

Contrasting Wrongful Dismissal Awards: Lessons For Employers



Two recent court decisions illustrate the wide range of possible outcomes in wrongful dismissal claims in Canada.

In *Gent v. Askanda Business Services Ltd.*¹ (*Gent*), a 64-year-old employee with 30 years of service alleged that he had been wrongfully dismissed and brought a claim for reasonable notice. However, despite the employee's long service and advanced age, the British Columbia Supreme Court only awarded the employee, Mr. Gent, damages for 6 months' pay in lieu of notice of termination of his employment based on the employee's stated intention that he was going to retire when he reached age 65.²

By way of contrast, *Lischuk v. K-Jay Electric Ltd.* (*Lischuk*) is a recent wrongful dismissal case decided by the Court of King's Bench of Alberta in which the Court awarded the employee, Mr. Lischuk, who was 58 years of age and had 34 years of service, over \$1.5 million dollars in damages for 26 months' pay in lieu of notice of termination of his employment, despite the fact that Mr. Lischuk had not taken any steps to mitigate his damages by seeking new employment and had essentially retired after being terminated.³

Two employees, each with more than 30 years of service, neither of whom works after being let go end up with wildly different outcomes. What distinguishes them from one another and how can employers apply the lessons from these decisions?

First, the circumstances leading up to a termination matter. In the *Gent* case, the employee had been temporarily laid off and not recalled in a timely manner, which allowed him to take the position that he had been constructively dismissed. The evidence also showed that Mr. Gent clearly intended to retire at age 65. The Court relied on these unequivocal statements to find that even if the employer had not terminated Mr. Gent's employment, he would have retired when he turned 65 (which he did six months after the termination date).

However, Lischuk had expressed no such interest in retiring and, in fact, gave evidence that he was working in his "dream job" in a company that he believed he had helped to build. The Court took special note of the employer's reasons for terminating Mr. Lischuk's employment when assessing his entitlement to reasonable notice; specifically, that Mr. Lischuk had an "old school" approach to management that was no longer a fit for the company or the industry. The Court held that this reflected a significant impact on Mr. Lischuk's ability to find new work since there

were only two other companies that were comparable to the employer, noting that an “old school mentality would be difficult to sell to new employers.”⁴

Second, Courts will take special notice of the degree of specialization that occurs when an employee essentially spends their whole career with one company. In the *Lischuk* case, the Court found that the employee’s skills and experiences were limited only to the employer’s business and could not be easily transferred. Ultimately, Mr. Lischuk’s lack of transferrable skills coupled with the specialized nature of his work were factors that led the Court to award him a longer notice period.

Finally, though not a central issue in either the *Lischuk* case or the *Gent* case, it is worth noting that the termination of a long-service employee who is of an advanced age can result in claims for additional damages against the employer for age discrimination. Having documented business reasons for terminating such employees can be important evidence for an employer when defending against such claims.

Given the significant potential liability associated with the termination of a long-service employee of an advanced age, prudent employers will seek legal advice prior to conducting the termination. Advance planning, documentation collection (including the employer’s reasons for termination, employee retirement plans, and transition opportunities for the employee), a clear understanding of the employee’s termination entitlements, and the presentation of a fair separation package at the outset can significantly limit an employer’s potential liability. Often, if a reasonable offer is made, the employee will choose to accept it, or negotiate, rather than incur the costs, delay, and uncertainty of going to court.

Footnotes

1. 2025 BCSC 1278

2. For a more detailed discussion of the facts in the *Gent* case, please see our Insight: [BC Court Awards 30-Year Employee Only Six Months’ Notice Due to Intended Retirement](#)

3. For more information about this decision, see our insight: [A First in Alberta: Employee Awarded 26 Months of Reasonable Notice](#)

4. Para 25.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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