

# The Employer's Rights And Obligations Upon Receiving An Employee's Prior Notice Of Resignation: The Supreme Court Spells Them Out



In its 2013 decision in *Asphalte Desjardins Inc. v. Commission des normes du travail*, the Québec Court of Appeal held that an employer had the right to waive the benefit of the notice of termination period given by an employee who intended to resign.

The circumstances of the case involved the resignation of a project manager for the company *Asphalte Desjardins*, who had decided to join a competitor. The employer elected to waive the benefit of the advance notice of termination given by the employee and asked him to leave the company several days before the expiration of the period specified in the prior notice. The provincial labour standards board, the *Commission des normes du travail* (the “Commission”) consequently claimed, on the employee’s behalf, the three weeks’ salary to which he was entitled by virtue of his prior notice of resignation.

## **The Court of Québec’s decision**

At first instance, the Court of Québec ruled in favour of the Commission, concluding that the employer had to respect the date chosen by the employee as his last day of work and thus could not terminate his employment on an earlier date without paying him the indemnity to which he was statutorily entitled.

## **The Court of Appeal’s decision**

The initial decision was overturned by the Court of Appeal, in a judgment drafted by Justice Marie-France Bich on behalf of the majority, with a dissenting opinion by Justice François Pelletier.

The Court of Appeal concluded that the protection afforded by Article 2091 of the *Civil Code of Québec*, which obliges each party to an employment contract with an indeterminate term to give reasonable notice to the other party if it intends to terminate the employment relationship, is for the sole benefit of the party receiving the notice, as it allows that party to mitigate the inconvenience resulting from the termination<sup>1</sup>. According to that logic, in such a situation there is no reciprocal obligation to continue the contractual relationship during the notice period and the

employer was thus entitled to waive the benefit of the prior notice period and terminate the employment relationship immediately without having to indemnify the employee.

## **The Supreme Court of Canada's decision**

Canada's highest court disagreed with the Court of Appeal and overturned its decision, agreeing instead with the Commission's argument that an employer cannot terminate the employment relationship before the expiration of the period stipulated in an employee's notice of resignation without assuming the financial consequences by paying the statutory indemnity.

Contrary to the Court of Appeal, the Supreme Court found that an employment agreement is a synallagmatic contract, i.e. one that creates obligations to be performed by both parties.

Justice Richard Wagner, writing for the Court, points out that the obligation to give prior notice pursuant to Article 2091 CCQ applies to both the employer and the employee. He also indicated that the employer must respect Quebec's *Act respecting Labour Standards*, particularly, in this case, sections 82 and 83 thereof, which specify the length of the applicable notice period and the amount of the indemnity in lieu of such notice.

Justice Wagner added that a contract of indeterminate duration of an employee who gives notice of resignation to the employer terminates upon the expiration of the period specified in the notice, not on the date the notice is given. Each party must accordingly fulfill their obligations until that period has expired. Consequently, an employer wishing to terminate the employment relationship before the expiration of that period finds itself in a situation where the roles are reversed. The Court has held, in other words, that it is the employer in such situations who is terminating the employee's job and therefore must compensate the latter in lieu of giving prior notice of termination, in accordance with Article 2091 CCQ.

The Court explained the logic underlying this by pointing out that an employer who waives the notice period is in effect preventing the employee from working and depriving him or her of the remuneration that otherwise would have been earned by the end of the notice period.

## **Conclusion**

The Supreme Court of Canada has conclusively ended all debate on this issue. Henceforth, upon receiving an employee's notice of resignation, an employer wishing to end the employment relationship before the expiration of the period specified in the notice must pay the employee the indemnity in lieu of prior notice provided for in section 82 of the *Act respecting Labour Standards*, calculated in accordance with the employee's number of years of service.

Last Updated: September 3 2014

Article by Marilyn Emery and Kassandra Church