

**26 MONTHS' NOTICE OF TERMINATION
AWARDED TO 65 YEAR OLD EMPLOYEE**

In *Hussain v. Suzuki Canada Ltd.*, the Court awarded an employee 26 months' notice of termination, surpassing the traditional high-water mark of 24 months' notice.

The Employee was a long-standing employee of Suzuki Canada Ltd ("Suzuki"). He had 35 years of service and was almost 65 years old at the time of his termination. He held the position of Assistant Warehouse Supervisor, earning \$48,790. He obtained general skills on the job but did not have a definable trade, and therefore, was found to be less marketable. Hussain was terminated without cause on February 15, 2011. Suzuki argued that the notice of termination should have been in the range of 12 to 18 months.

In a surprising decision, the Ontario court awarded Hussain 26 months' notice of termination and ordered Suzuki to pay almost \$20,000 in interest and costs. The court held that there were "exceptional circumstances" that warranted lengthier than usual notice of termination. While each factor on its own was not considered deserving of lengthier notice, the combination of the employee's age, length of service and poor job prospects all amounted to exceptional circumstances.

The decision is noteworthy in a number of aspects:

1. The court awarded a lengthy notice period, despite the non-managerial and relatively junior position held by Hussain.
2. The fact that Hussain was in the "twilight if not at the end of his working years" served to increase, rather than decrease, the notice period.
3. More recently, termination as a result of a restructuring due to economic issues has resulted in a reduction of notice. However, this had no effect in reducing the notice period for Hussain.
4. The Court found that the Employee has mitigated his damages even though he waited over 3 weeks to start looking for a job. The Court held that that period of time was reasonable given his age and how traumatic his termination would have been.

5. The Employee received Judgement before the notice period expired. Normally the Court would grant partial Judgement and then revisit the issue after the notice period expired to take mitigation issues into account. In this case the Court assumed that the Employee had only a 1% chance of re-employment and reduced damages accordingly.

This case is a good example of what can happen to an employer who terminates the employment of an elderly senior employee without adequate notice. Providing working notice would have been far more effective in this case.

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