

How Does a Court Determine Reasonable Notice?

A recent British Columbia case (*Waterman v. Mining Association of British Columbia*) reaffirms the notion that assessing reasonable notice is more of an art than a science. That's because if one just looked at the facts and the decision in this case – a 45 year old Vice President with less than 4 years of service who was awarded 10 months reasonable notice – one may conclude that this case is another classic example of a short-service employee getting a disproportionate amount of notice. That assumption would also be supported by recent case law, where courts have commented upon the declining importance placed on the 'character of employment' factor when assessing reasonable notice. However, if your assumption was short-service, lengthy notice, your assumption would be wrong.

In fact, in this case, the court went out of the way to specifically state that the employee's short service was a factor that favoured a shorter notice period – not a longer one. No, the disproportionate notice period in this case (relative to service and age) was due almost entirely, on the character of the employee's employment. The court noted, "*In my view, the nature and character of her employment is a strong factor in this case favouring a more lengthy notice period.*" The court also seems to have taken into account the 'availability of alternate employment' factor, at least in part, commenting on the downturn in the mining industry.

In any event, the *Waterman* case serves as a great reminder that courts may weigh certain factors more than others and therefore there is no surefire way to know what you may owe an employee upon termination save and except for having an enforceable employment agreement with a valid termination clause. Where there is no such agreement/clause, courts will assess reasonable notice based upon the traditional factors like age, service, character of employment and availability of similar employment, and other factors such as inducement.

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For more information on assessing reasonable notice or eliminating the uncertainties altogether through an employment contract, please do not hesitate to set up an appointment to speak with an e2r Advisor.

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