

## EMPLOYERS' ALERT

### Is There a Cap on Reasonable Notice?

How many times have you asked yourself whether there is a maximum amount of reasonable notice an employee is entitled to receive at the time of dismissal? This question must continue to confuse because the issue has recently been considered by our own Ontario Court of Appeal.

In *Lowndes v. Summit Ford Sales Ltd.*, the 59 year-old General Manager of a car dealership was fired after having worked for the company for 28 years. At trial, he was awarded 30 months of reasonable notice plus an additional four months to reflect certain bad faith conduct engaged in by his employer at the time of his dismissal. The employer appealed, and the Ontario Court of Appeal reduced the base notice period of 30 months to 24 months.

#### What does this mean for employers like you?

There are a number of principles we can extract from *Lowndes* which employers may find helpful when determining reasonable notice periods:

- Determining the period of reasonable notice is an art, not a science. In other words, there is no universal formula for notice;
- In each case, trial judges must weigh and balance a catalogue of relevant factors, including the employee's position, age, length of service, etc.;
- There is no one "right" amount of reasonable notice: cases usually yield a "range of reasonableness;"
- There is no absolute upper limit or "cap" on reasonable notice
- Generally, only exceptional circumstances will support a base notice period in excess of 24 months

In *Lowndes*, there was minimal guidance provided as to what would constitute an "exceptional circumstance," but there is some suggestion that senior executive status or promises of employment to the age of retirement might qualify.

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### WHAT'S NEW AT RUBIN THOMLINSON LLP

- ◆ Following our last sold-out session, we are pleased to announce a second "Respect at Work" training session on April 27 and 27, 2006. Contact us for details to find out what all the buzz is about.
- ◆ "The Guide to Workplace Investigations", written by our very own Janice Rubin and Christine M. Thomlinson, is due to be published by Canada Law Book this Spring.
- ◆ Our complimentary "Just Cause" breakfast seminar gathered a full house. Stay tuned for our next session in the Spring!

At Ruben Thomlinson LLP, we work with our clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at [contact@rt-law.ca](mailto:contact@rt-law.ca)

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### Is There a Cap on Reasonable Notice? (cont'd)

Going forward, we think it is fair for you to assume that, in the vast majority of cases, the upper limit on notice is 24 months. Any employee looking to justify an award in excess of this amount will need to put forth certain significant or exceptional circumstances as justification, and these will need to be measured on a case-by-case basis. Do remember, though, that Courts have shown far less reluctance to propel base notice periods in excess of 24 months when they are trying to send a message to employers that they behaved badly at the time of termination.

#### DID YOU KNOW?

- Effective February 1, 2006, Ontario's minimum wage raised from \$7.45 to \$7.75
- Liquor servers in Ontario received a 25 cent raise, from \$6.50 to \$6.75 per hour.
- Hunting and Fishing guides saw their minimum wages jump from \$37.25 per hour (for less than 5 hours/day) to \$38.75, and from \$74.50 per hour (for greater than 5 hours/day) to \$77.50.
- Minimum wages are set to rise again once more on February 1, 2007.

(Source: Ministry of Labour)

#### Helpful websites

Ontario Human Rights Commission  
[www.ohrc.on.ca](http://www.ohrc.on.ca)

Human Rights Tribunal of Ontario  
[www.hrto.ca](http://www.hrto.ca)

Ontario Ministry of Labour  
[www.labour.gov.on.ca](http://www.labour.gov.on.ca)

CanLII – Canadian Legal Information Institute  
[www.canlii.org](http://www.canlii.org)

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