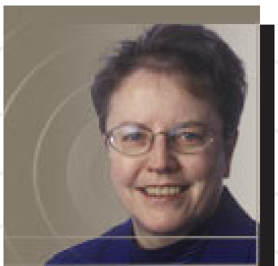
Current Workplace Issues

Evaluating the Manner of an Employee's Termination to Assess Reasonable Notice

SANDRA ANDERSON



SANDRA ANDERSON

In Wallace v. United Grain Growers Ltd., the Supreme Court of Canada recently expanded the list of factors, such as age, length of service, nature of the job, and availability of other employment, which courts use to determine the length of the notice period due terminated employees. Now the manner in which the employer terminates will affect reasonable notice.

At the age of 45, Wallace agreed to leave his previous employment with a competitor when he sought and was given a guarantee of secure employment, fair treatment, and good remuneration. He was told by his new employer, a printing company, that if he performed as expected, he could continue to work for the company until his retirement. He enjoyed great success in the job and was the company's top salesman for each of the 14 years he spent in its employ. Then he was discharged without explanation. Wallace sued for wrongful dismissal. The company alleged that he had been dismissed for cause, up until the trial began, when it dropped the allegation. That allegation and the termination itself caused Wallace distress for which he sought psychiatric help. This spread around the printing industry, impeding his efforts to find similar employment.

The Court focused on the unique nature of an employment contract as governing a relationship on which society places great value but which reflects a power imbalance between employers and vulnerable employees whose identities and emotional well-being are bound up in their work. Consequently, "the point at which the employment relationship ruptures is the time when the employee is most vulnerable and most in need of protection." Although the Court found that the manner in which Wallace's termination was carried out did not constitute a separately-actionable wrong, its consequences and the distress caused Wallace justified extending the notice period to 24 months. The Court held that employers "ought to be held to an obligation of good faith and fair dealing in the manner of dismissal, the breach of which will be compensated for by adding to the length of the notice period."

It was recognized that it is impossible to lay down hard and fast rules for what constitutes a breach of an employer's good faith and fair dealing obligation. The obligation appears to crystalize at termination but is measured against the employer's earlier conduct. In Wallace's case, the Court noted the employer's unduly insensitive and misleading dealings, Wallace's age, his long tenure as an outstanding employee, his limited re-employment prospects, the inducement to leave his previous secure employment, and especially the guarantee of job security.

The Court cited other examples of a lack of good faith and fair dealing, such as: (1) unfounded accusations against a terminated employee, combined with refusal to provide a letter of reference; (2) reassuring an employee whose position was being eliminated that he would be transferred to another position for over a month after the decision had been taken to terminate him; (3) terminating an employee who was returning to work after a long term disability leave for major depression; and (4) laying off a bartender who found out from a newspaper advertisement for a bartender at half his salary that

2000, 10235 - 101 Street
Edmonton, AB T5J 3G1
PH: 780.423.3003

400 The Lougheed Building
604 1 Street SW
Calgary, AB T2P 1M7
PH: 403.260.8500

201, 5120 - 49th Street
Yellowknife, NT X1A 1P8
PH: 867.920.4542

www.fieldlaw.com

he had in fact been dismissed without being offered the advertised job.

The court summarized its expectations of employers as follows:

"...at a minimum... in the course of dismissal employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive... where an employee can establish that an employer engaged in bad faith conduct or unfair dealing in the course of dismissal, injuries such as humiliation, emharassment and damage to one's sense of self-worth and self-esteem might all he worthy of compensation depending upon the circumstances of the case."

While Wallace may not be a revolutionary decision from our highest Court, it represents a shift towards compensating for breaches of implied good faith obligations present in an employment relationship. It is expected that wrongful dismissal litigation will now more strongly emphasize the employer's conduct and the personal, rather than simply economic, harm which bad faith termination inflicts on employees. More than ever, dispassionate, evenhanded, and forthright termination practices, combined with clear employment terms from the start, are mandatory for an employer who wishes to avoid the courtroom after terminating an employee.