

## BC Court Awards 30-Year Employee Only Six Months' Notice Due to Intended Retirement

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As most employers are aware, in the absence of an enforceable termination clause, employees will be entitled to reasonable notice or pay in lieu of notice on termination. However, this notice entitlement is not determined by a strict formula, but rather depends on a number of factors including the employee's age, length of service, position, and the availability of similar alternative employment. A long-term employee nearing retirement age in a specialized role can often receive a very lengthy period of notice. Indeed, courts have even eliminated the onetime 24-month ceiling on reasonable notice awards in these circumstances.

Despite this potential for lengthy notice awards, in the recent decision in [\*Gent v. Askanda Business Services Ltd.\*](#), the Supreme Court of British Columbia awarded only six months' pay in lieu of notice to a 64-year-old employee with 30 years of service due to the employee's intention to retire in the near term.

### Background

Bradley Gent had worked for Askanda Business Services Ltd. since 1987, servicing draft beer equipment at pubs and restaurants. He was the sole employee for many years and earned approximately \$29,000 annually in the three years prior to the COVID-19 pandemic.

In March 2020, Mr. Gent was temporarily laid off due to pandemic-related shutdowns. He never returned to work. Askanda claimed Mr. Gent had resigned during a phone call in May 2020, in which he stated that he was moving and "might as well retire." Mr. Gent denied resigning and later sued Askanda for wrongful dismissal.

### Key Findings

While the Court did not find either the employee or employer's evidence to be entirely reliable, it ultimately made the following findings:

#### 1. There Was No Clear Resignation

While the Court concluded that Mr. Gent likely did say "he might as well retire" during a call with Askanda in

May 2020, he did not clearly and unequivocally resign. His statement was ambiguous and in this circumstance it was incumbent upon Askanda to inquire further as to Mr. Gent's intentions, which it failed to do.

## **2. Gent Was Constructively Dismissed**

Since Mr. Gent had not resigned, Askanda's failure to recall Mr. Gent after the statutory layoff period ended constituted constructive dismissal. Accordingly, Mr. Gent was entitled to reasonable notice at common law.

## **3. Gent's Retirement Plans Limited His Reasonable Notice Period**

The Court held that a number of factors supported a longer than normal period of notice in Mr. Gent's case, including his age at the time of termination (64), his length of employment (30 years), his "somewhat niche" work experience, and the reduced demand in the entire beverage sector in 2021–2022. However, during his testimony Mr. Gent was emphatic that he intended to retire when he was 65 and could qualify for CPP and OAS. While this evidence was given to rebut the suggestion that he had expressed an intention to retire during the May 2020 call with Askanda, ultimately the Court concluded that Mr. Gent's firm plans to retire when he turned 65 precluded him from receiving additional pay in lieu of notice thereafter. Accordingly, the Court awarded him six months of pay in lieu of notice.

## **Takeaways for Employers**

This decision provides a useful example of the fact that an employee's intention to retire can serve to limit an employer's notice obligations in appropriate circumstances. While a wrongfully dismissed employee is entitled to be put in the position the employee would have been in if appropriate notice of termination had been given, the employee is not entitled to be put in a better position.

However, employers intending to rely upon an employee's resignation must be cautious: to be effective, a resignation must be clear and unequivocal. Ambiguous or vague statements about retiring will not suffice, and in such cases employers should, at a minimum, make further inquiries to confirm an employee's intentions.

For assistance in advising on employee resignations or terminations, please contact a member of the Cassels [Employment & Labour Group](#).