



LAPOINTE ROSENSTEIN
MARCHAND MELANÇON
L.L.P. Attorneys

Newsletter

Labour Law

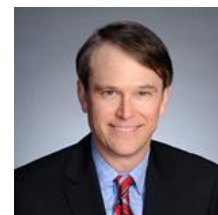
Volume 1, Number 1

November 2013

Editor's Remark

Lapointe Rosenstein Marchand Melançon is proud to provide you with this first issue of our labour law newsletter. Our goal is to bring interesting legal questions to our client's attention in labour law.

We would appreciate your comments and suggestions with respect to subjects of interest for future newsletters. Do not hesitate to contact us should you have any question.



M^{re} Christopher Deehy

Asphalte Desjardins Inc. v. Commission des normes du travail: an employee's notice of resignation can be waived by the employer

M^{re} Sophie Roy-Lafleur, attorney
Simon Rainville, student

In a judgment dated March 19, 2013¹, the Quebec Court of Appeal was called upon to rule on the issue of an employee's notice of resignation in order to determine whether employers have a right to waive such notices and whether, by doing so, they would be liable to compensate the employee.

The facts of the case are as follows: Daniel Guay worked for Asphalte Desjardins Inc. for a number of years as a project manager. In 2008, he received an offer of employment from a competitor doing business in the same sector. Given the possibility of better employment conditions than those offered by his current employer at the time, Mr. Guay submitted his resignation on February 15, 2008. His letter of resignation stated that his resignation would be effective as of March 7, 2008 and that he would use the remaining three weeks on the job to complete a number of different files in order to facilitate the task of his successor. The management at Asphalte Desjardins tried in vain to convince Mr. Guay to stay. Seeing that it was unable to change Mr. Guay's mind, the employer chose to dismiss him the following day without pay in lieu of notice of termination of employment.

This judgment is of particular relevance to employers as it clarifies the law regarding their right to waive an employee's resignation notice. In short, the Quebec Court of Appeal states that an employee's resignation notice period is left up to the discretion of the employer and that the latter does not

have to compensate the employee for such lost weeks of work should it choose to waive it.

The Court of Appeal starts off by recalling that the purpose of article 2091 of the *Civil Code of Quebec*, which codifies the right to notice of termination of employment, is to protect an employee's interests in order to allow him time to find alternate employment without suffering a financial loss. This provision also protects the employer, allowing it to restructure and to find and train a suitable replacement. Even though it is possible for an employee to draw a benefit from this notice of termination, the law's purpose, rather, is to protect the co-contracting parties.

In this respect, the Court of Appeal shifted away from a case often cited by the Court of Quebec in this question, *Commission des normes du travail v. Hewitt Équipement Ltée*², where the Court held that while an employer does have the right to waive the performance of work by a resigning employee, the employer does not have the right to waive the employee's "right" to work and to receive compensation during such a period—whether the employee continues to work or not. The Court of Appeal chose not to follow this legal reasoning. It is of the opinion that although an employee stands to benefit from the notice period leading up to resignation when he unilaterally terminates the employment contract, this benefit does not constitute a right that the employer is fully obligated to respect.

While pursuant to article 2092 of the *Civil Code of Quebec*, an employee cannot waive the right to obtain compensation when his employment is terminated by his employer, there is no analogous provision in favour of employers upon the resignation of an employee, meaning that, logically, the employer is entitled to waive the notice period offered by its employee.

Moreover, the Court of Appeal adds that a waiver of the notice period offered by an employee does not constitute a termination of the employment contract under section 82 of the *Act respecting labour standards* which establishes the

notice to which an employee is entitled prior to the termination of his employment by the employer. The Court reasons that upon an employee's resignation, the legal situation between the two parties is already crystalized. Consequently, the employee's resignation does not become a dismissal should the employer elect to waive the employee's notice period.

On September 5, 2013, leave to appeal to the Supreme Court of Canada was granted. Consequently, the Supreme Court of Canada will rule on the question of the rights and obligations of the parties when notice of termination is given by a resigning employee.

-
1. *Asphalte Desjardins Inc. v. Commission des normes du travail*, 2013 QCCA 484
 2. C.Q., district of Montreal, 500-02-038921-834, December 14, 1984

The content of this newsletter is intended to provide general comment only and should not be relied upon as legal advice.

For more information, contact one of the team members:

Christopher Deehy, CIRC

514 925-6353

christopher.deehy@lrmm.com

Jacquelin Caron, CIRC

514 925-6314

jacquelin.caron@lrmm.com

Guy P. Dancosse, Q.C.

514 925-6393

guy.dancosse@lrmm.com

Roland Massicotte

514 925-6326

roland.massicotte@lrmm.com

Sophie Roy-Lafleur

514 925-6395

sophie.roy-lafleur@lrmm.com