

The Escalating Reasonable Notice Period: What does it mean for Employers, and who are these “Exceptional” Employees?



Contributed By: Tara Vasdani

The Ontario Superior Court of Justice has released yet another decision with respect to the reasonable notice period, and what it seems to suggest is a trend in escalating awards for aged, but loyal employees.

In [*Dussault v. Imperial Oil Limited, 2018 ONSC 1168*](#), Justice Favreau awarded 26 months' notice to two dismissed employees, aged 63 and 57, respectively, with 36-40 years of experience and always working for the same defendant-employer. While the trend in reasonable notice period awards over the past several decades has seemed to suggest that a “cap” on reasonable notice exists at 24 months, the Ontario courts have signaled a rise in awards exceeding this “cap” – however, in analyzing the caselaw, it becomes evident that this exceeded period is narrowly awarded to employees who are of a certain age, with over 24 years of experience, and having always remained employed by the same employer for the majority of their entire adult working lives.

Therefore, as a result of the trend, the ultimate question for employers, and employees, is this: what does this mean for companies who are subject to an overwhelming workforce of baby boomers all on the edge of retirement, and the company's plans for reorganization? How does the company essentially get rid of “the old, and in with the new?”

The Ontario courts seem to categorize employees of a certain age with a significant level of experience (+24 years) and loyalty to their employers as those being awarded excessive reasonable notice periods of 26 months and above. However, these characteristics attaching to employees will occur for employers all at different times. Therefore, companies are left at a standstill: do they wait for their employees to reach the age of retirement, and leave the company on their own? Or, do they succumb to the growing caselaw, and begin to pay out excessive notice periods (and engage in inevitable litigation) to their aging employees?

Ultimately, the solution, in my opinion, is this. Given the Court's trend in awarding excessive reasonable notice periods to aged, loyal, and experienced employees – it would be mindful for an employer to begin to engage its aged workforce in programs or

training which would keep them relevant, useful, and (while of course not fundamentally changing their employment contracts) trendy. How to do so? Look to your policies, and your lingering feelings for termination: is there something constructive that can be done to keep this employee working hard and remaining relevant until retirement? I bet there is.

 Tara is an Associate Lawyer at MacDonald & Associates, an employment law firm in Toronto specializing in Canadian Employment Law for both employees and employers.

Tara is an experienced, innovative litigator whose early success has brought her national recognition across the legal industry. Despite only being called to the Bar in 2017, Tara argued her first trial in December 2017, and by January 2018 was known as a 'visionary' and 'innovator' throughout the industry.

In January 2018, Tara was renowned as the [first Canadian lawyer to serve a Statement of Claim](#) using the social media app, Instagram. Her innovative approach to law was quickly endorsed by the legal community, and she was featured in Canadian Lawyer Magazine, Above the Law, Globe Legal Post, Droit-Inc and on CBC, as well as profiled on the front page of the Law Times.