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## Taxi Company Taken for a Drive: "Quasi-employee" Entitled to Notice of Termination

### CONGRATULATIONS, JANICE!



We are proud to announce that Janice Rubin has been selected by her peers for inclusion in the inaugural Canadian edition of *The Best Lawyers in Canada* – a listing of the country's top lawyers that is considered to be the gold standard of reliability and integrity in lawyer ratings.

Like its long-standing sister publication, *The Best Lawyers in America*, lawyers listed in the Canadian edition were included solely on the votes of their peers. Over the course of a year-long survey, ballots were cast by the top lawyers in Canada, registering 62,426 votes, to determine which of their peers should be featured in the inaugural edition.

Published this summer, *The Best Lawyers in Canada* can be viewed online: [www.bestlawyers.com/search](http://www.bestlawyers.com/search). Janice is listed under Labour & Employment Law.

We work with employer 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)

Companies that retain the services of consultants and contractors should take note of a recent decision of the Ontario Superior Court of Justice in which a taxi driver, who operated his own vehicle and was not employed by the company, was entitled to notice of the termination of his services. This confirms a long-standing legal principle that "quasi employees" are entitled to notice of termination.

In *Chaudry v. Beck Taxi Limited*, the Court dealt with an individual who was a "quasi employee". While it was clear on the facts that Mr. Chaudry was not an employee of Beck in the traditional sense – i.e. he drove his own car, paid Beck \$420 a month to participate in a dispatch service, and set his own hours – he was well integrated into the company's operations. In fact, the evidence was that Mr. Chaudry was required to take a sensitivity awareness course on how to treat cab customers when he first started with Beck. He was also required to paint his car the Beck orange and green colours and carry a roof light with the name of the company on it. In addition, he was subject to the rules set out in the Beck handbook, many of which carried consequences of a disciplinary nature.

The judge concluded that the nature of the employment relationship was that it would be for an indefinite period, and that, if terminated, it would be on notice (or pay in lieu of such notice). In reaching this conclusion, he rejected Beck's argument that its drivers were "no more than subscribers to a dispatch system operated by the company and for which they paid a regular fee".

In many similar cases, judges assess notice somewhat differently than in a typical wrongful dismissal case, with the end-result being notice awards less than those of an employee who has been terminated. In this case, however, the judge looked at the traditional "Bardal" factors such as age, length of service, and availability of alternative employment, and provided the employee with eight weeks pay in lieu of notice. This was not dissimilar to the amount of notice Mr. Chaudry would have received had he been an employee of Beck.

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## EMPLOYERS' ALERT

### Upcoming workshops offered by Rubin Thomlinson LLP:

- “Respect at Work: Human Rights & Personal Harassment in the Workplace”, November 1, 2006
- “How to Conduct a Workplace Investigation”, December 4 & 5, 2006
- “Managing the Disabled Employee”, January 17, 2007

\*\*\*\*NEW\*\*\*\*

- “Help! I’ve Got to Hire Someone!”, February 20, 2007

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### What does this mean for employers?

- **Use a written contract**

In this case, the Court found an implied term that a taxi driver retained under these circumstances was entitled to notice, and that notice was eight weeks. Had the company put its mind to the issue in the first place, it could have determined the amount of notice to which Mr. Chaudhry was entitled, for example 30 days, and stipulated this in a written contract.

- **Plan for termination costs of “quasi- employees”**

Yes, these folks are not your employees, and they are not entitled to notice and severance pay under the *Employment Standards Act*, or reasonable notice at common law but, as this case clearly shows, they cannot be terminated without something. Noting the parallels between this relationship and that of employment, the judge provided Mr. Chaudhry with a modest financial buffer to assist him in moving on to his next position. A company will be better able to predict the true costs of retaining such individuals if these termination costs are considered.

- **Disproportionate relationship between length of notice and the length of service**

In this case, Mr. Chaudhry received eight weeks of pay in lieu of notice, despite the fact that he had only four weeks of service as a driver and two years as a lessor of another driver (although the trial judge said he didn’t take this time period into account). The amount of notice to which an individual is entitled is not based on a formula, but is rather fact-specific. Those with short service often get disproportionately high notice.

- **Consider alternatives to trial**

The plaintiff’s eight-week win translated into \$7500. Undoubtedly, this was less than what he paid his lawyer, and what the defendant paid theirs. The optimal legal solution, certainly in terms of cost efficiency, would have been to have resolved the dispute through mediation.

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.