

The Duty To Provide Reasonable Notice Of Termination Cuts Both Ways



It is a relatively little-known fact to non-lawyers that just as employers are required to provide employees with reasonable notice of termination, employees are likewise required to provide employers with reasonable notice of resignation. A 2016 Ontario Superior Court of Justice case has recently confirmed same.

In the case of *Gagnon & Associates Inc. v. Jesso et al.*, the company sought damages from employee Barry Jesso (“Jesso”) for having resigned his employment without notice. Jesso had been employed by Gagnon & Associates Inc. (the “Company”) for 10 years and at the time of resignation was responsible for approximately 30% of the Company’s annual HVAC sales. His colleague Patrice Comeau, also a defendant in the litigation, was responsible for a further 30% of the Company’s annual sales. In 2006 Jesso and Comeau approached one of the Company’s competitors and entered into an agreement with it to open a satellite office. It was at that point that they both provided the Company with their notices of resignation.

The court stated that the notice of resignation period required by an employee will be a function of the employee’s position with the employer and the time that it would reasonably take the employer to replace the employee or otherwise take steps to adjust to the loss of the employee. The court then made a finding on the evidence that although Jesso was not a fiduciary employee, a reasonable notice of resignation period was 2 months given that: (i) Jesso was responsible for a significant percentage of the Company’s sales; (ii) the market for experienced HVAC salespeople was limited and it would likely take approximately 2 months to find a replacement; and (iii) Jesso knew that the Company’s other senior salesperson was resigning on the same day, thereby putting the Company in a very difficult position.

It is important to bear in mind that where an employee has signed a proper employment agreement which sets out a notice of resignation period, the employee will probably be bound by that contractual provision. Likewise, for employees who work in jurisdictions that have employment standards legislation containing a notice of resignation provision, they may be bound by same. Finally, there is a long line of separate case-law which confirms that fiduciary employees have obligations to provide reasonable notice of resignation to their employers. That said, the *Gagnon v. Jesso* case is a helpful reminder that even when there is no contract, no legislation and no fiduciary relationship, an employee may still owe his or her employer a reasonable notice of resignation period.

The case of *Gagnon & Associates Inc. v. Jesso et al.* can be found here: <https://www.canlii.org/en/on/onsc/doc/2016/2016onsc209/2016onsc209.html?autocompleteStr=gagnon%20%26%20associates&autocompletePos=3>.

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