes du travail) v. Asphalte Desjardins inc.*, 2014 SCC 51.

³ *Ibid.* para. 44.

⁴ *Oxman v Dustbane Enterprises Ltd*, [1988] O.J. No. 2067 (ONCA).

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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