

Current Workplace Issues

Employee Termination

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Three recent cases from the Alberta Court of Appeal are making an impact on employment law. In **Christianson v. North Hill News Inc.**, the Court examined what the length of the notice period should be for a 17-year assistant manager who was terminated without cause. The Court increased it to twelve months from the six months awarded by the trial judge. Of significance is the fact that there was to be no deduction for failing to mitigate even though the employee had not applied for every local job in her field and had, instead, spent time taking a retraining program. She was also compensated for expenses associated with her as-yet unsuccessful attempts to mitigate, including the cost of the retraining program.

An award of twelve months' reasonable notice for a sales manager dismissed without cause after 4 1/2 years of employment with a new home construction and sales business was also upheld by the Court of Appeal in **Farmer v. Foxridge Homes Ltd.** Commission earnings from previous years were averaged with salary over the relevant notice period to arrive at the compensation figure. The Court noted that twelve months was at the high end of the range for an employee of 4 1/2 years, but given the economic climate, the award was not unreasonable.

The fact that similar notice periods were upheld as reasonable for persons who had been employed for quite different lengths of time illustrates the demise of the "one month per year of service" principle, which has frequently been used to anticipate court awards or to calculate settlement packages.

The third decision is more favourable to employers. In **Hamilton & Olsen Surveys Ltd. v. Otto and Comin**, the Alberta Court of Appeal held that two employees were not constructively dismissed by their employer which had unilaterally reduced their benefits in its efforts to adjust to changed economic conditions and revenue shortfalls. The company had withheld its 5% contribution to the employees' RRSP plan and had reduced their six weeks of annual vacation to four, amounting to a rollback of between 6.49% and 8% of their total compensation. This result should not be interpreted as a license to reduce employee benefits, however. The company had made generous upward adjustments in bonuses during its profitable times, so that the rollbacks were held to be consistent with its previous approach to adjusting compensation in accordance with its economic position. Field & Field Perraton acted for the company in this case.

If you are currently considering severance packages or contemplating changing employee benefits, it is wise to contact legal counsel beforehand.

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