

Supreme Court Of Canada Rules On The Obligations Of Québec Employers Who Receive Termination Notices From Employees



On July 25, 2014, the Supreme Court of Canada (the “SCC”) rendered an important decision for Québec employers and employees bound by contracts of employment for an indeterminate term. In *Québec (Commission des normes du travail) v. Asphalte Desjardins Inc.*, 2014 SCC 51 (“*Asphalte Desjardins*”), the issue before the SCC was whether an employer who receives a notice of termination from an employee can legally terminate the employment contract before the expiration of the notice period provided by the employee without, in turn, having to provide reasonable notice or an indemnity in lieu of such notice. The SCC answered the foregoing question in the negative.

The facts in *Asphalte Desjardins* were straightforward. The employee provided his employer notice that he would be terminating his contract of employment three weeks later. Three days after receiving the employee’s notice and after the employer was unsuccessful in convincing the employee to stay, the employer decided, without providing any notice or indemnity, to terminate the employee’s contract of employment the next day. The Appellant, the Commission des Normes du Travail (Québec’s Labour Standards Commission) obtained, on the employee’s behalf, an indemnity equivalent to the three-weeks’ notice period sought in the employee’s notice of termination.

In short, the SCC held that Québec employers cannot “waive” or “renounce” employees’ notices of termination. A contract of employment for an indeterminate term is not terminated immediately upon notice being provided. Rather, the contractual relationship continues to exist until the date specified in the notice. Accordingly, even after one party provides notice, both parties must continue to perform their contractual obligations until the notice period

expires, and this includes the obligation of the receiving party to provide its own reasonable notice if it seeks to advance the date of termination.

Take-aways from the SCC's decision are the following:

- **From the employer's perspective:** where an employee provides a notice of termination, the notice period chosen by the employee cannot be "imposed" on the employer. The employer: (a) can deny the employee access to the workplace during the notice period, but in such case, it is unilaterally terminating the contract and must pay the employee's wages during the notice period; or (b) can choose to advance the date of termination and terminate the contract by giving reasonable notice of termination or paying a corresponding indemnity.
- **From the employee's perspective:** where an employee receives a notice of termination from his/her employer with a period to be worked (as opposed to an indemnity in lieu of notice) and stops working prior to the expiry of the notice, he/she breaches his/her contractual obligations and could be liable for damages.

The foregoing must be distinguished from cases where: (a) a party terminates a contract of employment for a serious reason, in which case, notice does not have to be provided; or (b) an employee resigns effective immediately but nonetheless agrees to keep working for a certain period of time. In the latter case, the employer may renounce its right to notice, and if it wants the employee to leave immediately, there would be an agreement between the parties and not a unilateral termination of the agreement by the employer. As such, the employer would not be required to compensate the employee.

The decision in *Asphalte Desjardins* is consistent with the position adopted by the courts in Ontario to the effect that an employer who wishes to terminate an employee prior to the date of the employee's notice of resignation must provide the employee reasonable notice or pay in lieu thereof.

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