



e2r Alert!

Case Law Update: Common Law or Common Sense?

As we move into 2025, we've highlighted below some recent and important legal decisions in employment law comparing and contrasting Alberta and Ontario decisions.

ALBERTA:

In the case of *Singh v. Clark Builders*, 2025 ABKB 3 (CanLII), an Alberta court was dealing with a wrongful dismissal allegation from Mr. Singh who was employed by Clark Builders as VP Corporate Operations with written confirmation that he would be Chief Operating Officer down the road. He was employed from October 15, 2013 until his employment was terminated on August 26, 2019. Mr. Singh had almost had 6 years' service and nearly 4 of those years were in the COO role. He was 60 years old at the time of termination.

Mr. Singh actively engaged in the negotiation of his employment contract and several versions were created. Ultimately Mr. Singh agreed to a termination clause that said it would be a "90-day notice period for the employer". The Court found that the 90 days was exactly what the contract provided, it was not ambiguous, it was not a minimum, and they upheld the clause.

Mr. Singh made other arguments about his role changing to COO and that this negated the agreement (changed substratum as it is known), but the Court rejected this argument. Instead they found that the changes were contemplated and that there was a clause specifically indicating that a change of duties will not impact the other terms of the agreement.

Had there been no enforceable termination clause, the Court concluded that Mr. Singh would have been entitled to 12 months' reasonable notice of termination at common law.

ONTARIO:

The Ontario Superior Court in *Shelp v. GoSecure Inc.*, 2025 ONSC 49 (CanLII) recently awarded a 51 years old Vice-President of Sales with 10 months' service with 6 months'

reasonable notice at common law. GoSecure did not have an enforceable termination clause in the employment agreement. The termination was a result of downsizing.

Mr. Shelp argued that he was induced to leave secure employment and that this should increase his reasonable notice period; the Court said no, he was not 'actively recruited' and therefore it gave no weight to this argument (or so it said).

The Court even noted that his employment was not highly specialized and that he was highly marketable as an employee – which should have caused the court to lean toward a lower notice period.

Disturbingly, despite having found that Mr. Shelp was not induced to leave secure employment, the Court stated (para.18): *“On the other hand, reasonable notice should not ignore the seniority the defendant gave up when he was hired away from his former employer.”*

Arguably, this is an error, as ignoring service with a former employer is exactly what should happen if there is no inducement. The Court went on to find that the normal factors assessed for reasonable notice would suggest a notice period of 6 months – there was no discussion of those factors or how this period was achieved. Given the Court called out the 'remarkable range' of notice periods for short service executives, one would have hoped for some rationale that actually made the award comprehensible.

Employers, and management-side employment lawyers, remain unable to properly assess damages for short-service employees due to a lack of analysis and what seems like reasonable notice periods that are not in fact based on the relevant factors.

What's Ahead

The summaries above – which speak to a number of important concepts, like written employment agreements, enforceable clauses and common law reasonable notice, are only a sample of the decisions within the ever-developing world of employment/HR law. The key take-away: you must ensure you have enforceable termination clauses, and change of terms clauses, in your employment agreements. We can help.

We will continue to pay close attention to critical decisions across Canada as there is no doubt that 2025 will see more exciting changes, and we do hope for some consistency in decisions in Ontario. In the meantime, we may see more CEO's and companies singing Gordon Lightfoot's lyrics: "I'm Alberta bound!"

If you have any questions about these decisions or your agreements, please do not hesitate to contact ClientCare.